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Presidential Documents

Title 3—

The President

Proclamation 5587 of December 8, 1986

Made in America Month, 1986

By the President of the United States of America

A Proclamation

During the past four years the United States has embarked on a new era of economic growth and prosperity. Millions of new jobs have been created, inflation is at its lowest point in 20 years, and the purchasing power of the average family has risen by close to 8 percent. But along with this new prosperity have come new challenges to American business. In the early years of our expansion our economy moved forward, while much of the rest of the world's lagged. The resulting strength of the dollar lowered the price of imports, making them more attractive to Americans, who then had extra money to spend. At the same time, it raised the prices buyers overseas had to pay for American goods. It is ironic that the very health and vitality of the United States economy led to our importing more than we export.

Already there are signs that this problem should lessen in the near future. American industry is rising to the challenge, producing more efficiently than ever before. The dollar is in better balance with major foreign currencies, and, even more important, our trading partners are taking a new look at what they can do to quicken their economies and rely less on the great locomotive of American prosperity. Now is the time, therefore, for consumers both here and abroad to take a fresh look at what America has to offer. American technology and management are second to none, and the skill and resourcefulness of the American worker are the envy of the world. Not only does "Made in the U.S.A." symbolize excellence of quality and design, but our products are now available at more competitive prices.

It is not only American products that merit a second look. Our commitments to freedom of enterprise, individual responsibility, and restraints on government power and taxation—some genuinely "made in America" ideas—have resulted in an economic renaissance in this country that stands as an example of hope for people everywhere. A world in which state-imposed barriers to commerce are removed, and in which all individuals are free to reach their greatest potential, will be a world in which all nations can bloom and prosper.

The Congress, by Public Law 99-568, has authorized and requested the President to proclaim December 1986 as "Made in America Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 1986 as "Made in America Month." I invite the people of the United States to observe this month with appropriate programs, ceremonies, and activities to celebrate the excellence of American products.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of December, 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. 86-27935
Filed 12-9-86; 3:31 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5588 of December 8, 1986

Wright Brothers Day, 1986

By the President of the United States of America

A Proclamation

If any event ever altered the future of mankind radically and irrevocably, it was the manned, engine-powered airplane flight of Orville Wright at Kitty Hawk, North Carolina, on December 17, 1903.

Before that day, people could but dream of flight or imitate it by floating in balloons. But forever after, thanks to Orville and Wilbur Wright, man could travel the skies as he had the continents, rivers, and seas throughout the ages.

The benefits of manned flight have been incalculable. Today, our world is linked by a global air transportation system that enables us to travel safely and efficiently virtually anywhere in a matter of hours. Aviation technology has built on the foundations of manned airplane flight to provide advances in science, medicine, and many other fields. And mankind has ventured beyond the skies into space.

Just as the principles of flight that the Wright Brothers harnessed still apply, so too their spirit—invention, exploration, originality, innovation—continues to motivate all those who would expand knowledge for the good of man. We owe the Wright Brothers a debt of gratitude for their invention of engine-powered flight but also for their immortal lesson of independence and determination.

The Congress, by joint resolution of December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated the seventeenth day of December of each year as Wright Brothers Day and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 17, 1986, as Wright Brothers Day, and I call upon the people of the United States to observe this day with appropriate ceremonies and activities, both to recall the accomplishments of the Wright Brothers and to provide a stimulus to aviation in this country and throughout the world.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of December, 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. 86-27936
Filed 12-9-86; 3:32 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 302

[Docket No. 86-355]

District of Columbia; Movement of Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the movement of plants and plant products into and out of the District of Columbia (D.C.) by revising the address of the official inspection and certification office for D.C. This action is necessary due to the relocation of this office from Washington, D.C., to Beltsville, MD.

EFFECTIVE DATE: December 11, 1986.

FOR FURTHER INFORMATION CONTACT: E.E. Crooks, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8249.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 302 contain inspection and certification requirements governing the movement of plants and plant products into and out of the District of Columbia (D.C.). In particular, current § 302.4(c)(2) requires that all plants and plant products sent to the United States Department of Agriculture, Washington, D.C., be delivered to the Plant Inspection House of the Plant Protection and Quarantine Programs, Room 1127, Auditors Building, 14th Street and Independence Avenue, SW, Washington, D.C. Likewise, current § 302.6(c)(1) requires that all nursery stock, herbaceous perennial plants, bulbs, or roots be inspected at this same Plant Inspection House prior to being shipped out of D.C.

This document announces that the D.C. Plant Inspection House has been closed, and amends the regulations to reflect the address where plant inspections shall be performed by USDA for plants moved into and out of D.C. This inspection and certification function has been transferred to a facility located 18 miles away in Beltsville, Md. Further, the address in § 302.4(c)(2) and § 302.6(c)(1), and the telephone number in § 302.6(c)(2), have been changed as follows:

Plant Protection and Quarantine Work Station, Beltsville Agricultural Research Center-East, Building 321, Beltsville, MD 20705, Phone: (301) 344-2527

The decision to close the D.C. Plant Inspection House was an internal agency action initiated to improve the management of our personnel and physical resources. Primary considerations were:

1. The volume of plant and plant product movements into and out of D.C. had fallen below the level necessary to justify operation of two separate, fulltime inspection stations in the same metropolitan area.

2. The Department was experiencing a severe office space shortage in DC and had requested that USDA agency functions be transferred, wherever possible, from DC to other locations.

3. We were experiencing a shortage of inspectors and, by combining the DC and Beltsville facilities, were able to relieve personnel to fill critical vacancies elsewhere in our plant quarantine and inspection system.

4. Combining the D.C. and Beltsville facilities resulted in significant fiscal savings.

Executive Order 12291 and Regulatory Flexibility Act

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

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

This facility relocation does not, in any way, change the availability or extent of inspection and certification services for plant and plant materials moving into and out of DC. Further, rather than causing an "adverse effect," this change should prove beneficial for persons who must use the facility. The D.C. Plant Inspection House was hard to get to and had no available parking, particularly for large commercial trucks. The Beltsville Work Station, on the other hand, is located closer to major interstate railroad and highway systems, and has ample public parking.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

Effective Date

The relocation of the official plant inspection and certification office for DC, from Washington, DC, to Beltsville, MD., was necessitated by fiscal, staffing and space considerations entirely within the knowledge of the Department. The office relocation does not change the availability of, or limit any of the inspection and certification services provided to the public, and no complaints have been received about the relocation.

Accordingly, pursuant to the administrative procedure provisions of 5

U.S.C. 553, prior notice and other public procedure with respect to this rule are unnecessary, and this rule may be made effective less than 30 days after publication of this document in the Federal Register.

List of Subjects in 7 CFR Part 302

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

PART 302—DISTRICT OF COLUMBIA; MOVEMENT OF PLANTS AND PLANT PRODUCTS

Accordingly, Part 302, Title 7, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 302 is revised to read as follows:

Authority: 7 U.S.C. 105dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Paragraph (c)(2) of § 302.4 is revised to read as follows:

§ 302.4 Requirements relating to nursery stock and other plants and plant products.

* * * * *

(c) * * *

(1) * * *

(2) All nursery stock and herbaceous perennial plants, bulbs, and roots, annual plants, decorative plant material, and other plants and plant products, whether restricted or unrestricted, addressed to the United States Department of Agriculture, Washington, DC, shall be delivered only to the Plant Protection and Quarantine Work Station, Beltsville Agricultural Research Center-East, Building 321, Beltsville, MD 20705.

3. Paragraph (c)(1) of § 302.6 is revised to read as follows:

§ 302.6 Certification of nursery stock and herbaceous perennial plants, bulbs, and roots.

* * * * *

(c) * * *

(1) Nursery stock, herbaceous perennial plants, bulbs, or roots to be shipped out of the District of Columbia must be presented at the Plant Protection and Quarantine Work Station, Beltsville Agricultural Research Center-East, Building 321, Beltsville, MD 20705, for inspection at the time of shipment unless otherwise authorized by an inspector.

* * * * *

4. Paragraph (c)(2) of § 302.6 would be amended by changing the telephone number "447–2598" to read "(301) 344–2527."

Done in Washington, DC, this 8th day of December, 1986.

W.F. Helms,

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

[FR Doc. 86–27874 Filed 12–10–86; 8:45 am]

BILLING CODE 3410-BY-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 1; Doc. No. 0107A]

General Administrative Regulations; Appeal Procedure

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends Subpart J to Part 400 in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure. The intended effect of this rule is to prescribe procedures under which a person may request review of determinations made by FCIC, as they affect the Standard Reinsurance Agreement between FCIC and a Multi-Peril Crop Insurance Company (MPCI), with respect to yields and coverages established on the basis of actuarial data provided by FCIC. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 11, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512.1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The Appeal Regulations provide administrative procedures under which any person or organization may request and obtain review and appeal of determinations made by FCIC. The regulations, found at 7 CFR 400, Subpart J, and published in the Federal Register on Wednesday, February 12, 1986 at 51 FR 5147, set forth the levels of appeal and prescribe the manner and format of such procedure.

FCIC, upon review of these regulations, has determined that no provision exists for an appeal by a producer whose contract with an MPCI company has been reinsured by FCIC under the Standard Reinsurance Agreement, when such producer disagrees with the actuarial data relative to yields and coverages relating to the producer's farming operation. FCIC provides such actuarial data for this purpose.

Under this amendment the insured producer will be afforded access to the appeal process administered by FCIC for the purpose of contesting the actuarial data affecting the MPCI policy.

The information collection control numbers assigned by Office of Management and Budget (OMB) are found at Subpart H to 7 CFR Part 400.

On Tuesday, August 26, 1986, FCIC published a Notice of Proposed Rulemaking (NPRM) in the Federal Register at 51 FR 30369, amending Subpart J to Part 400 in Chapter IV of Title 7 of the Code of Federal

Regulations (CFR), known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure by prescribing procedures under which a person may request review of determinations made by FCIC, as they affect the Standard Reinsurance Agreement between FCIC and a Multi-Peril Crop Insurance Company (MPCI), with respect to yields and coverages established on the basis of actuarial data provided by FCIC.

The public was given 60 days in which to submit written comments, data, and opinions on the NPRM, but none were received. Therefore, the NPRM is hereby adopted as final.

List of Subjects in 7 CFR Part 400

Crop insurance; Administrative regulations, Review and appeal procedure.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends 7 CFR Part 400, Subpart J—General Administrative Regulations; Appeal Procedure, in the following instances:

PART 400—[AMENDED]

1. The authority citation for 7 CFR Part 400, Subpart J, continues to read as follows:

Authority: Pub. L. 75–430, 52 Stat. 72 et seq., as amended, (7 U.S.C. 1501 et seq.).

2. 7 CFR 400.92 is revised to read as follows:

§ 400.92 Rights of appeal.

Appeal is available to:

(a) Any person determined to be indebted to the Corporation as a result of:

(1) Overpaid indemnities; or

(2) Non-payment of premium;

(b) Any person whose claim for indemnity under insurance obtained pursuant to this Chapter has been denied;

(c) Any person whose request for insurance provided for in this Chapter has been denied;

(d) Any party to a contract who has received notification of a determination by the Corporation regarding any terms or conditions of the contract between the person and the Corporation which the party disputes;

(e) Any person whose request for relief under the Good Faith Reliance on Misrepresentation provisions of the crop insurance regulations contained in this Chapter has been denied in whole or in part; or

(f) Any party to a crop insurance contract with a multi-peril insurance company (a company which is a party to a Standard Reinsurance Agreement with the Corporation) whose contract has been reinsured by the Corporation, provided that the appeal is related to yield and coverage issues based upon actuarial data furnished by the Corporation, which said party disputes. In such cases, the Corporation shall notify the multi-peril insurance company of the appeal request and such company shall be offered an opportunity to participate in the appeal hearing.

Done in Washington, DC, on November 20, 1986.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–27787 Filed 12–10–86; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Parts 905, 987, and 991

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 905 and 987 for the respective 1986–87 fiscal year for each order. Funds to administer these programs are derived from assessments on handlers. A budget is authorized for Marketing Order 991 for the period August 1 through October 31, 1986, to cover expenses incurred in connection with the termination of the order. The order was terminated on October 31, 1986. No assessment rate was recommended because there were sufficient operating revenues from the previous year for these expenses.

EFFECTIVE DATES: August 1, 1986–July 31, 1987, (§ 905.225), October 1, 1986–September 30, 1987, (§ 987.331), and August 1, 1986 to October 31, 1986, (§ 991.321).

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 Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) 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 businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 95 handlers of Florida citrus and 26 handlers of California dates that will be subject to regulation during the course of the current season. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.2) as those whose gross annual receipts are less than $3,500,000. The majority of these firms may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year.

An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and/or producers of the regulated commodities. This is appropriate because they are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area and thus in a position to formulate an appropriate budget. The budgets are formulated and discussed in public meetings, thus all directly affected persons have opportunity to participate and provide input.

The assessment rate recommended by each committee is a derived figure. It is merely a rate per unit of the commodity (e.g. per pound, ton, box, carton, etc.) applied to the estimated production in order to produce income sufficient to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by committees shortly before a season starts and expenses are incurred on a continuous basis, therefore budget and assessment rate approval must be

expedited in order that the committees will have funds to pay their expenses.

Effective October 31, 1986, Marketing Order No. 991 for hops of domestic production was terminated and removed from the Code of Federal Regulations (51 FR 32779). However, based on an October 17, 1986, recommendation of the Hop Administrative Committee, expenses for the period August 1–October 31, 1986, should be established so as to bring committee operations for that period into conformity with the act and marketing order requirements.

Based on the foregoing, the Secretary finds that it is impractical and unnecessary to give preliminary notice, engage in public rulemaking procedure and that good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Handlers have been apprised of the provisions and effective dates specified in this final rule. It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 905, 987, and 991

Marketing agreements and orders, Oranges, Grapefruit, Tangerines, Tangelos (Florida), Dates (California), Hops.

1. The authority citation for 7 CFR Parts 905 and 987, continues to read as follows (the authority for 7 CFR Part 991 was the same before termination on October 31, 1986).

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

2. New §§ 905.225, 987.331, and 991.321 are added to read as follows (the following sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

§ 905.225 Expenses and assessment rate.

Expenses of $242,020 by the Citrus Administrative Committee are authorized and an assessment rate of $0.00375 per ⅘ bushel carton is established for the fiscal year ending July 31, 1987. Unexpended funds may be carried over as a reserve.

PART 987—[AMENDED]

§ 987.331 Expenses and assessment rate.

Expenses of $395,000 by the California Date Administrative Committee are authorized and an assessment rate of $1.30 per hundredweight is established for the fiscal year ending September 30, 1987. Unexpended funds may be carried over as a reserve.

PART 991—[AMENDED]

§ 991.321 Expenses.

Expenses of $118,620 by the Hop Administrative Committee are authorized for the period August 1 to October 31, 1986. Pursuant to §§ 991.56(b) and 991.79, all unexpended funds remaining after October 31, 1986, have been returned to handlers.

Dated: November 19, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 86–27192 Filed 12–10–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1064, 1102, 1106, 1108, and 1126

[Docket Nos. AO–231–A54 et al.]

Milk in the Texas and Certain Other Marketing Areas; Order Amending Orders

7 CFR Parts	Marketing Areas	Docket Nos.
1126	Texas	AO–231–A54
1064	Greater Kansas City.	AO–23–A57
1102	Fort Smith, Arkansas.	AO–237–A34–RO1
1106	Southwest Plains.	AO–210–A45–RO1
1108	Central Arkansas.	AO–243–A39

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the plant location adjustments to prices under the Texas, Greater Kansas City, Southwest Plains and Central Arkansas milk orders based on industry proposals considered at a public hearing held March 4–7, 1986. The location adjustment provisions of the four orders are amended to conform prices under such orders with the Class I differentials mandated for all orders by the Food Security Act of 1985. Also, certain changes are adopted to assure the proper intra-market alignment of prices under the orders. More than the necessary two-thirds of the producers supplying each of the four affected markets has approved the amended order.

No changes for the Fort Smith, Arkansas and Rio Grande Valley orders are warranted on the basis of this hearing record and the proceeding for the Rio Grande Valley market was terminated in the October 30 final decision. Amendments to the Memphis, Tennessee order were considered at the hearing also. A prior emergency final decision and an amended order to deal with the proposed changes for this market were issued separately.

This hearing proceeding reopened an earlier proceeding for the Southwest Plains and Fort Smith, Arkansas orders to consider a merger of the two orders plus an expansion of the merged marketing area to include presently unregulated territory in southwest Missouri and northwest Arkansas. The earlier proceeding was reopened for the limited purpose of receiving evidence with respect to the economic and marketing conditions which relate to the location adjustment provisions of the merged and expanded Southwest Plains marketing area. A separate decision to deal with these issues and conclude the prior proceeding for the two markets will be issued later.

EFFECTIVE DATE: January 1, 1987.

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued February 14, 1986; published February 21, 1986 (51 FR 6250).

Emergency Final Decision: Issued May 8, 1986; published May 16, 1986 (51 FR 17982).

Final Order: Issued June 4, 1986; published June 10, 1986 (51 FR 20955).

Tentative Decision: Issued July 9, 1986; published July 15, 1986 (51 FR 25539).

Interim Amendments: Issued August 5, 1986; published August 11, 1986 (51 FR 28687).

Final Decision: Issued October 30, 1986; published November 5, 1986 (51 FR 40176).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7

U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

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

(1) The said orders as hereby amended and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

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

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

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

(3) The issuance of this order amending each of the specified orders is approved or favored by more than the necessary two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1064, 1106, 1108, and 1126

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

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

1. The authority citation for 7 CFR Parts 1064, 1106, and 1108 and 1126 continues to read as follows:

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

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

2. In § 1064.52, paragraph (a) is revised to read as follows:

§ 1064.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the marketing area and more than 70 miles by the shortest highway distance as determined by the market administrator, from the nearer of the City Hall in Kansas City, Missouri, or Topeka, Kansas, which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1064.50(a) shall be reduced by a per hundredweight rate of 1.7 cents for each 10 miles or fraction thereof that such plant is located from the nearer City hall.

* * * * *

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

Note.—No amendatory action taken herein.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. Section 1106.2 is revised to read as follows:

§ 1106.2 Southwest Plains marketing area.

The "Southwest Plains marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties, and all territory occupied by government (Municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone I—in the State of Oklahoma

Caddo	Lincoln
Canadian	McClain
Cleveland	McIntosh
Coal	Okfuskee
Garvin	Oklahoma
Grady	Pittsburg
Haskell	Pontotoc
Hughes	Pottawatomie
Latimer	Seminole
LeFlore	Sequoyah

Zone II—in the State of Oklahoma

Atoka	Jefferson
Bryan	Johnston
Carter	Kiowa
Choctaw	Love
Comanche	Marshall
Cotton	McCurtain
Greer	Murray
Harmon	Pushmataha
Jackson	Stephens
	Tillman

Zone III—in the State of Oklahoma

Adair	Major
Alfalfa	Mayes
Beaver	Muskogee
Beckham	Noble
Blaine	Nowata
Cherokee	Okmulgee
Cimarron	Osage
Craig	Ottawa
Creek	Pawnee
Custer	Payne
Delaware	Roger Mills
Dewey	Rogers
Ellis	Texas
Garfield	Tulsa
Grant	Wagoner
Harper	Washita
Kay	Washington
Kingfisher	Woods
Logan	Woodward

Zone IV—in the State of Kansas

Allen	Kingman
Barber	Kiowa
Barton	Labette
Bourbon	Marion
Butler	McPherson
Chautauqua	Montgomery
Cherokee	Neosho
Comanche	Pawnee
Cowley	Pratt
Crawford	Reno
Edwards	Rice
Ellis	Rush
Harper	Russell
Harvey	Sedgwick
	Stafford
	Sumner
	Wilson

In the State of Missouri

Barton	Newton
Jasper	Vernon

Zone V—in the State of Kansas

Clark	Lane
Finney	Meade
Ford	Morton
Gove	Ness
Grant	Scott
Gray	Seward
Greeley	Stanton
Hamilton	Stevens
Haskell	Trego
Hodgeman	Wichita
Kearney	

2. In § 1106.52, paragraph (a) is revised to read as follows:

§ 1106.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in

§ 1106.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1106.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (9) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1106.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone I	No Adjustment.
Zone II	Plus 23 cents.
Zone III	Minus 18 cents.
Zone IV	Minus 47 cents.
Zone V	Minus 27 cents.

(2) For a plant located in any of the following Kansas counties, the adjustment shall be as follows:

(i) *Minus 85 cents.* Anderson, Atchison, Brown, Chase, Clay, Cloud, Coffey, Dickinson, Doniphan, Douglas, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Linn, Lyon, Marshall, Miami, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Shawnee, Wabaunsee, Washington and Wyandotte.

(ii) *Minus 47 cents.* Elk, Greenwood and Woodson.

(iii) *Minus 27 cents.* Cheyenne, Decatur, Ellsworth, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Phillips, Rawlings, Rooks, Sheridan, Sherman, Smith, Thomas and Wallace.

(3) For a plant located in the State of Missouri, the adjustment shall be as follows:

(i) *Minus 58 cents.* In the county of Barry, Butler, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Gasconade, Greene, Howell, Iron, Laclede, Lawrence, Madison, Maries, McDonald, Mississippi, New Madrid, Oregon, Ozark, Pemiscot, Phelps, Polk, Pulaski, Reynolds, Ripley, Scott, Shannon, Stoddard, Stone, Taney, Texas, Wayne, Webster or Wright.

(ii) *Minus 76 cents.* In the county of Jefferson, St. Charles, or St. Louis or in the city of St. Louis.

(iii) *Minus 85 cents.* In any other county that is outside the marketing area and also outside the designated pricing area described in paragraph (a)(3)(i) or (a)(3)(ii) of this section.

(4) For a plant located in the State of Arkansas, the adjustment shall be the difference (plus or minus) between the applicable Class I price effective at such plant location under the Central Arkansas order (Part 1108) and the Class I price specified in § 1106.50(a).

(5) For a plant located in the State of Louisiana, the plus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Greater Louisiana order (Part 1096) and the Class I price specified in § 1106.50(a).

(i) In the Texas marketing area, the plus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas order (Part 1126) and the Class I price specified in § 1106.50(a).

(ii) In the Texas Panhandle marketing area or in Lipscomb County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas Panhandle order (Part 1132) and the Class I price specified in § 1106.50(a).

(iii) In the Lubbock-Plainview, Texas, marketing area or in Parmer County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Lubbock-Plainview, Texas, order (Part 1120) and the Class I price specified in § 1106.50(a).

(iv) In the county of Bowie or Cass, the adjustment shall be plus 31 cents.

(v) In any other territory that is outside the marketing area of any Federal order and also outside the designated pricing areas described in paragraphs (a)(6) (i) through (iv) of this section, the adjustment shall be plus 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is from the City Hall in Oklahoma City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(7) For a plant located in the Rio Grande Valley marketing area and the New Mexico counties of Catron, Colfax, Hidalgo or Union, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Rio Grande Valley order (Part 1138) and the Class I price specified in § 1106.50(a).

(8) For a plant located in the State of Colorado, the adjustment shall be as follows:

(i) In the Eastern Colorado marketing area or in the county of Baca, Bent or Prowers, the adjustment shall be the difference (plus or minus) between the applicable Class I effective at such plant location under the Eastern Colorado order (Part 1137) and the Class I price specified in § 1106.50(a).

(ii) In any other territory that is outside the Rio Grande Valley marketing area and outside the designated pricing area described in paragraph (a)(8)(i), the adjustment shall be minus 77 cents.

(9) For a plant located outside the designated pricing areas described in paragraphs (a) (1) through (8) of this section, the adjustment shall be minus 18 cents plus an additional reduction of 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the City Hall in Tulsa or Ponca City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

3. § 1108.52, paragraph (a) is revised to read as follows:

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1108.9(c) and which is classified as Class I milk without movement in bulk form to another pool plant at which a higher Class I price applies, the price specified in § 1108.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (6) of this section for the location of such plant:

(1) For a plant located in the State of Arkansas, the adjustment shall be as follows:

(i) In the counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittendon, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincolon, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff, or Yell, no adjustment shall apply;

(ii) In any county lying north of any county specified in paragraph (a)(1)(i) of this section the adjustment shall be minus 22 cents; and

(iii) In any country lying south of any county specified in paragraph (a)(1)(i) of this section, the adjustment shall be plus 31 cents.

(2) For a plant located in the State of Oklahoma or Tennessee, no adjustment shall apply.

(3) For a plant located in the Texas county of Bowie or Cass, the adjustment shall be plus 31 cents.

(4) For a plant located in the State of Louisiana, Mississippi or Texas (except the counties of Bowie and Cass), the adjustment shall be plus 2.1 cents per hundredweight for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the nearer of the County Courthouse in

Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(5) For a plant located in any of the following Missouri counties, the adjustment shall be minus 58 cents.

Barry	Lawrence
Cedar	McDonald
Christian	Ozark
Dade	Polk
Dallas	Pulaski
Douglas	Stone
Greene	Taney
Howell	Texas
Laclede	Webster
	Wright

(6) For a plant located outside the designated pricing areas specified in paragraphs (a) (1) through (5) of this section, the adjustment shall be minus 2.1 cents per hundredweight for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

PART 1126—MILK IN THE TEXAS MARKETING AREA

4. In § 1126.52, paragraph (a) is revised to read as follows:

§ 1126.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (10) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1126.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1-A	Minus 25 cents.
Zone 2	No adjustment.
Zone 3	Plus 15 cents.
Zone 4	Plus 18 cents.
Zone 5	Plus 20 cents.
Zone 6	No adjustment.
Zone 7	Plus 30 cents.
Zone 8	Plus 54 cents.
Zone 9	Plus 42 cents.
Zone 10	Plus 53 cents.
Zone 11	Plus 66 cents.
Zone 12	Plus 75 cents.

(2) For a plant located in the Texas Panhandle marketing area or in Lipscomb County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas Panhandle order (Part 1132) and the Class I price specified in § 1126.50(a).

(3) For a plant located in the Lubbock-Plainview, Texas, marketing area or in Parmer County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Lubbock-Plainview, Texas order (Part 1120) and the Class I price specified in § 1126.50(a).

(4) For a plant located in Bowie or Cass County, Texas, the adjustment shall be minus 20 cents.

(5) For a plant located in the State of Texas that is outside the designated pricing areas described in paragraphs (a) (1) through (4) and (a)(6) of this section, the adjustment shall be the adjustment applicable at the nearer of Corpus Christi, San Angelo, or San Antonio, Texas, except that for a plant located in the Texas counties of Brewster, Crane, Crockett, Culberson, Hudspeth, Irion, Jeff Davis, Loving, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Ward, and Winkler, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in San Angelo, Texas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(6) For a plant located in the Rio Grande Valley marketing area or the New Mexico counties of Catron, Colfax, Hidalgo or Union, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Rio Grande Valley order (Part 1138) and the Class I price specified in §1126.50(a).

(7) For a plant located in the Southwest Plains marketing area or in the Missouri counties listed below, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Southwest Plains order (Part 1106) and the Class I price specified in § 1126.50(a).

Barry	Lawrence
Cedar	McDonald
Christian	Ozark
Dade	Polk
Dallas	Pulaski
Douglas	Stone
Greene	Taney
Howell	Texas
Laclede	Webster
	Wright

(8) For a plant located in the State of Arkansas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Central Arkansas order (Part 1108) and the Class I price specified in § 1126.50(a).

(9) For a plant located in the State of Louisiana, no adjustment shall apply.

(10) For a plant located outside the designated pricing areas described in paragraphs (a) (1) through (9) of this section, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in Dallas, Texas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

Effective date: January 1, 1987.

Signed at Washington, DC., on December 5, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86-27870 Filed 12-10-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 86-20]

Rules, Policies, and Procedures for Corporate Activities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is making technical revisions to reflect current position and organizational titles and other non-substantive, technical changes. Also, certain revisions have been made to allow for consistent computation of time for calculating comment periods.

EFFECTIVE DATE: December 11, 1986.

FOR FURTHER INFORMATION CONTACT: Mickey Fenyk-King, Financial Analyst, or Randall J. Miller, Director, Licensing Policy and Systems, Bank Organization and Structure, (202) 447-1184, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this final rule is to update official titles and functions. This

final rule provides terminology changes made for clarity. It also provides consistent guidelines for calculating the duration of comment periods. In addition, changes to 12 CFR 5.11(b) and 5.12 have been made to coincide with the comment period referenced in § 5.10(a).

Reasons for Not Allowing Notice and Comment Procedures

The Office has determined that notice and comment are unnecessary under 5 U.S.C. 553(b)(3) since this rulemaking pertains to rules of agency procedure and practice, and does not include any substantive changes.

Reason for Immediate Effective Date

This final rule is not substantive. A 30-day delayed effective date, therefore, is unnecessary.

Regulatory Flexibility Act

Because no general notice is required by 5 U.S.C 553 or any other law, the regulations of the Regulatory Flexibility Act do not apply. The effect of this final rule is expected to be beneficial rather than adverse, and both small and large entities are expected to benefit equally.

Executive Order 12291

This rule is not classified as a "major rule" and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Part 5

National banks, Organization and functions (Government agencies), Freedom of information, Official forms, Administrative practice and procedure.

Authority and Issuance

For the reasons set out in the preamble, Part 5 of Chapter I of Title 12 of the Code of Federal Regulations is amended as set forth below:

PART 5—[AMENDED]

1. The authority citation for 12 CFR Part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*

§§ 5.4, 5.21, and 5.31 [Amended]

2. Part 5 is amended by removing the word "region" and inserting in its place, the word "district" in the following places:

a. 12 CFR 5.4
b. 12 CFR 5.21 (d)
c. 12 CFR 5.31(f)(1)

§§ 5.4, 5.8, 5.9, 5.10, 5.11, 5.20, 5.21, 5.22, and 5.31 [Amended]

3. Part 5 is amended by removing the words "Regional Administrator" and inserting, in their place, the words "Director for Analysis or Director for Multinational and Regional Bank Supervision" in the following places:

a. 12 CFR 5.4
b. 12 CFR 5.8 (a) and (b)
c. 12 CFR 5.9(a)
d. 12 CFR 5.10(a), (b)(1), (b)(3), and (c)
e. 12 CFR 5.11(a), (a)(2), (c), and (f)
f. 12 CFR 5.20(f)
g. 12 CFR 5.21(d)
h. 12 CFR 5.22(c)
i. 12 CFR 5.31 (f)(1), (f)(2), and (g)

§§ 5.4, 5.23, 5.25, 5.32, 5.41, 5.43, and 5.48 [Amended]

4. Part 5 is amended by removing the words "the Bank Organization and Structure Division" and inserting, in their place, the words "Bank Organization and Structure" in the following places:

a. 12 CFR 5.4
b. 12 CFR 5.23(c)
c. 12 CFR 5.25(c)
d. 12 CFR 5.32(c)
e. 12 CFR 5.41(c)
f. 12 CFR 5.43(c)
g. 12 CFR 5.48 (c), (e), and (f)

§§ 5.4, 5.11, 5.21, 5.30, 5.31, and 5.33 [Amended]

5. Part 5 is amended by removing the words "regional office" and "Regional Office" and inserting, in their place, the words "district office" in the following places:

a. 12 CFR 5.4
b. 12 CFR 5.11(g)
c. 12 CFR 5.21(h), and (j)(2)
d. 12 CFR 5.30(f), and (h)(2)
e. 12 CFR 5.31(j)(1), (j)(2), and (k)(2)
f. 12 CFR 5.33(i)(2)

6. Section 5.1 is amended by designating the present text as paragraph (a) and adding the following paragraph (b):

§ 5.1 [Amended]

* * * * *

b. The Deputy Comptroller for Multinational Banking shall be considered a district office for the purposes of this part. All corporate activities enumerated in this part requiring filings by those banks that have been designated as multinational banks or affiliates of multinational companies shall be filed with the Deputy Comptroller for Multinational Banking.

§ 5.4 [Amended]

7. Section 5.4 is amended by removing the words "490 L'Enfant Plaza, SW." and inserting in their place, the words "490 L'Enfant Plaza East, SW."

§ 5.5 [Amended]

8. Section 5.5(b) is amended by removing the words "Notwithstanding the provisions of 12 CFR 8.8, however, the new schedule of filings fees to be charged during 1985 will be published no later than February 28, 1985. Any fee revision contained in the new schedule for 1985 will become effective thirty days after the schedule is published. Existing filing fees will remain in effect until the new schedule for 1985 becomes effective."

9. Section 5.9(b) is revised to read as follows:

§ 5.9 [Amended]

* * * * *

(b) *Availability to interested persons.* During the investigatory period the public file of corporate applications and filings made in accordance with 12 CFR Part 5, shall be available for inspection and photocopying during regular business hours in the District Office or Multinational Banking Department upon written request. This request must be made in accordance with the procedures set forth in 12 CFR 4.17a. No documents in the public file may be removed from the District Office or Multinational Banking Department by persons other than employees of the Office. A charge for photocopying may be imposed in accordance with the written schedule set forth in 12 CFR 4.17(h).

§ 5.10 [Amended]

10. Section 5.10(b)(4) is amended by removing the words "Office of the Regional Administrator" and inserting, in their place, the words "district office."

§ 5.11 [Amended]

11. Section 5.11(b) is amended by changing the reference comment period from "21-day comment period" to "30-day comment period." This amendment is made to coincide with the comment period referenced in § 5.10(a).

12. Section 5.12 is revised to read as follows:

§ 5.12 Computation of time.

In computing any period of days provided for in this part, the day of the act from which the period begins to run shall be included. The last day or the period computed shall also be included regardless of whether it is a Saturday, Sunday or legal holiday.

13. Section 5.21(e) is revised to read as follows: This revision is made to coincide with the revised interim bank procedures whereby the interim bank application and merger application are filed simultaneously.

§ 5.21 [Amended]

* * * * *

(e) *Investigation.* Generally, no investigation of the interim bank application will be conducted.

* * * * *

14. Section 5.21(g) is amended by removing the words "Regional Administrator" and inserting, in their place, the words "Deputy Comptroller (District)"

§ 5.31 [Amended]

15. Section 5.31(g)(2) is amended by removing the following sentence. "Immediately thereafter, the applicant shall furnish the Regional Administrator with a statement containing the date of publication and the name and address of each newspaper in which the notice was published."

16. Section 5.33(d) is revised to read as follows. (This revision is made to coincide with the delegation of merger, consolidation, and purchase and assumption approval authority to the district offices.)

§ 5.33 [Amended]

* * * * *

(d) *Place of filing of application.* Applications should be submitted for filing with the Director for Analysis in the appropriate district office or with the Director for Multinational and Regional Bank Supervision.

* * * * *

Dated: December 2, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86-27712 Filed 12-10-86; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-65-AD; Amdt. 39-5485]

Airworthiness Directives; Fairchild Aircraft Corporation Models SA 227-TT, SA 227-AT, and SA 227-AC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Fairchild Aircraft Corporation Models SA 227-TT, SA 227-AT, and SA 227-AC airplanes, herein referred to as "SA 227 Series" airplanes, which requires the use of continuous ignition during flight in meteorological conditions shown to result in flameout until such conditions no longer exist, or allows modification of the airplane with an FAA-approved automatic-relite ignition system. The FAA has received numerous reports of single and dual-engine flameouts attributed to known or suspected ice ingestion on airplanes powered by Garrett TPE-331 engines. Ten in-flight flameouts were reported on Fairchild Model SA 227 Series airplanes. The requirements of this AD will prevent significant power interruptions and spool down due to inadvertent flameout by providing a source of ignition to reestablish combustion quickly once the ingested ice has passed through the engine and a proper fuel/air mixture is reestablished.

DATES: *Effective date:* December 15, 1986. Comments for inclusion in the Rules Docket must be received on or before January 14, 1987.

Compliance: As prescribed within the body of the AD.

ADDRESSES: Garrett Turbine Engine Company (GTEC) Operating Information (OI) Letter 331-11 dated April 30, 1985, applicable to this AD may be obtained from GTEC, P.O. Box 5217, Phoenix, Arizona 85010; Telephone (602) 231-1000; or the Fairchild Aircraft Corporation, P.O. Box 32486, San Antonio, Texas 78284; Telephone (512) 824-9421; or the Rules Docket at the address below. Send comments on the AD in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-65-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., FAA, Central Region, Project Support Section Foreign, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: Numerous U.S. certificated airplanes, including the Fairchild Model SA 227 Series airplanes, are powered by GTEC TPE 331 engines. The FAA has received reports of 53 single and dual-engine flameouts in the U.S. and overseas from operators of airplanes powered by these engines. All of these flameouts occurred during or after a known or suspected icing encounter and are attributed to ice ingestion causing an interruption of power and spool down of the engine. There were eleven reports of dual-engine flameouts, seven of those occurring in flight and four on the ground. In three of the seven in-flight reports, both engines flamed out during final approach and in two of the three reports, the airplane landed without engine power. The ice ingestion/flameout event apparently occurs because of ice buildup prior to use of anti-ice protection, not using or prematurely turning off ignition, or anti-ice system failure. In some cases, crew action was based upon the mistaken belief that airframe and engine installations were free of the ice hazard because of clear air conditions with no visible moisture and no substantial airframe ice accretion.

Ten in-flight flameouts were reported on the Fairchild Model SA 227 Series airplanes. Analysis of these events, and coordination with the airframe and engine manufacturers has led to certain conclusions. The number of reports correlates very closely with exposure to an icing environment which is greatest for FAR 135 operators who fly approximately 2,000 hours per airplane per year, and in some regions, are routinely exposed to flight in an icing environment during the icing season on every flight at lower altitudes with no opportunity to deviate from the route or delay departures substantially. These FAR 135 operators are also required to submit service difficulty reports (SDRs). FAR 91 operators submit SDRs on a voluntary basis only, and from the record, at a lower rate than the FAR 135 operators. The greater exposure and required reporting are believed to account for the apparent but incorrect assumption of a high rate of flameouts of engines installed on certain commuter airplanes, and no potential problem with engines installed on other airplanes.

The engine manufacturer commented that, despite some differences in gas path parameters between various models of TPE-331 engines installed in these airplanes, none of the differences were believed to have a significant effect on ice ingestion capability margin. These facts have led the FAA to conclude that the potential for flameout due to icing exists in all GTEC TPE-331 engine installations, and no model variant appears more or less susceptible to flameout due to design features of the engine, or installation variances. It has been observed that while some models of airplanes have accrued substantial engine time with few flameouts, the data must be tempered by understanding that only a small fraction of the flight time, perhaps one hour per hundred, may be in an icing environment by FAR 91 operators. Also, for a twin engine airplane, the engine time is twice the flight time and the concern is dual engine flameouts per flight hour. These two considerations will thereby increase the apparent flameout per engine hour

rate by an estimated factor of at least 200. While rate of occurrence is discussed, a singular event in the fleet is sufficient to initiate AD action.

From these facts, the FAA has observed that a dual engine flameout is possible at low altitudes and locations that would preclude a safe landing prior to ground contact. It is also possible that total loss of power in an icing environment will preclude the use of bleed-air powered surface de-icing equipment. Either of these conditions could result in a stall or stall/spin accident.

The GTEC has demonstrated that the power interruptions caused by a flameout event can be minimized by the use of an automatic-relite (auto-relite) ignition system which senses power or RPM loss, to energize the ignition exciter unit until power or RPM is restored, then de-energize the ignition exciter unit.

In 1981, the FAA issued an Airworthiness Directive (AD) against certain airplanes requiring installation of an auto-relite for flight into known icing conditions. Since that time, ten flameout reports were received on that model with only two occurring in-flight. The eight ground flameouts occurred when the auto-relite was disabled. Verification of the in-flight events revealed that the flameouts occurred because the auto-relite was not enabled when the ignition selector was improperly set. The auto-relite system on the airplane model evidently functioned adequately to restore power quickly after an ice-induced in-flight flameout. A subsequent bird ingestion event demonstrated the auto-relite effectiveness in other than ice ingestion events. Auto-relite is not presently required in another similar model. The latter model accrues approximately 21 percent less FAR 135 flight time than the former model. Seven in-flight flameout reports were received on the latter during the same period.

Considering the above facts, the FAA has concluded that: (1) The dual engine in-flight flameout is an unsafe condition; (2) Ice-induced dual-engine flameouts are probable; (3) No GTEC TPE–331 model engine can be excluded from the consequences of ice-induced flameout (except the TPE–331–14 which has auto-relite); (4) No model aircraft having a TPE–331 engine can be excluded from the probability of ice-induced flameout using fleet exposure times as substantiation of reliability when an ice-induced flameout event has been reported; (5) Continuous ignition or auto-relite is effective in rapidly restoring power after an ice-induced flameout.

The FAA has determined there are approximately 248 airplanes affected by this AD. The cost of compliance with the AD is estimated at $6.45 per additional ignition hour per airplane. This increase in usage cost is so small that it will not have a significant economic impact on a substantial number of small entities.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring the use of continuous ignition or auto-relite when operating in actual or potential icing conditions on Fairchild Aircraft Corporation Model SA 227 Series airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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 AD:

Fairchild Aircraft Corporation: Applies to Model SA 227 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent engine flameout when in or departing an icing environment, accomplish the following:

(a) Revise the airplane Pilot's Operating Handbook and Airplane Flight Manual (POH/AFM) by inserting Appendix 1 of this AD in the "LIMITATIONS" section of the POH/AFM. Appendix 1 procedures supersede any other POH/AFM procedures which may be contradictory.

Note.—Automatic-relite ignition is a system which automatically energizes engine ignition without pilot action when engine RPM or torque decays below a specified level, and de-energizes engine ignition when RPM or torque exceeds the specified level. It is not synonymous with CONTINUOUS IGNITION.

(b) The requirements of paragraph (a) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

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

(d) An equivalent method of compliance with this AD, if used, must be approved by contacting the Manager, Airplane

Certification Branch, ASW-150, Rotorcraft Certification Directorate, P.O. Box 1689, Fort Worth, Texas 76101; Telephone (817) 877-5150.

All persons affected by this directive may obtain copies of the document referred to herein upon request to GTEC, P.O. Box 5217, Phoenix, Arizona 85010; Telephone (602) 231-1000; or Fairchild Aircraft Corporation, P.O. Box 32486, San Antonio, Texas 78284; Telephone (512) 824-9421.

This amendment becomes effective on December 15, 1986.

Issued in Kansas City, Missouri, on November 28, 1986.

Edwin S. Harris,

Director, Central Region.

Appendix 1—Supplement to the POH/AFM Fairchild Models SA 227-TT, SA 227-AT and SA 227-AC Airplanes

The IGNITION MODE switches shall be selected to OVERRIDE or, for those aircraft which have the auto-relite system installed, CONTINUOUS or AUTO during all operations in actual or potential icing conditions described herein:

(1) During takeoff and climb out in actual or potential icing conditions.

*(2) When ice is visible on, or shedding from propeller(s), spinner(s), or leading edge(s).

*(3) Before selecting ANTI-ICE, when ice has accumulated.

(4) Immediately, any time engine flameout occurs as a possible result of ice ingestion.

(5) During approach and landing while in or shortly following flight in actual or potential icing conditions.

*Note.—If icing conditions are entered in flight without the engine antiicing system having been selected, switch one ENGINE system to an ENGINE HEAT position. If the engine runs satisfactorily, switch the second ENGINE system to an ENGINE HEAT position and check that the second engine continues to run satisfactorily.

For the purpose of this supplement, the following definition applies:

"Potential icing conditions in precipitation or visible moisture meteorological conditions:

(1) Begin when the OAT is +5 °C (+41 °F) or colder, and

(2) End when the OAT is +10 °C (+50 °F) or warmer."

The procedures and conditions described in this appendix supersede any other POH/AFM procedures and conditions which may be contradictory.

[FR Doc. 86-27778 Filed 12-10-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 86-AGL-8]

Alteration of Restricted Area R-6901 Fort McCoy, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the boundaries and time of designation of Restricted Area R-6901 Fort McCoy, WI. The boundary changes delete the southwest corner of the area removing McCoy Army Airfield from restricted airspace and subdivides the remaining area into two separate restricted areas. In addition, the time of designation of the restricted airspace is reduced. The Continental Control Area is adjusted to reflect this action.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9246.

SUPPLEMENTARY INFORMATION:

History

On August 25, 1986, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to (1) modify the boundaries of R-6901 to exclude McCoy Army Airfield from restricted airspace; (2) internally subdivide the remaining area into two separate restricted areas; (3) reduce the overall time of use of the airspace; and (4) adjust the Continental Control Area accordingly (51 FR 30228). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment on the proposal was received. The commenter concurred with the proposed change, but offered a suggestion pertaining to aeronautical chart symbology to depict "By NOTAM" restricted areas. The comment does not relate to the proposed rule but will be taken into consideration by the FAA. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.69 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations modify the boundaries and time of designation of R-6901 and correct the title of the area in the Continental Control Area. The change excludes McCoy Army Airfield from R-6901, internally subdivides the remaining airspace into two separate restricted areas, R-6901A and R-6901B, and reduces the time of designation of the areas to reflect actual use and makes additional airspace available for public access when it is not required by the using agency.

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 Parts 71 and 73

Aviation safety, Continental control area and restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—[AMENDED]

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

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

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-6901 Camp McCoy, WI [Removed]
R-6901A Fort McCoy, WI [New]
R-6901B Fort McCoy, WI [New]

PART 73—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.69 [Amended]

4. Section 73.69 is amended as follows:

R-6901 Fort McCoy, WI [Remove].
R-6901A Fort McCoy, WI [New].

Boundaries. Beginning at lat. 44°08'40" N., long. 90°44'20" W.; to lat. 44°08'40" N., long. 90°40'22" W.; to lat. 44°09'36" N., long. 90°40'22" W.; to lat. 44°09'36" N., long. 90°36'50" W.; to lat. 44°00'27" N., long. 90°36'45" W.; west along Wisconsin State Highway 21; to lat. 44°00'03" N., long. 90°43'10" W.; to lat. 44°00'03" N., long. 90°44'40" W.; to lat. 44°02'45" N., long. 90°44'30" W.; to the point of beginning.

Designated altitudes. Surface to 20,000 feet MSL.

Time of designation. May 1 through September 30—Continuous; October 1 through April 30—0800–2200 Monday–Thursday and 0800 Friday—2200 Sunday; other times by NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Army, Commanding Officer, Fort McCoy, WI.

R–6901B Fort McCoy, WI [New].

Boundaries. Beginning at lat. 44°00'03" N., long. 90°43'10" W.; east along Wisconsin State Highway 21; to lat. 44°00'27" N., long 90°36'45" W.; to lat. 44°00'02" N., long 90°36'35" W.; to lat. 44°00'02" N., long. 90°35'15" W.; to lat. 43°56'22" N., long. 90°35'22" W.; to lat. 43°56'22" N., long. 90°39'00" W.; to lat. 43°56'38" N., long. 90°41'00" W.; to lat. 43°56'44" N., long. 90°43'17" W.; to the point of beginning.

Designated altitudes. Surface to 20,000 feet MSL.

Time of designation. By NOTAM issued 24 hours in advance.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Army, Commanding Officer, Fort McCoy, WI.

Issued in Washington, DC, on December 2, 1986.

Harold H. Downey,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86–27779 Filed 12–10–86; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 385

[OST Docket No. 1; Amdt. 385–2]

Temporary Assignments of Functions and Delegations of Authority in the Office of the Assistant Secretary for Policy and International Affairs

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Interim final rule.

SUMMARY: This rule makes temporary assignments of functions and delegations of authority in the Office of the Assistant Secretary for Policy and International Affairs.

DATE: This rule is effective December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia N. Snyder, Office of the General Counsel (C–20), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590; (202) 366–5621.

The Assistant Secretary has decided to reorganize the Office functions and make clear to the public the responsibilities of the offices affected by this delegation.

SUPPLEMENTARY INFORMATION: Effective December 1, 1986, the Office of Essential Air Service and the Office of Aviation Operations within the Office of the Assistant Secretary for Policy and International Affairs will temporarily assume certain additional functions. The changes listed below reflect these temporary assignments of functions and effect temporary delegations of authority necessary to permit continued efficient administration of Department business.

Under this temporary reassignment of function, the Office of Aviation Operations has been assigned the authority to extend the time permitted by statute for acting on complaints filed under the International Air Transportation Fair Competitive Practices Act of 1974 Aviation. The responsibilities of the Office of Essential Air Service have been expanded to include certain analytical work related to air carrier fitness determinations and the conduct of formal hearing cases before administrative law judges, as well as other air transportation regulatory activities. This rule implements those changes by amending 14 CFR Part 385.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in less than thirty days after publication in the **Federal Register.**

List of Subjects in 14 CFR Part 385

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

For the reasons set out in the preamble, and under authority delegated to me by 49 CFR 1.54(b)(1) and 14 CFR 385.2, 14 CFR Part 385 is amended as follows:

1. The authority for Part 385 continues to read as follows:

Authority: Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*); Airline Deregulation Act of 1978 (Pub. L. No. 95–504, October 24, 1978); Civil Aeronautics Board Sunset Act of 1984 (Pub. L. No. 98–443, October 4, 1984).

PART 385—[AMENDED]

2. Section 385.13 is amended by adding a new paragraph (hhh) to read as follows:

§ 385.13 Authority of the Director, Office of Aviation Operations.

* * * * *

(hhh) Extend for an additional period or periods of 30 days each (to a maximum of four such extensions) the time allowed for action on a complaint filed under section 2 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1159b).

3. Section 385.14 is amended by adding the following new paragraphs (p) through (ee) to read as follows:

§ 385.14 Authority of the Director, Office of Essential Air Service.

* * * * *

(p)(1) Approve or deny applications of certificated route air carriers for exemptions to perform single flights outside the authority contained in their certificates.

(2) Approve, when no person disclosing a substantial interest protests, or deny applications of certificated route air carriers for exemptions to perform any other operation prohibited by a term, condition, or limitation in a certificate.

(q) Approve or deny applications of air carriers for exemptions from section 401 of the Act and from applicable regulations under this chapter where the course of action is clear under current precedent or policies.

(r) Approve or disapprove applications of air carriers for permission to do business in names other than those authorized pursuant to regulation or order of the Department.

(s) Waive the provisions of § 377.10(c) of this chapter with respect to the time for filing applications for the renewal of temporary authorizations so as to permit their filing within shorter periods than required by that section when, in the Director's judgment, the public interest would be served, except that the interim extension provisions of § 377.10(d) of this chapter shall, if otherwise pertinent, apply to authorizations involved in applications filed pursuant to such waivers.

(t) With respect to applications filed under section 401 of the Act for authority to engage in interstate, overseas or foreign air transportation that are either accompanied by a petition for an order to show cause, or request show-cause treatment or the use of expedited procedures under Subpart Q of Part 302 of this chapter, and can be handled by show-cause orders:

(1) Issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed, and where the Department has already found the applicant to be fit, willing and able to provide service of the same basic scope and character;

(2) Issue an order stating the Department's intention to process the application through show-cause procedures or other expedited procedures, where the course of action is clear under precedent and policy; and

(3) Issue an order, subject to any Presidential review required under section 801(a) of the Act, making final an order to show cause issued under paragraph (t)(1) of this section, where no objections to the order to show cause have been filed.

(u) Grant or deny requests for waiver of Parts 207, 208, 212, 372, and 380 of this chapter, where grant or denial of the request is in accordance with established precedent.

(v) Approve or disapprove escrow agreements filed pursuant to §§ 207.17, 208.40, and 212.15, respectively, as security for customers' deposits made with such carriers as advance payment for charter flights.

(w) Reject or accept Public Charter prospectuses in accordance with § 380.25.

(x) Grant or deny, in accordance with established precedent, applications for relief, under section 101(3) of the Act, to hold out, arrange, and coordinate the operation of air ambulance flights as indirect air carriers.

(y) With respect to an application under section 401 of the Act for a certificate to engage in interstate, overseas, or foreign scheduled air transportation or to engage in interstate, overseas or foreign charter air transportation, issue an order instituting an investigation of the applicant's fitness and other issues related to the application, where no person has already filed an objection to the application and the investigation will be conducted by oral evidentiary hearing procedures.

(z)(1) Approve applications for registration filed under Part 297 of this chapter, or require that a registrant under Part 297 submit additional information, or reject an application for registration for failure to comply with Part 297.

(2) Cancel the registration of any foreign air freight forwarder or foreign cooperative shippers association that files a written notice with the Department indicating the discontinuance of common carrier activities.

(3) Grant or deny requests by foreign air freight forwarders or foreign cooperative shippers associations for permission to deviate from the documentation requirements of § 297.32 of this chapter. Such requests will be granted upon a showing that the record retention system of the forwarder permits ready access to information otherwise required on a manifest; that the name of the person determining rates and charges, together with the commodity rate applied, appears on the airwaybill; that the forwarder will provide copies of airwaybills to the consignor of consignee when either so requests; and that the recordkeeping operations of the forwarder otherwise comport with the policy set forth in Order E–19074 of December 7, 1962.

(4) Exempt the registrant from the requirement contained in § 297.20 of this chapter that substantial ownership and effective control reside in citizens of the country that the applicant claims as its country of citizenship, where the course of action is clear under current precedent or policies.

(aa)(1) Approve (with or without condition) or reject applications for registration filed under Part 294 of this chapter, or require that an applicant under Part 294 submit additional information.

(2) Cancel, revoke, or suspend the registration of any Canadian charter air taxi operator using small aircraft registered under Part 294 of this chapter that:

(i) Filed with the Department a written notice that it is discontinuing operations;

(ii) No longer is designated by its home government to operate the services contemplated by its registration;

(iii) Holds a foreign air carrier permit under section 402 to operate large aircraft charters between the United States and Canada;

(iv) Fails to keep its filed certificate of insurance current;

(v) No longer is substantially owned or effectively controlled by persons who are (A) citizens of Canada, (B) the Government of Canada, or (C) a combination of both; or

(vi) No longer holds current effective operations specifications issued by the FAA.

(3) Grant or deny requests for a waiver of Part 294 of this chapter, where grant or denial of the request is in accordance with current precedent or policy.

(bb) With respect to an application filed under section 401 of the Act for authority to provide interstate, overseas or foreign air transportation and with respect to which an order instituting an oral evidentiary hearing has not been issued:

(1) Dismiss the application when dismissal is requested or consented to by the applicant.

(2) Dismiss the application when it has become moot.

(cc) With respect to the procedures for the registration of foreign charter operators under Subpart F of Part 380 of this chapter:

(1) Approve the registration application under § 380.64(a)(1).

(2) Reject the registration application under § 380.64(a)(4);

(3) Request additional information from the applicant under § 380.64(a)(2);

(4) Notify the applicant under § 380.64(a)(3) that its application will require further analysis or procedures, or is being referred to the Assistant Secretary for Policy and International Affairs for formal action;

(5) Cancel the registration of a foreign charter operator under § 380.66(a) if it files a written notice with the Department that it is discontinuing its charter operations;

(6) Waive provisions of Subpart F of Part 380 of this chapter under § 380.69.

(dd) Issue Fitness Certificates and Certificates of Public Convenience and Necessity when revisions thereof are necessitated by a change in the name of the carrier or of points specified in the certificate: *Provided,* that no issue of substance concerning the operating authority of a carrier is involved.

(ee) Review Federal Aviation Administration reports on the safety of newly certificated air carriers, and

(1) Amend orders issuing certificates to advance the effective dates of the certificate if the review is satisfactory, or

(2) Stay the effectiveness of such orders for up to 30 days if the review is unsatisfactory.

Issued in Washington, DC, on December 5, 1986.

Mathew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–27853 Filed 12–10–86; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Approval of Permanent Program Amendments for the State of Iowa Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of an amendment to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Iowa submitted the amendment to bring its sedimentation pond regulations into conformance with the revised federal regulations.

EFFECTIVE DATE: December 11, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106: Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981. The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register** [46 FR 5885]. Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 915.11 and 915.15.

II. Discussion of Amendments

By letter dated August 12, 1986, Iowa submitted amendments to subrules 4.522(15)c and 4.522(15)g. Proposed subrule 4.522(15)c amends the sedimentation pond detention time rule so that it more closely reflects the language found at 30 CFR 816.46(c)(1)(iii)(C). The proposed rule would allow a sedimentation pond to be designed for a precipitation event less than 10-year, 24-hour, if approved by the regulatory authority. Iowa proposed to remove and reserve the subrule at 4.522(15)g. This deletes a requirement that there be no outflow through an emergency spillway during a 10-year, 24-hour or lesser participation event.

On September 15, 1986, OSMRE published an announcement of the receipt of the amendment and invited public comment on the adequacy of the proposed amendment (51 FR 32664). The notice stated that a public hearing would be held only if requested. Since there were no requests for a hearing, a hearing was not held. The comment period closed on October 15, 1986. No comments were received.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Iowa on August 12, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII. Accordingly, the Director is approving these program amendments. The Federal rules at 30 CFR 915 which codify decisions on the Iowa program are being amended to implement this decision.

The final rule is being made effective upon publication to expedite the State program amendment process and to encourage the State to bring its program into conformity with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Iowa Administrative Code

The proposed subrules, 4.552(15)c and 4.522(15)g, implement Iowa Code chapter 83. Subrule 4.522(15)c sets forth the detention time for sedimentation ponds. The amended subrule contains the same language found at 30 CFR 816.46, requiring regulatory authority approval for sedimentation ponds designed for precipitation events less than 10-year, 24-hour. Subrule 4.522(15)g is suspended and reserved. By suspending this section of its regulations, Iowa is bringing its regulations into conformance with the revised Federal regulations at 30 CFR 816.46. The amendment deletes a requirement that there be no outflows through an emergency spillway during a 10-year, 24-hour precipitation event. The Director finds that the amendments are no less effective than the Federal regulation.

IV. Public Comments

No public comments were received.

V. Director's Decision

The Director, based on the above findings, is approving the amendments submitted to OSMRE on August 12, 1986. The Director is amending Part 915 of 30 CFR Chapter VII to reflect this decision.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Imnpact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 3, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining and Reclamation and Enforcement.

PART 915—IOWA

30 CFR Part 915 is amended as follows:

1. The authority citation for Part 915 is added to read as follows and the authority citations following the sections in Part 915 are removed:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

2. § 915.15(f) is added:

§ 915.15 Approval of regulatory program amendments.

* * * * *

(f) The following amendments submitted to OSMRE on August 12, 1986, are approved effective December 11, 1986: Iowa Administrative Code

subrules 4.522(15)c and 4.522(15)g: sedimentation ponds.

[FR Doc. 86-27722 Filed 12-10-86; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 3]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Heart Transplantation

AGENCY: Office of the Secretary, DoD.
ACTION: Amendment to final rule.

SUMMARY: This amendment provides for coverage by the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) of the costs of heart transplantation. The amendment is necessary to state the conditions under which heart transplantation will be cost-shared by CHAMPUS.

EFFECTIVE DATE: November 7, 1986.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Policy Branch, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Reta Michak, Policy Branch, OCHAMPUS, telephone (303) 361-4078.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8-R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

The proposed rule-making process is not being used based on a determination that a delay in implementation of coverage for heart transplantation would be contrary to public interest [32 CFR 296.2(d)(4)]. However, in recognition of the value of public comments, written comments are invited for 30 days following publication of this final rule. A document advising of any revisions prompted by public comments will be published in the **Federal Register** and any changes which operate to increase the rights, benefits, or privileges provided in the amended regulation will be effective retroactively to the effective date insofar as administratively feasible.

Section 199.4(e)(5) of Part 199 states that "CHAMPUS benefits are available for otherwise covered services and/or supplies in connection with an organ transplant procedure: *Provided* such transplant procedure is generally in accordance with accepted professional medical standards and is not considered to be experimental or investigational." CHAMPUS has considered heart transplantation to be excluded from coverage by the terms of this provision.

In carefully selected patients managed according to specific protocols by experienced medical teams at institutions with a substantial dedication to and experience with the procedure, heart transplantation has resulted in major increments in life expectancy and in improvements in the quality of life. Such practice has become widely accepted by the medical profession. Thus, under such circumstances, CHAMPUS no longer considers heart transplantation to be experimental.

The decision to reimburse for heart transplantation warrants specific criteria both for patients and for institutions. Patient criteria are designed to ensure that patients are selected so that heart transplantation is a therapy of last resort, and that patients have good prospects for substantial benefit from the procedure. Institutional criteria are designed to ensure that there are adequate institutional resources and commitment; professional expertise and organization; experience and success with heart transplantation; sufficient logistical processes, and participation in data collection and reporting.

Services and supplies related to heart transplantation will be covered when performed at a CHAMPUS-approved heart transplant center for a beneficiary who has an end-stage cardiac disease which has not responded to or no longer responds to other medical and surgical therapies, has a very poor prognosis as a result of poor cardiac functional status, and for whom plans for long-term adherence to a disciplined medical regimen are feasible and realistic.

Strongly adverse factors to heart transplantation include the following conditions:

Advancing age (The selection of any patient for transplantation beyond age 50 must be done with particular care to ensure an adequately young "physiologic" age and the absence or insignificance of coexisting disease.);

Severe pulmonary hypertension (because of the limited work capacity of the typical donor right ventricle);

Renal or hepatic dysfunction not explained by the underlying heart failure and not deemed reversible;

Acute, severe hemodynamic compromise at the time of transplantation if accompanied by compromise or failure of a vital end-organ;

Symptomatic peripheral or cerebrovascular disease;

Chronic obstructive pulmonary disease or chronic bronchitis;

Active systemic infection;

Recent or unresolved pulmonary infarction or pulmonary roentgenographic evidence of infection or of abnormalities of unclear etiology;

Systemic hypertension, either at transplantation or prior to development of end-stage cardiac disease, that requires multi-drug therapy for even moderate control (multi-drugs to bring diastolic pressure below 105 mm Hg);

Other systemic disease considered likely to limit or preclude survival and rehabilitation after transplantation;

Cachexia;

The need for or prior transplantation of a second organ such as lung, liver, kidney, or marrow (because this represents the coexistence of significant disease);

A history of a behavior pattern or psychiatric illness considered likely to interfere significantly with compliance with a disciplined medical regimen (because a lifelong medical regimen is necessary, requiring multiple drugs several times a day, with serious consequences in the event of their interruption or excessive consumption); and

The use of a donor heart, the long-term effectiveness of which might be compromised by such actions as the use of substantial vasopressors prior to its removal from the donor, its prolonged or compromised maintenance between the time of its removal from the donor and its implantation into the patient, or pre-existing disease.

Other factors given less adverse weight but still considered as importantly adverse include:

Insulin-requiring diabetes mellitus (because the diabetes is often accompanied by occult vascular disease and because the diabetes and its complications are exacerbated by chronic corticosteroid therapy);

Asymptomatic severe peripheral or cerebrovascular disease (because of accelerated progression in some patients after heart transplantation and chronic corticosteroid treatment);

Peptic ulcer disease (because of the likelihood of early postoperative exacerbation); and

Current or recent history of diverticulitis (considered as a source of active infection which may be exacerbated with the initiation of an immunosuppressant).

Even though the beneficiary may meet the general criteria for a heart transplant, such a transplant is contraindicated when any of the adverse factors listed above are present. Although cases in these groups will not be categorically denied, a medical review must be conducted to ascertain that the transplant was medically appropriate in view of the circumstances.

Services or supplies required following a heart transplant received by a beneficiary either in nonapproved heart transplant center or received prior to the effective date of CHAMPUS coverage may be covered if provided by a CHAMPUS-authorized institutional or professional provider and when otherwise medically necessary and appropriate. Thus, coverage would be provided for subsequent inpatient stays or outpatient treatment ordinarily covered by CHAMPUS even if the need for treatment arose because of a previous noncovered heart transplant. These services would also be covered for CHAMPUS beneficiaries who were not beneficiaries at the time they received a heart transplant regardless of whether the transplant was performed at an approved facility.

These guiding principles that CHAMPUS will follow in providing coverage for heart transplantation will be included in the CHAMPUS Policy Manual. This Policy Manual provides guidance, policy interpretations and decisions implementing the CHAMPUS.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare and make available for public comment, a regulatory flexibility analysis (RFA) when the agency issues regulations which would have a significant impact on a substantial number of small entities, that is, small businesses, nonprofit enterprises, or governmental jurisdictions with populations of less than 50,000. An RFA is not required for this rule because we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities.

We have 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 is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by adding paragraph (e)(5)(vi).

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(5) * * *

(vi) *Heart Transplantations.* CHAMPUS benefits are payable for services and supplies related to heart transplantation under the following circumstances:

(A) *Medical indications for heart transplantation.* CHAMPUS shall provide benefits for services and supplies related to heart transplantation performed for beneficiaries with end-stage cardiac disease who have exhausted alternative medical and surgical treatments, who have a very poor prognosis as a result of poor cardiac functional status, for whom plans for long-term adherence to a disciplined medical regimen are feasible, and who are considered appropriate for heart transplantation according to guidelines adopted by the Director, OCHAMPUS. However, benefits for heart transplantation are available only if the procedure is performed in a CHAMPUS-approved heart transplantation center or meets other certification or accreditation standards recognized by the Director, OCHAMPUS. See § 199.6(b)(4)(iii).

(B) *Specific covered services.* CHAMPUS shall provide coverage for the following services related to heart transplantation:

(*1*) Medically necessary services to evaluate a potential candidate's suitability for heart transplantation, whether or not the patient is ultimately accepted as a candidate for transplantation;

(*2*) Medically necessary pre- and post-transplant inpatient hospital and outpatient services;

(*3*) Surgical services and related pre- and post-operative services of the transplant team;

(*4*) Services provided by the donor acquisition team, including the costs of transportation to the location of the donor organ and transportation of the team and the donated organ to the location of the transplantation center;

(*5*) Medically necessary services required to maintain the viability of the donor organ following a formal declaration of brain death and after all existing legal requirements for excision of the donor organ have been met;

(*6*) Blood and blood products;

(*7*) Services and drugs required for immunosuppression, provided the drugs are approved by the United States Food and Drug Administration;

(*8*) Services and supplies, including inpatient care, which are medically necessary to treat complications of the transplant procedure, including management of infection and rejection episodes; and

(*9*) Services and supplies which are medically necessary for the periodic evaluation and assessment of the successfully transplanted patient.

(C) *Noncovered services.* CHAMPUS benefits will not be paid for the following:

(*1*) Services and supplies for which the beneficiary has no legal obligation to pay; and

(2) Out-of-hospital living expenses and any other nonmedical expenses, including transportation of the heart transplant candidate or family members, whether pre- or post-transplant.

(D) *Implementation guidelines.* The Director, OCHAMPUS, shall issue such guidelines as are necessary to implement the provisions of this paragraph.

* * * * *

2. Section 199.6 is amended by adding a new paragraph (b)(4)(iii) and redesignating the existing paragraphs (b)(4)(iii) through (b)(4)(ix) as paragraphs (b)(4)(iv) through (b)(4)(x).

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(iii) *Heart transplantation centers.*

(A) CHAMPUS shall provide coverage for heart transplantation procedures performed only by experienced transplant surgeons at centers complying with provisions outlined in paragraph (b)(4)(i) of this section and meeting the following criteria:

(*1*) The center has experts in the fields of cardiology, cardiovascular surgery, anesthesiology, immunology, infectious disease, nursing, social services and organ procurement to complement the transplant team;

(*2*) The center has an active cardiovascular medical and surgical program as evidenced by a minimum of 500 cardiac catheterizations and coronary arteriograms and 250 open heart procedures per year;

(*3*) The center has an anesthesia team that is available at all times;

(*4*) The center has infectious disease services with both the professional skills

and the laboratory resources that are needed to discover, identify, and manage a whole range of organisms;

(5) The center has a nursing service team trained in the hemodynamic support of the patient and in managing immunosuppressed patients;

(6) The center has pathology resources that are available for studying and reporting the pathological responses of transplantation;

(7) The center has legal counsel familiar with transplantation laws and regulations;

(8) The commitment of the transplant center must be at all levels and broadly evident throughout the facility;

(9) Responsible team members must be board certified or board eligible in their respective disciplines;

(10) Component teams must be integrated into a comprehensive transplant team with clearly defined leadership and responsibility;

(11) The center has adequate social service resources;

(12) The transplant center must comply with applicable State transplant laws and regulations;

(13) The transplant center must safeguard the rights and privacy of patients;

(14) The transplant center must have adequate patient management plans and protocols;

(15) The center participates in a donor procurement program and network;

(16) The center systematically collects and shares data on its transplant program;

(17) The center has an interdisciplinary body to determine the suitability of candidates for transplantation on an equitable basis;

(18) The center has extensive blood bank support;

(19) The center must have an established heart transplantation program with documented evidence of 12 or more heart transplants in each of the two consecutive preceding 12-month periods prior to application and 12 heart transplants prior to that; and

(20) The center must demonstrate actuarial survival rates of 73 percent for one year and 65 percent for two years for patients who have had heart transplants since January 1, 1982, at that facility.

(B) CHAMPUS approval will lapse if either the number of heart transplants falls below 8 in 12 months or if the one-year survival rate falls below 60 percent for a consecutive 24-month period.

(C) CHAMPUS-approval may also be extended for a heart transplant center that meets other certification or accreditation standards provided the standards are equivalent to or exceed the criteria listed above and have been approved by the Director, OCHAMPUS.

(D) In order to receive approval as a CHAMPUS heart transplant center, a facility must submit a request to the Director, OCHAMPUS, or a designee. The CHAMPUS-authorized heart transplant center shall agree to the following:

(1) Bill for all services and supplies related to the heart transplantation performed by its staff and bill also for services rendered by the donor hospital following declaration of brain death;

(2) Submit all charges on the basis of fully itemized bills. Each service and supply must be individually identified and the first claim submitted for the heart transplantation must include a copy of the admission history and physical examination; and

(3) Report any significant decrease in the experience level or survival rates and loss of key members of the transplant team to the Director, OCHAMPUS.

* * * * *

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 8, 1986.

[FR Doc. 86-27865 Filed 12-10-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore, MD Reg. 86-09]

Safety Zone Regulations: Chesapeake Bay, Baltimore Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Extension of Emergency Rule.

SUMMARY: The Coast Guard is extending the safety zone regulation for the Brewerton Channel Eastern Extension, Upper Chesapeake Bay, Maryland, that was published in the **Federal Register** on Monday, August 18, 1986 (51 FR 29468). Dredging of the channel has not been completed. This extension is necessary to protect vessels from the safety hazards associated with the dredging project.

EFFECTIVE DATES: This extension becomes effective at 8:00 PM local time on December 01, 1986. It terminates at 8:00 PM local time on December 19, 1986, unless sooner terminated by the Captain of the Port Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Commander D. M. Strasser, Chief Port Operations Department, USCG Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (301) 962-5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information:

The drafters of this regulation are Chief Warrant Oficer D. L. Hutchinson, project officer for the Captain of the Port Baltimore, MD and Commander R. J. Reining, Project Attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulation:

The reason for extending this regulation is a delay in the completion of the Brewerton Channel Eastern Extension dredging project. Until that dredging project is completed, equipment will obstruct the channel making navigation hazardous. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation:

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 604-1, 6.04-6 and 160.5.

2. Section 165.T0507(b) is revised to read as follows:

§ 165.T0507 Safety Zone: Brewerton Channel Eastern Extension, Upper Chesapeake Bay, Baltimore, Maryland.

* * * * *

(b) *Effective dates.* This regulation becomes effective on August 20, 1986. It terminates on December 19, 1986 unless sooner terminated by the Captain of the Port, Baltimore.

* * * * *

Dated: December 1986.

R. C. Pickup,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 86-27851 Filed 12-10-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3121-3]

Approval and Promulgation of Implementation Plan, Rhode Island; Reasonably Available Control Technology for Stanley Bostitch

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan revision submitted by the State of Rhode Island. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Stanley Bostitch, a subsidiary of The Stanley Works, in East Greenwich, Rhode Island. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments specified in its Ozone Attainment Plan approved by EPA on July 6, 1983 (48 FR 31026). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: January 12, 1987.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2311, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, S.W., Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, N.W., Room 8301, Washington, D.C., and the Air and Hazardous Materials Division, Department of Environmental Management, 75 Davis Street, Cannon Building, Room 204, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On July 16, 1986 (51 FR 25720), EPA published a Notice of Proposed Rulemaking (NPR) to approve an administrative consent agreement between the Rhode Island Department of Environmental Management (DEM) and Stanley Bostitch. The consent agreement and an addendum to it between the DEM and Bostitch require Stanley Bostitch to meet specific emission limits, specified in pounds VOC/gallon of coating (minus water), for every adhesive and coating it uses on all of its VOC emitting processes covered under Rhode Island Regulation No. 15, subsection 15.5. These emission limits are:

1. The major staple adhesives will be required to meet an emission limitation of 2.9 pounds VOC/gallon of coating (minus water).

2. The major nail coating will be required to meet an emission limitation of 4.3 pounds VOC/gallon of coating (minus water).

3. The coating used on the paint application process will be required to meet an emission limitation of 3.05 pounds VOC/gallon of coating (minus water).

All other minor use coatings will be required to maintain their present emission limitations as specified in pounds VOC/gallon of coating (minus water). Stanley Bostitch is required by the consent agreement to achieve all of these emission limitations by December 31, 1986. This date is the final compliance date allowed by Rhode Island Regulation No. 15, Subsection 15.5.3(b) Stanley. Bostitch will meet these emission limitations through reformulation of its solvent-based coatings to low/no solvent formulations.

The consent agreement also limits Stanley Bostitch's total VOC emissions from its VOC emitting processes subject to Subsection 15.5 to 283 TPY after December 31, 1986. Stanley Bostitch signed the consent agreement and addendum on June 3, 1985 and October 10, 1985, respectively.

Since the VOC reductions that Stanley Bostitch will achieve through its reformulations exceed what could be achieved had Stanley Bostitch installed add-on controls on each process that is cost-effective to control, EPA has determined that the requirements in the consent agreement constitute RACT for Stanley Bostitch's surface coating VOC emitting processes. Further information regarding the revision is explained in the NPR and will not be restated here. No comments were received on the proposed action.

Final Action: EPA is approving an administrative consent agreement between the Rhode Island DEM and Stanley Bostitch as a revision to the Rhode Island SIP. EPA has determined that the consent agreement establishes and imposes control requirements which constitute RACT for Stanley Bostitch's VOC emitting processes.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

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

Dated: November 12, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

Subpart 00—Rhode Island

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

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

2. Section 52.2070 is amended by adding paragraph (c)(27) as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(27) Revision submitted on November 5, 1985 by the Rhode Island Department of Environmental Management consisting of an administrative consent agreement defining reasonably available control technology for Stanley Bostitch (formerly Bostitch Division of Textron) in East Greenwich, Rhode Island.

(i) *Incorporation by Reference.* (A) An administrative consent agreement between the Rhode Island Department of Environmental Management and Bostitch Division of Textron. The consent agreement became effective on June 6, 1985 and requires Bostitch Division of Textron to reformulate certain solvent-based coatings to low/no solvent formulations by December 31, 1986.

(B) A letter to Bostitch Division of Textron from the Rhode Island Department of Environmental Management dated September 20, 1985 which serves as an addendum to the consent agreement. The addendum defines the emission limitations which Bostitch's Division of Textron reformulated coatings must meet.

3. Section 52.2081 is amended by adding a third line to the Table under entry No. 15 to read as follows:

§ 52.2081 EPA-approved EPA Rhode Island State regulations.

* * * * *

TABLE 52.2081—EPA-APPROVED RULES AND REGULATIONS

State citation and title/subject	Date adopted by State	Date approved by EPA	FEDERAL REGISTER citation	52.2070	Comments/ unapproved sections
* * *	*	*	*	*	*
No. 15: Control of Organic Solvent Emissions	12/9/86	51 FR			
	12/9/86	51 FR			
No. 16:	6/6/85	See note below.	See note below.	(c)(27)	RACT for Stanley Bostitch under 15.5.

[FR Doc. 86-27026 Filed 12-10-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6F3377/R859; FRL-3126-5]

Exemption From the Requirement of a Tolerance for Isomate-M (Pheromone Dispensers)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insect pheromone isomate-M (Pheromone Dispensers) containing the active ingredients Z-8-dodecen-1-yl acetate; E-8-dodecen-1-yl acetate; and Z-8-dodecen-1-ol in or on nectarines and peaches. This regulation eliminates the need to establish a maximum permissible level for residues of this biochemical pesticide. This request for an exemption from the requirement of a tolerance was requested by John W. Kennedy Consultants, Inc.

EFFECTIVE DATE: Effective on December 11, 1986.

ADDRESS: Written objections, identified by the document control number [PP 6F3377/859] may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Arturo E. Castillo, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of November 12, 1986 (51 FR 41003), which announced that the EPA received pesticide petition 6F3377 from Biocontrol, Ltd., 148 Palermin St., Warwick, Queensland 4370, Australia (U.S. Agent: John W. Kennedy Consultants, Inc., American Bank Building, Suite 406, Laurel, MD 20707), proposing that 40 CFR Part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the insect pheromone isomate-M (Z-8-dodecen-1-yl acetate; E-8-dodecen-1-yl acetate; Z-8-dodecen-1-ol) in or on the raw agricultural commodities nectarines and peaches.

No comments were received in response to the notice of filing.

This exemption is for an oriental fruit moth pheromone which acts to control the oriental fruit moth by mating disruption.

The pheromone is a synthetic replica of the naturally occurring pheromone. This pheromone product is impregnated in a 6-inch flexible polyethylene tube which has an aluminum wire that runs along the length of the tube to allow the tube to be tied to the lateral branches of the fruit trees.

The pheromone permeates the surrounding area giving off an olfactory stimulant which disrupts the mating pattern of the oriental fruit moth and diminishes its ability to reproduce, by reportedly causing a false trail in the orchard air so as to interrupt the reproductive cycle.

Isomate-M is selective for the oriental fruit moth. It appears to have no influence on other insects, which means that beneficial insects, such as those that prey on mites, are not affected.

The recommended application rates are: Four dispensers/tree in standard orchard spacing or 400 dispensers/acre, or 1,000 dispensers/hectare. Normally two applications per season will suffice; the first application should be prior to the emergence of the moths in late February, and the second application should be 90 days later, preferably in late May.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the exemption from the requirements of a tolerance include: An acute oral LD_{50}, rat, with a no-observed-effect level (NOEL) = > 20 mL/kg (17.12 g/kg); acute dermal LD_{50}, rat, NOEL = > 2000 mg/kg; primary dermal irritation, rabbit, P.I. score = 0.96, a slightly irritating agent; primary eye irritation, rabbit, no corneal opacity or iritis observed; and acute inhalation LC_{50} NOEL = 74.7 mg/L. The Ames mutagenicity assay showed no mutagenic potential.

The exemption from the requirement of a tolerance in or on the commodities and registration of isomate-M on a conditional basis is toxicologically supported.

1. It is a synthetic replica of the naturally occurring oriental fruit moth pheromone which already exists in nature.

2. The polyethylene synthetic tube used in the isomate-M formulation is cleared for use in pesticides.

3. Isomate-M will be released at treatment sites at the specific application rate of 30 mg of active ingredient/hour, or 12.15 mg/acre/hour through the walls of the polyethylene tubing. Because the product is encapsulated in plastic tubing, it is highly unlikely that humans or animals would be exposed to isomate-M.

A lack of demonstrable toxicity and near nonexistent potential for exposure to isomate-M indicates that its use to aid in oriental fruit moth control would not result in hazards to public health.

Due to the small quantity of product being used, and its rapid dissipation into the environment, the acceptable daily intake and maximum permissible intake considerations are not relevant to this regulation; that the toxicological data in support of the exemption did not show any deleterious effects that would indicate a cause for concern from the use of this product.

Based on the data and information considered, the Agency concludes that the exemption from the requirement of a tolerance for isomate-M will protect the public health. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given

above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–12), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 2, 1986.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1073 is added to read as follows:

§ 180.1073 Isomate-M; exemption from the requirement of a tolerance.

The oriental fruit moth pheromone Isomate-M (Z-8-dodecen-1-yl acetate, E-8-dodecen-1-yl acetate, Z-8-dodecen-1-ol) is exempted from the requirement of a tolerance in or on the raw agricultural commodities peaches and nectarines, when used in orchards with encapsulated polyethylene tubing to control oriental fruit moth.

[FR Doc. 86–27838 Filed 12–10–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 85–349; FCC 86–357]

Cable Television; Amendment of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action implements a two part program that eventually will eliminate the need for cable mandatory signal carriage regulation. The first part of the new regulatory program will require cable systems to offer their subscribers input selector switches for use with antennas and to conduct a consumer education program concerning the purpose of, and need for, maintaining off-the-air capability. The second part of this program consists of interim mandatory signal carriage rules that are intended to provide an orderly transition to a new environment. These interim must carry rules will expire at the end of a five year transition period. The new regulatory program is designed to maximize consumers' program choices by developing cable subscribers' awareness of the need for the capability to receive off-the-air broadcast signals independent of their cable system. The Commission stated that it believes this program will provide a constitutionally acceptable balance between the need to protect this federal interest and the First Amendment rights of cable operators.

EFFECTIVE DATE: January 15, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in MM Docket No. 85–349, adopted August 7, 1986, and released November 28, 1986.

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

Summary of the Report and Order

1. On July 19, 1985, the U.S. Court of Appeals held in *Quincy Cable TV, Inc. v. FCC* that the Commission's regulations requiring that cable television systems carry certain local television stations were unconstitutional. The court did state however, that the Commission was free to recraft must carry rules in a manner more sensitive to the court's concerns. In this regard, the Commission issued a combined *Notice of Inquiry and Notice of Proposed Rule Making* on November 14, 1985, requesting comment and specific rule proposals concerning carriage of television broadcast signals of cable television systems. During the course of this proceeding, broadcasters and cable interests entered into an "industry agreement" on which the Commission also requested comment.

2. In this *Report and Order*, the Commission adopts a two-part program that eventually will eliminate the need for mandatory signal carriage regulation. This program is designed to alter the existing practices with respect to connection of cable service that can render cable subscribers unable to receive broadcast television signals and to provide interim must carry protection to the broadcast television industry during the transition to the new environment in which the connection of cable service no longer has that effect. The first and continuing part of the regulatory plan to implement these objectives will require cable operators to install for new subscribers, and offer to existing subscribers, input selector switches for use with antennas and to conduct a consumer education program concerning the purpose of, and need for, maintaining off-the-air reception capability. The second part of this plan consists of interim must carry rules that are intended to provide an orderly transition to the new environment over a five-year period. These interim must carry rules will expire at the end of the transition period.

3. In taking this action, the Commission finds that the federal interest in this matter is to maximize diversity of choice in television services consistent with section 151 and 303(g) of the Communications Act. In this respect, it recognizes that cable systems presently are the predominate means of distributing satellite programming to consumers. The Commission further recognizes the congressional endorsement in section 601 of the Cable Communications Policy Act of 1984 of policies designed to assure that "cable communications provide and are

encouraged to provide the widest possible diversity of information sources and services to the public" and to "promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems." The Commission also notes that Congress has expressed in section 307(b) of the Communications Act of 1934, as amended, its will that broadcasting signals be distributed "among the several States and communities" in a fair and equitable manner. It states that the plan adopted herein contributes toward both statutory goals.

4. The Commission finds that the input selector switch requirement is warranted in the long term to assure that viewers retain both the awareness and capability to receive signals off-the-air. It concludes that a rule promoting the availability of an input selector switch to viewers helps attain the important governmental interest of maximizing the program choices available to the public. In this respect, the Commission observes that cable subscribers' choice is maximized by assuring accessibility to all off-the-air broadcast signals as well as to cable offerings. Indeed, it finds that their choice is increased if not all off-the-air signals are duplicated on cable, but, rather, cable channels are freed up for other programming that the viewer is unable to receive off-the-air. The Commission concludes that noncable subscribers viewing choices also are maximized to the extent that cable subscribers use input selector switches to access all off-the-air broadcasting, thereby increasing station audiences and revenues. In addition, it noted that even rural viewers who must rely on television receive-only (TVRO) equipment will have their viewing choices maximized by this requirement, as increased cable channel capacity for satellite programmers can be expected to provide a spur to the economic market of such programmers, thereby increasing the likelihood that additional satellite programming will be developed.

5. In the short term, the Commission finds it necessary to adopt a limited interim must carry obligation to ensure that broadcasting remains a competitive alternative source of programming even as consumers move towards an environment without must carry rules. The interim must carry rules will meet this objective by preventing disruption of the flow of television services to the public during a five year implementation period and by facilitating an orderly transition to a new market environment in which must carry regulation is no longer necessary because consumers have both the awareness and capability to use switching devices to alternate between cable and broadcast program sources. The limited interim rules adopted herein are comprised in large part of the terms in the industry agreement, with certain modifications designed to assure that the rule maximizes the public interest. These include specific provisions for noncommerical educational and new commercial stations, and rentention of the network nonduplication rule.

6. The Commission finds that its narrowly drawn, interim rules are consistent with the First Amendment rights of cable operators. While recognizing that any must carry rules intrude on the editorial discretion of cable operators, the Commission concludes that the rules meet the *O'Brien* test employed by the *Quincy* court. In this regard, the Commission notes that the interim must carry rules are considerably narrower in scope than the former rules, are less intrusive on cable operators' editorial discretion, account for viewer preference, and apply for a minimal length of time. In short, they are narrowly tailored to meet the specified governmental objective.

7. Consistent with the Commission's desire to craft rules that are no broader than necessary, the interim must carry rules will automatically expire five years from the effective date of this *Report and Order*. The Commission will initiate and conclude a rule making proceeding prior to the expiration of the five-year period to determine if particular situations exist where mandatory carriage rules might continue to be necessary.

8. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that the interim mandatory carriage requirements will have less impact than our previous must carry rules. However, the input selector switch and consumer education requirements will impose some cost burdens on all cable systems. The cost of supplying and installing the switch for new subscribers and for existing subscribers who choose to have it will be absorbed by cable systems. Nevertheless, the switch is a low-cost item on a wholesale basis, and we anticipate that manufacturers will supply the switch to cable operators at volume discounts. In addition, installation costs to cable systems for new subscribers are expected to be minimal, since the switch will be installed at the same time that cable service is installed. Furthermore, the on-going nature of most of our requirements will spread the cost to the operator over an indefinite time period. We believe also that the cable operator will derive some benefits in the marketing of cable service by offering the switch to new subscribers. With respect to existing subscribers, the switch offer will be only minimally burdensome, since the subscriber will pay the actual labor costs associated with installation.

9. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget as prescribed by the Act.

10. Accordingly, it is ordered that under the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, Part 76 of the Commission's Rules and Regulations are amended as set forth below. These rules and regulations are effective January 15, 1987.

11. It is further ordered, that good cause not having been shown, the "Emergency Motion to Terminate Proceeding or, Alternatively, to Defer Action," filed August 4, 1986, by Cole, Raywid & Braverman is denied.

12. It is further ordered that this proceeding and those in Docket Nos. 21323, 81–741, and 84–168 are terminated.

List of Subjects in 47 CFR Part 76

Cable television.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—[AMENDED]

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 601.

2. Section 76.5 is amended by revising paragraphs (d) and (j) and adding new paragraphs (jj), (kk), (ll), and (mm) to read as follows:

§ 76.5 Definitions.

* * * * *

(d) *Qualified television station.* (1) Any television broadcast station, as defined in § 76.5(b), that with respect to a particular cable system:

(i) Is licensed to a community whose reference point, as defined in § 76.53, is within 50 miles of the principal headend of the cable system; and

(ii) If a commercial station, receives an average share of total viewing hours of at least 2 percent and a net weekly circulation of at least 5 percent, as defined in § 76.5(k), in noncable households in the county served by the cable system or has been operational less than one full year. For purposes of this section, a station is considered operational as of the date it commences operation under program test authority. The viewing standards of this paragraph shall not apply for one full year from January 15, 1987 to otherwise qualified stations that commenced operation after July 19, 1985, but before January 15, 1987 (the effective date of these rules).

(2) Any noncommercial educational television station's translator with 100 watts or higher power serving the cable community.

* * * * *

(j) *Substantially duplicates.* Regularly duplicates the network programming of one or more stations in a week during the hours of 6 to 11 p.m., local time, for a total of 14 or more hours.

* * * * *

(jj) *Usable activated channels.* Channels engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use but excluding channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations. *See* Part 76, Subpart K.

(kk) *Principal headend.* The location of the cable system equipment used to process the signals of television broadcast stations for redistribution to subscribers. Where more than one location meets the above definition, the cable operator shall designate a single location as the principal headend.

(ll) *Television survey season.* The twelve-month period beginning April 1 of one year and ending March 31 of the following year.

(mm) *Input selector switch.* Any device that enables a viewer to select between cable service and off-the-air television signals. Such a device may be more sophisticated than a mere two-sided switch, may utilize other cable interface equipment, and may be built into consumer television receivers.

§ 76.7 [Amended]

3. Section 76.7, *Special relief,* is amended by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

4. Section 76.53 is amended by revising the first sentence to read as follows:

§ 76.53 Reference points.

The following list of reference points shall be used to determine whether a television station is "qualified" pursuant to § 76.5(d) and to identify the boundaries of the major and smaller television markets (defined in § 76.5).

* * * * *

5. Section 76.55 is revised to read as follows:

§ 76.55 Qualified television station; method to be followed for showings.

A commercial television station shall demonstrate that it meets the viewing standard specified in § 76.5(d)(1)(ii) on the basis of an independent professional survey of noncable homes conducted according to the following provisions:

(a) If the station has been operational, as defined in § 76.5(d)(1)(ii), for at least one complete television survey season, the survey shall cover four separate, consecutive four-week periods, including one in each of the four quarters of the survey season (i.e., April–June, July–September, October–December, January–March), and be conducted pursuant to the methodology used to compile Appendix B of the *Memorandum Opinion and Order on Reconsideration of Cable Television Report and Order,* FCC 72–530, 36 FCC 2d 326 (1972).

(b) If the station has been operational, as defined in § 76.5(d)(1)(ii), for less than one complete television survey season, the survey shall cover a single period of at least two weeks. The survey sample shall be proportionally distributed among the noncable homes in the county served by the cable system and shall be of sufficient size to assure that the reported results are at least one standard error above the required viewing standard.

6. A new § 76.56 is added to Subpart D to read as follows:

§ 76.56 Mandatory carriage of television stations.

(a) A cable system shall carry the signals of qualified television stations in accordance with the following provisions:

(1) A cable system shall carry the signals of qualified noncommercial educational television stations or translators of such stations, as follows:

(i) A cable system with fewer than 54 usable activated channels shall carry the signal of one qualified noncommercial educational station or translator;

(ii) A cable system with 54 or more usable activated channels shall carry the signals of two qualified noncommercial educational stations or translators.

(2) A cable system with 21 or more usable activated channels shall carry the signals of qualified television stations as follows:

Cable channels	TV signals
21 to 29	7
30 to 33	8
34 to 37	9
38 to 41	10
42 to 45	11
46 to 49	12
50 to 53	13
54 to 57	14
58 to 61	15
62 to 65	16
66 to 69	17
70 to 73	18
74 to 77	19
78 to 81	20
82 to 85	21
86 to 89	22
90 to 93	23
94 to 97	24
98 to 101	25
102 to 105	26
106 to 109	27
110 to 113	28
114 to 117	29
118 to 121	30
122 to 125	31
Above 125	(1)

[1] 25% of capacity.

(b) Where the number of qualified television station signals exceeds the number that a cable system is required to carry pursuant to paragraph (a) of this section, the cable system may select which of the signals to carry, *except that* carriage of qualified noncommercial educational station signals pursuant to paragraph (a)(1) of this section is nondiscretionary.

(c) In complying with the provisions of this section, a cable system shall be permitted but shall not be required to carry the signal of any qualified television station that:

(1) Substantially duplicates the signal of another qualified television station affiliated with a particular commercial national network;

(2) Would result in payment by the cable system of distant signal copyright fees;

(3) Fails to deliver to the cable system principal headend a picture of high quality providing enjoyable viewing and in which interference is no greater than just perceptible.

Note.—In general, a signal level of -45 dBm for UHF signals and -49 dBm for VHF signals

at the input terminals of the signal processing equipment would be needed to provide a picture of the required quality. Alternatively, a baseband video signal could be supplied.

(d) A cable system shall not accept payment or other consideration in exchange for carriage of the signal of any qualified television station carried in fulfillment of mandatory signal carriage obligations, *except that* any such station may bear any costs associated with: (1) Delivering a good quality signal, as defined in § 76.56(c)(3), to the cable system; (2) meeting copyright obligations that are incurred as a consequence of such carriage.

(e) A cable system shall identify on request those stations carried in fulfillment of its must carry signal carriage obligations.

§ 76.57 [Removed]

7. Section 76.57, *Provisions for systems operating in communities located outside of all major and smaller television markets, is removed.*

8. A new § 76.58 is added to Subpart D to read as follows:

§ 76.58 Disputes concerning carriage.

(a) Any qualified television station not being carried may demand carriage from a cable system.

(b) As a prerequisite to a Commission decision concerning a television station's right to carriage, such demand shall be made in writing and shall include showings that:

(1) The station is a "qualified television station" as defined in § 76.5(d);

(2) The cable system on which carrige is sought has not satisfied its carriage obligations under § 76.56;

(3) To the extent that the matter is in dispute, the station delivers a good quality signal to the principal headend of the cable system pursuant to § 76.56(c)(3).

(c) A cable system receiving a demand for carriage pursuant to this section shall respond in writing to the television station requesting carriage within fifteen (15) days of receipt of such demand. If the system declines to carry the station, the system's response shall state the reasons under the rules for such refusal.

(d) If no carriage agreement is reached between the parties, a ruling on the matter may be requested from the Commission. Such request shall contain a copy of the carriage demand, the response thereto, and any other information that may be considered relevant to a resolution of the question. Pleadings responsive to such request may be filed within twenty (20) days. Initial requests and pleadings relating thereto shall be served on all parties to the proceeding. All factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them. An original and two (2) copies of the request and subsequent pleading(s) shall be filed.

(e) No cable system that, in refusing a carriage request, has complied in good faith with the mandatory signal carriage requirements of this chapter shall be subject to any forfeiture or penalty if it is later determined that the requesting station is entitled to carriage. If the Commission determines that the signal in question was or is entitled to carriage, the system shall commence such carriage within a reasonable period, to be specified by the Commission, and shall continue such carriage for at least twelve months.

(f) A cable system may be assessed as forfeiture or other penalty for failure to comply with a Commission order to carry a qualified broadcast station. Such Commission orders include action by the Chief of the Mass Media Bureau under delegated authority.

§ 76.59 [Removed]

9. Section 76.59, *Provisions for smaller television markets,* is removed.

10. A new § 76.60 is added to Subpart D to read as follows:

§ 76.60 Carriage of other television signals.

(a) In addition to the qualified television station(s) carried pursuant to § 76.56, a cable system may carry the signals of any other television station, low power television station, or television translator.

(b) A cable system shall be permitted, but shall not be required, to carry any subscription television broadcast program or any ancillary service transmission on the vertical blanking interval or the aural baseband of any television broadcast signal including, but not limited to, multichannel television sound and teletext.

§ 76.61 [Removed]

11. Section 76.61, *Provisions for the major television markets, is removed.*

12. A new § 76.62 is added to Subpart D to read as follows:

§ 76.62 Manner of carriage.

(a) Where a qualified television broadcast signal is carried by a cable system in fulfillment of the mandatory signal obligations set forth in this part of the rules:

(1) The signal shall be carried in full, without deletion or alteration of any portion, except as required by this part;

(2) The signal shall be carried in its entirety, without material degradation, on the lowest-priced, separately available cable service tier.

(b) Where a television broadcast signal otherwise is carried by a cable system pursuant to the rules in this part, programs broadcast shall be carried in full, without alteration or deletion of any portion, except as required by this part.

13. Section 76.64 is revised to read as follows:

§ 76.64 Expiration of mandatory carriage provisions.

The provisions of §§ 76.56, 76.58, and 76.60, and 76.62(b) shall remain in force until January 15, 1992, and shall thereafter be of no further force or effect.

§ 76.65 [Removed]

14. Section 76.65, *Determination of signal contours,* is removed.

15. A new § 76.66 is added to Subpart D to read as follows:

§ 76.66 Input selector switches.

(a) A cable system operator shall supply to each new subscriber and offer to supply to each existing subscriber an input selector switch for each separate television receiver to which cable service is provided by the cable operator. The operator shall comply with the following requirements in providing the switch and installing cable service:

(1) Supply and install the switch at no additional cost to new subscribers, unless the subscriber already has an input selector switching device or his/her television has such a device built-in;

(2) Offer to supply the switch to any person who is a subscriber on January 15, 1987, within six months of that date and thereafter on an annual basis until January 15, 1992, at no cost other than reasonable labor charges for installation, if necessary or requested, by providing the following form, in the same words or in other words that convey the same meaning, to all such persons who do not have input selector switches:

In accordance with FCC rules, we are offering to supply you with an input selector switch, at no cost, for each separate television receiver to which cable service is provided. This device, which connects both to the cable service and an antenna you supply, will enable you to select between cable service and off-the-air television signals. You may already have such switching capability, either in a separate device or as a built in feature to your television receiver. If you already have this capability you do not need an additional switch. However, if you do not have such switching capability, we will install a switch for a reasonable charge that reflects our actual labor costs or we will provide you a switch with written self-installation instructions at no charge. If you wish to

obtain an input selector switch, please check the appropriate box below and return this form to our business office.

[ ] I wish to have an input selector switch installed. I understand that I will be charged reasonable labor costs for this service.

[ ] I wish to receive an input selector switch with installation instructions at no additional charge.

Please contact [Name of Contact at Cable System Office] at [Address and Telephone Number] for further information.

(3) Comply with the following requirements with respect to antennas:

(i) If an antenna is present, the operator shall not recommend that the antenna be removed;

(ii) If an antenna is not present, the operator shall inform the subscriber that the switch will be operational only if it is connected to an antenna, which the subscriber may purchase from an antenna supplier;

(iii) Where the operator installs a switch and an antenna is present, it shall connect the switch to that existing antenna.

(b) Input selector switches used for alternating between a cable system and an antenna for reception of television broadcast signals shall comply with the technical standards of § 15.606(a) of the rules.

(c) The cable system operator shall provide the following information, in the same words or in other words that convey the same meaning, to each new subscriber at the time of installation of cable service and to existing subscribers that do not have input selector switches in writing within six months after January 15, 1987, and annually thereafter to all subscribers:

The FCC in 1986 adopted new requirements concerning cable system carriage of local television broadcast stations. Under these regulations, a cable system will be required to carry one or more local broadcast stations, but not necessarily all such stations, until January 15, 1992. After that date, carriage of local broadcast stations will be at the discretion of the cable operator. As a result, at this time or at a later date, you may not be able to receive all local television stations over your cable system. To ensure that you retain the capability of receiving all of the broadcast stations that are available off-the-air, which might not be carried on the cable system, either now or in the future, it may be necessary to use an input selector switching device in conjunction with an antenna. This device, which connects both to your cable service and your antenna, will enable you to select between cable service and off-the-air television signals.

At this time, [Name of Cable System] is not carrying the following local broadcast stations: [List Call Letters and Channels]

Questions related to input selector switches should be directed to [Name of Contact at Cable System Office] at [Telephone Number].

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-27858 Filed 12-10-86; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 51, No. 238
Thursday, December 11, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1030, 1032, 1033, 1036, 1049, and 1050

[Docket Nos. AO-361-A24, et al.]

Milk in the Chicago Regional and Certain Other Marketing Areas; Decision on Amendments to Orders and Order Amending Orders

7 CFR Part	Marketing area	AO Nos.
1030	Chicago Regional	AO-361-A24
1032	Southern Illinois	AO-313-A35
1033	Ohio Valley	AO-160-A55
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A49-RO1
1049	Indiana	AO-319-A35
1050	Central Illinois	AO-355-A24

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action adopts without change an interim final decision published in the **Federal Register** on July 8, 1986 (51 FR 24677) which amended on an interim basis the plant location adjustments to prices under the Southern Illinois, Ohio Valley, Indiana, and Central Illinois orders. The action is based on industry proposals considered at a public hearing held March 12–14, 1986 and modifies the location adjustment provisions of the four orders to conform with the higher Class I price differentials mandated by the Food Security Act of 1985. In several orders, changes are also made to assure the proper intra-market alignment of prices.

The hearing in this proceeding reopened an earlier proceeding on proposed amendments to change the location adjustment provisions of the Eastern Ohio-Western Pennsylvania order. Separate documents dealt with the Eastern Ohio-Western Pennsylvania order and the issues related thereto.

This decision does not adopt any change for the Chicago Regional milk order in that all relevant proposals were withdrawn at the hearing.

Cooperative associations will be polled to determined whether producers, who have already approved the interim amendments to the order for their market, favor the issuance of the amended orders on a permanent basis.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The proposed amendments modify the transportation allowances provided under the four orders to make them conform more closely to the economic conditions that currently exist in the marketplace. The main economic condition involved is the change in the cost of transporting milk as reflected in the Class I differentials that became effective May 1, 1986, and as mandated by the Food Security Act of 1985.

Reflection of the changed marketing conditions through amendments to plant location adjustments to order prices will not result in a significant added price impact on regulated handlers.

In their exceptions to the interim final decision, three Cincinnati based pool distributing plant operators and the Milk Foundation of Indiana argued that the decision failed to properly take into account the impact of the amendments to the location adjustment provisions on small businesses. In particular, the argument advanced by the parties taking exception suggests that the Department failed to develop an initial Regulatory Flexibility Analysis which they believe is required by 5 U.S.C. 603 of the Regulatory Flexibility Act. Finally, it was their position that the economic impact of the proposed amendments on small businesses could not be determined without a realistic economic analysis of the changes and possible alternatives as required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Under the terms of the Regulatory Flexibility Act, a regulatory analysis is not required if a proposed regulation is found to have neither a beneficial nor an adverse effect on small entities. In such cases the agency may certify that the rule does not exert a significant economic impact on a substantial number of small entities. Such certification was made in the interim final decision and is included herein. Accordingly, the exception raised in this regard is denied.

These parties allege also the Administrator's certification "that this action will not have a significant impact on a substantial number of small entities" is incorrect. It is their opinion that there are a substantial number of small entities which will be adversely affected if the proposed amendments become effective.

The Department concurs with the position that the amendments will have an economic effect upon a substantial number of small entities (dairy farmers supplying the respective order markets and operators of processing plants). However, it is the Department's position that such economic effect upon individual dairy farmers or processors will not be significant. For example, the interim final decision found that a transportation rate of 2 cents per 10 miles, which is substantially less than the cost of hauling packaged milk, would suggest a price 12 cents higher in Cincinnati than in Dayton. Therefore, it was concluded that the adopted 7-cent higher price at Cincinnati would not be disruptive to handlers based there who compete with Dayton and other base-zone handlers for fluid milk sales in the Cincinnati metropolitan area. Accordingly, the position of those taking exception in this matter is not supportable. Therefore, the exception is denied.

Prior documents in this proceeding:

Notice of Hearing: Issued February 14, 1986; published February 21, 1986 (51 FR 6241).

Interim Final Decision: Issued June 26, 1986; published July 8, 1986 (51 FR 24677).

Correction to Interim Final Decision: Published July 17, 1986 (51 FR 25896).

Interim Final Rule: Issued July 24, 1986; published July 30, 1986 (51 FR 27152).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the aforesaid specified marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), at Indianapolis, Indiana, on March 12–14, 1986. Notice of such hearing was issued on February 14, 1986 (51 FR 6241).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Assistant Secretary, Marketing and Inspection Services, on June 26, 1986, filed with the Hearing Clerk, United States Department of Agriculture, an interim final decision containing notice of the opportunity to file written exceptions thereto.

Upon approval of the interim amendments to each of the four orders that were set forth in the interim final decision by more than the necessary two-thirds of the producers who during the representative period were engaged in the production of milk for sale in the respective marketing areas, the Deputy Assistant Secretary, Marketing and Inspection Services, issued on July 24, 1986, interim amendments to each of the four orders. The interim amendments became effective August 1, 1986.

Findings and Conclusions

The material issues and findings and conclusions of the interim final decision published in the July 8, 1986, issue of the **Federal Register** (51 FR 24677) are incorporated by reference in this document and are hereby adopted subject to the correction published July 17, 1986 (51 FR 25836) and the addition of the response to exceptions set forth below.

Response to Exceptions

Order 32—Southern Illinois

Prairie Farms excepted to the zone price, as provided in the interim final decision, that would apply to its pool supply plant at Carbondale, Illinois. The cooperative argued that the price adopted for this location does not follow the basis used in developing the mandated higher Class I prices as provided by the Food Security Act of 1985. In this regard, Prairie Farms pointed out that the new mandated Class I prices increase as you move in a southerly direction reflecting the additional transportation costs of moving milk from the heavy producing areas in the north. Beyond this, Prairie Farms argued that the price proposed for the Carbondale location would jeopardize the milk supplies of its supply plant because producers delivering to this plant would find a more attractive outlet in the Paducah and higher-priced markets to the south.

While it is necessary to use the pricing mechanism to insure adequate supplies of milk at various locations, it is not in the public interest to provide any higher price than is necessary for this purpose. Based on the evidence in the record, there appears to be no basis for providing a zone price at the Carbondale location any higher than would apply in the St. Louis metropolitan area.

Contrary to Prairie Farms' position, there was no convincing evidence that indicated how the market would be adversely affected if the present Carbondale supply plant or any of its producers now on the market would shift to another market because of more attractice prices. It is true, as Prairie Farms contends, that the zone price adopted for the Carbondale location will widen the difference between the Paducah uniform price and the Southern Illinois uniform price at this location. However, this difference does not appear to be wide enough to make it attractive for the supply plant or any of its producers to shift to the very small Paducah market. In any event, if this were to occur, there is no indication that milk supplies for distributing plants in this market would be jeopardized under current marketing conditions. Accordingly, the exception is denied.

In its exceptions, Prairie Farms withdrew support of the recommended location rate for its Quincy plant. Instead, it urged that the recommended rate of minus 17 cents adopted for the Northern Zone apply to the Quincy location. For the reasons already cited in the interim final decision, the location adjustment rate adopted for the Quincy location is reasonable under the present marketing situation. Accordingly, the exception is denied.

Several parties in exceptions and comments to the interim final decision opposed the proposed location pricing structure for the two pool supply plants at Jackson and Cabool, Missouri. Prairie Farms recommended that the base zone price, adopted for both plant locations, be restricted to only those plants located east of Missouri U.S. Highway 67. The effect of the cooperative's recommendation would make the base zone price applicable at the Jackson plant location while a minus location adjustment would continue to apply at the Cabool plant. In support of its position regarding this matter, Prairie Farms argued that the price recommended for the Cabool location is too high and would provide sufficient incentive for reserve milk supplies located in southwest Missouri that are now pooled under the Southwest Plains order to become asociated with the Southern Illinois order.

Mid-America Dairymen (Mid-Am) also excepted to the recommended price structure for these two plants. The cooperative stressed that with the higher mandated Class I differentials and resulting blend prices in markets to the south, the recommended price structure applicable at Jackson and Cabool could jeopardize adequate supplies at these two Missouri plant locations.

Also, NFO excepted to the overall recommended price structure for this region of Missouri on the basis that such price structure would not provide adequate transportation credits to encourage shipments of milk for fluid use to the market's population center(s) as opposed to being retained by such supply plant operators for manufacturing uses.

The specific price structure adopted for these two plants was selected to reflect in part increased transportation costs to the extent that maintenance of alignment of prices with orders to the south permits. In this regard, Class I prices in markets south of the Southern Illinois market exceed the price at all locations adopted herein. This is because milk markets to the south have a tighter supply situation. Under this marketing situation, Southern Illinois handlers should not be encouraged by transportation credits to procure milk from plants to the south. To do so would encourage uneconomic milk movements. Moreover, to continue to provide minus adjustments at the locations in question will further distort the inter-order price alignment among competing plants and lead to disorderly marketing in the region. None of those who took exception suggested any modification that would better improve inter-order price alignment. Accordingly, the exceptions are denied.

Finally, Prairie Farms excepted, generally, to the overall recommended changes in the location price structure for the market. In support of this position, the cooperative contended that there was no record evidence or support to justify many of the recommended revisions. Rather, Prairie Farms held that there was broad industry support

for its proposals presented at the hearing which were not adopted.

An amended order may be made effective only if the Secretary finds that such order will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended. If the Secretary were forced to adopt proposals simply because they had broad industry support, there is no assurance that the Secretary would be able to make this necessary finding. To carry out the mandates of the Act, the Secretary must be free to analyze and appraise the evidence in a hearing record and to make a determination that a specific proposal will or will not contribute to orderly marketing conditions. To appropriately carry out the intent of the Congress, the Secretary must be persuaded that a proposal will tend to effectuate the purpose of the Act before including it in an order. In this case, the revisions recommended by Prairie Farms would not tend to effectuate the purpose of the Act to the same extent as the location pricing structure adopted in the interim final decision. Accordingly, the exception is denied.

Order 33—Ohio Valley

The three Cincinnati handlers (Louis Trauth Dairy, Inc., H. Meyer & Sons Dairy Co., and United Dairy Farmers) excepted to that part of the decision which adopts a new pricing zone (Zone 4) of plus 7 cents for the Cincinnati Metropolitan area. They requested that the need for the new Zone 4 be reexamined in light of the record evidence. In this connection, they argued the decision failed to properly consider certain evidence regarding adequate supplies for the area and the institutional factors affecting the costs of serving the market by the principal supplier. Additionally, they claimed that the Department erred when it adopted the same zone price at the Winchester, Kentucky plant location as would apply at Cincinnati even though Winchester is some 97 miles south of Cincinnati. This they argued is "illogical and unjustified".

The several points raised by the handlers, and the marketing ramifications involved, were among the numerous facets of zone pricing that were considered in arriving at the initial conclusion to adopt a plus 7-cent zone for the Cincinnati area. For the reasons already set forth in the interim final decision, the zone price structure adopted is appropriate under the present marketing situation in the Ohio Valley market.

Dairymen, Inc. (DI) excepted to the prices proposed to be established under the order as they apply to the pool distributing plants at Beckley, West Virginia, and Winchester, Kentucky, on the basis that they are less than it proposed and supported at the hearing. The cooperative argued that the prices established at these locations should be aligned with the Upper Midwest reserve supply area (Eau Claire, Wisconsin).

This argument, however, fails to recognize that in developing an appropriate pricing structure for the market, it is essential that consideration be given to both the level of prices that are necessary to assure an adequate supply of milk and reasonable alignment of prices not only with other markets but also among the various segments within the market. On the basis of the record evidence, it was necessary to establish a series of pricing zones that related the value of milk to Louisville to the south and to the Detroit-Toledo area to the north. Establishing a pricing structure solely on the basis advocated by DI is only one of several considerations. Accordingly, DI's position is not supportable and there is no basis for reaching a different conclusion on this matter.

In its exceptions, Milk Marketing, Inc. (MMI) also expressed dissatisfaction with the zone price recommended for the Beckley, West Virginia area. In this regard, the cooperative advocated that the price at this location should be higher than the price established for the Charleston, West Virginia, area. The cooperative's exception was a reiteration of the position it took at the hearing and it did not raise any new points that were not considered in the interim final decision. Accordingly, the exception is denied.

In addition, MMI excepted to the denial of its proposal to apply a location adjustment for a plant regulated by the Ohio Valley order but located in either the Order 36 or Order 49 marketing area that would result in the same price as would be applicable under the order in which the plant is located. However, the cooperative's exception is a reiteration of the testimony its witness presented at the hearing, and as such, was fully considered in the interim final decision in concluding that the proposal should not be adopted. Accordingly, the exception is denied.

Finally, MMI excepted to the failure of the Department to adopt its proposal to change the point of pricing diverted milk of certain producers on the basis of the location of their farms. The points raised by MMI were a reiteration of the same points that were already considered in denying the initial proposal. Accordingly, no departure from the interim final decision should be made in concluding that the point of pricing diverted milk should continue to be the same on all producer milk. Therefore, this exception is also denied.

Order 49—Indiana

In its exceptions and comments, the Milk Foundation of Indiana (MFI) objected to the finding of the interim final decision that the modifications adopted will help insure handlers who compete for supplies and sales in the same geographic locations relatively equal product costs. Rather, MFI contended that Order 49 handlers are not assured of expending the same dollar amount for their milk supply as those handlers with whom they compete for sales (i.e., other Order 49 handlers located in lower price zones and other order handlers).

The statement of the interim final decision referred to equal product costs between Order 49 handlers and nearby other-order handlers. In this regard, the changes adopted in the interim final decision do lessen the differences in Class I differentials between border handlers; and, those differences that exist now merely reflect the costs of transport between orders. As a result of the interim final decision, west-to-east movements are made with only slight transportation allowances (i.e., Fort Wayne to Defiance, 0.00¢/10 miles; Benton Harbor to New Paris, 0.86¢/10 miles; and Richmond to Dayton, 0.80¢/10 miles), while north-to-south movements approximately reflect a 2-cent-per-ten-mile rate (i.e., Seymour to Louisville, 2.20¢/10 miles). Therefore, MFI's exception is denied.

In another exceptions filed in regard to the interim final decision, Dean Foods Company (Dean) argued that the Department erred in placing its Rochester, Indiana plant in the minus 20-cent zone. Dean held that based on mileage from Eau Claire, Rochester should be in the minus 30-cent zone.

The exceptor fails to recognize, however, that it is essential to consider both the level of prices that are necessary to assure an adequate supply of milk and a reasonable alignment of prices with other markets and with the various segments within the market. Based on the record evidence, the pricing zones established relate the value of milk to Indianapolis, the market's center, and to the reserve milk producing areas in the northern tier segment of the market. Establishing a pricing structure solely on the distance of particular plants from Eau Claire is only one of several factors considered in the interim final decision in developing the zone pricing structure for the Indiana

market. Based on all of the factors considered, Rochester was correctly placed in the minus 20-cent zone and the Dean exception is, therefore, denied.

The MFI also objected to the adopted location adjustment schedule for the Indiana market in its exceptions to the interim final decision. MFI contended that the large increases in location adjustments among and between zones (i.e., from 4¢ to 20¢, from 8¢ to 20¢ and 30¢, and from 12¢ to 40¢) will create disruption in the competitive situation between Indianapolis handlers and handlers in lower price zones.

The position taken by MFI at the hearing and in its exceptions reflects the premise that pricing zones should reflect the geographic region in which handlers compete for fluid sales. As indicated in the interim final decision, competition for sales of fluid milk among handlers cannot be the sole criterion for drawing zone boundaries since the primary function of location pricing in Federal orders is to insure adequate supplies of milk for the fluid market. In this connection, Class I prices at various plant locations must reflect the economic value that milk has to handlers at such locations.

The pricing structure developed herein enhances the movement of milk from abundant production areas of the market to the Indianapolis area. All non-base zone pool distributing plants are afforded approximately a 2-cent-per-ten-mile location adjustment rate to Indianapolis. Such location pricing realistically reflects the added value of milk as it moves through the market and does not, as claimed by MFI, creates disorderly marketing conditions. Accordingly, MFI's exception is denied.

MFI submitted another exception contending that Congress did not prohibit the Secretary from changing the geographical composition of an order's base zone in applying location adjustment. MFI pointed out that in the same interim final decision, the Secretary did make changes in the base zone area of the Ohio Valley milk order by placing some counties in a lower price zone and some in a higher price zone. However, in this regard, MFI failed to point out that in no case was the Class I differential applicable at an Order 33 base zone distributing plant decreased from that which was mandated by Congress. Rather, the interim final decision amended Order 33 by placing certain base-zone counties, where 11 pool distributing plants are located, in a plus 7-cent zone. The other initial six base zone distributing plants continued to be included in the new base zone

MFI's proposal would have placed the counties where all 11 Order 49 base zone distributing plants are located in a minus 12-cent zone. As mandated by Congress, these differentials are not to be lowered for two years. Therefore, such action is contrary to Congress' intent of raising to a certain specified level the Class I differentials at pool distributing plants in base zones throughout the Federal orders.

In a related exception, MFI also objected to the base zone price adopted in the interim final decision in that it does not provide competitive alignment between Chicago and Indianapolis. MFI pointed out that the 3.33-cent-per-hundredweight rate per ten miles between Chicago and Indianapolis is in excess of the 2-cent-per-ten-mile rate generally adopted throughout the area.

As stated throughout the interim final decision, the differentials which apply in Chicago and Indianapolis were mandated by Congress. Lowering the Indianapolis differential is not permissible for reasons already cited. In addition, a differential which would yield a 2-cent-per-ten-mile rate between Chicago and Indianapolis ($1.76) would severely disrupt the alignment between Indianapolis and Robinson, Illinois (113 miles to the west, with a differential of $1.92); Dayton, Ohio (105 miles to the east, with a differential of $2.04); and Louisville, Kentucky (111 miles to the south, with a differential of $2.11). Furthermore, any reduction in the base zone differential would disrupt the alignment between certain base zone distributing plants and other distributing plants (i.e., between Seymour, Indiana, and Louisville, Kentucky and between Richmond, Indiana and Dayton, Ohio). Therefore, both of these exceptions are denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act as amended by the Food Security Act of 1985;

(b) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held; and

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

Rulings on Exceptions

In arriving at the findings and conclusions, and regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

In addition to the exceptions heretofore noted, the three Cincinnati handlers excepted to the alleged failure of the Department to consider certain requested findings of fact that were detailed in their post-hearing brief. They believed that if all of their proposed findings were fully considered, the Department would have concluded that the proposed Zone 4 was not needed.

The various points incorporated in the Cincinnati handlers' post-hearing brief were fully considered in reaching the findings and conclusions of the interim final decision as adopted herein. Accordingly, no further comment is warranted.

Marketing Agreement and Order

Annexed hereto and made part hereof are two documents, a Marketing Agreement regulating the handling of milk and an Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

March 1986 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

Lists of Subjects in 7 CFR Parts 1032, 1033, 1049, and 1050

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on December 5, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order [1] Amending the Orders, Regulating the Handling of Milk in Certain Specified Marketing Areas

Findings and Determinations

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.),* and the applicable rules of practice and procedure (7 CFR Part 900).

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

(1) The said orders as hereby amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the interim final rule issued on July 24, 1986, and published in the Federal Register on July 30, 1986 (51 FR 27152) shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

1. The authority citation for Parts 1032, 1033, 1049, and 1050 continues to read as follows:

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

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

Note.—No amendatory action taken.

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

2. Section 1032.52 is amended by revising paragraphs (a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (b) and adding (a)(2)(iii) to read as follows:

§ 1032.52 Plant location adjustments for handlers.

(a) * * *

(1) For a plant located within one of the zones designated in § 1032.2, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
Base zone	No adjustment.
Northern zone	Minus 17 cents.
Southern zone	Plus 9 cents.

(2) * * *

(i) Plus 9 cents. St. Clair County (Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites Townships and the city of Belleville only) in the State of Illinois and the counties of Jefferson, St. Charles and St. Louis and the city of St. Louis in the State of Missouri.

(ii) Minus 17 cents. In the counties of Fountain, Parke, Vermillion and Warren in the State of Indiana.

(iii) No location adjustment shall apply at a plant located in the State of Missouri south and east of Interstate Highway 44 that was not in an area described in paragraph (a)(2)(i) of this section.

(3) For a plant located outside the marketing area and the area described in paragraph (a)(2) of this section, the adjustment shall be minus 20 cents for any such plant located 100 miles or more from the city or village limit of Alton, Robinson, or Vandalia, Illinois, whichever is nearest, and minus an additional 2.0 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(4) In determining location adjustments pursuant to this section, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator from the latest Mileage Guide as published by the Household Goods Carrier's Bureau.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 110 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1032.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to receipts of fluid milk products from pool plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

* * * * *

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

3. Section 1033.6 is amended by revising paragraphs (a), (b), (c), and adding (d) and (e) to read as follows:

§ 1033.6 Ohio Valley marketing area.

* * * * *

(a) "Zone 1" shall include the following territory:

Ohio Counties

Fulton, Hancock, Henry, Lucas, Putnam, Sandusky (Woodville and Madison Townships only), Seneca, Wood.

Michigan Counties

Lenawee (Blissfield, Deerfield, Ogden, Palmyra, and Riga Townships only).

Monroe (except Ash, Berlin, Dundee, Exeter, London, and Milan Townships).

(b) "Zone 2" shall include the following territory:

Ohio Counties

Allen, Auglaize, Crawford, Darke, Hardin, Logan, Marion, Mercer, Morrow, Richland, Shelby, Union, Van Wert (city of Delphos only), Wyandot.

(c) "Zone 3" shall include the following territory:

Ohio Counties

Butler, Champaign, Clark, Clinton, Coshocton (except Adams Township), Delaware, Fairfield, Fayette, Franklin, Greene, Guernsey (except Oxford, Londonderry, and Millwood Townships), Hocking, Knox, Licking, Madison, Miami, Montgomery, Morgan, Muskingum, Noble, Perry, Pickaway, Preble, Warren.

(d) "Zone 4" shall include the following territory:

Ohio Counties

Adams, Athens, Brown, Clermont, Gallia, Hamilton, Highland, Jackson, Lawrence, Meigs, Pike, Ross, Scioto, Vinton, Washington.

Kentucky Counties

Boone, Boyd, Bracken, Campbell, Grant, Greenup, Harrison, Kenton, Lewis, Mason, Pendleton, Robertson.

Indiana Counties

Dearborn, Ohio.

West Virginia Counties

Calhoun, Gilmer, Pleasants, Ritchie, Wirt, Wood.

(e) "Zone 5" shall include the following territory:

Kentucky Counties

Floyd, Johnson, Lawrence, Magoffin, Martin, Pike.

West Virginia Counties

Boone, Cabell, Fayette, Jackson, Kanawha, Lincoln, Logan Mason, Mingo, Putnam, Raleigh, Roane, Wayne, Wyoming.

4. Section 1033.53 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), redesignating (a)(4) as (a)(5), and adding (a)(4) to read as follows:

§ 1033.53 Plant location adjustments for handlers.

(a) * * *

(1) At a plant located in one of the zones set forth in § 1033.6, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
1	Minus 24 cents.
2	Minus 14 cents.
3	No adjustment.
4	Plus 7 cents.
5	Plus 15 cents.

(2) At a plant located outside the marketing area and 60 miles or less from the city hall of the nearest city listed herein, excluding plants located in the area specified in paragraph (a)(4) of this section, the adjustment shall be the adjustment applicable at Cincinnati, Coshocton, Dayton, Lima, Marietta, or Toledo, Ohio; Ashland or Maysville, Kentucky; or Beckley or Charleston, West Virginia; whichever city is nearest;

(3) At a plant located outside the marketing area and more than 60 miles from the city hall of the nearest city listed in paragraph (a)(2) of this section, excluding plants located in the area specified in paragraph (a)(4) of this section, the adjustment shall be the adjustment applicable at the nearest city, less 11 cents and less an additional 1.5 cents for each 10 miles or fraction thereof in excess of 70 miles that such plant is located from the city hall of the nearest city listed above. However, at any such plant located in the Louisville-Lexington-Evansville marketing area under Part 12046 of this chapter or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia, or Virginia, the adjustment shall be the adjustment applicable at Zone 4;

(4) At a plant located outside the marketing area in the Ohio counties of Defiance, Paulding, Van Wert, (except the city of Delphos), or Williams, the adjustment shall be minus 24 cents; and

(5) For the purpose of computing location adjustments pursuant to this section, distances shall be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

* * * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Note.—A separate document will be issued regarding the issues related thereto.

PART 1049—MILK IN THE INDIANA MARKETING AREA

5. In § 1049.52, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) * * *

(1) At any plant located within:

	Rate of adjustment per hundredweight (cents)
(i) The state of Ohio or any indiana county not specifically named in paragraph (a)(1)(ii) through (a)(1)(iv) of this section or at any location south of the marketing area as specified in § 1049.2	0
(ii) Any of the Indiana counties of: Adams, Allen, Benton, Blackford, Carroll, Cass, Fulton, Huntington, Jay Miami, Wabash, Wells, and White	20
(iii) Any the Indiana counties of: DeKalb, Elkhart, Jasper, Kosciusko, Lagrange, La Porte, Marshall, Newton, Noble, Pulaski, Starke, Steuben, St. Joseph, and Whitley and any of the Michigan counties of Berrien, Branch, Cass, and St. Joseph	30
(iv) Any of the Indiana counties of: Lake and Porer	40

(2) For any plant at a location outside the territory specified in the preceding paragraph (a)(1) of this section, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be 2.0 cents for each 10 miles or fraction thereof from such point plus the amount of the location adjustment pusuant to paragraph (a)(1) of this section applicable at the respective point.

* * * * *

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

6. In § 1050.52, paragraphs (a) and (b) are revised to read as follows:

§ 1050.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk at a plant located outside the State of Illinois or in the State of Illinois but north of the northernmost boundaries of the counties of Mercer, Henry, Bureau, La Salle, Grundy, and Kankakee shall be reduced 10 cents if such plant is 50 miles or more from the City Hall in Peoria, Illinois, plus an additional 2.0 cents for

each 10 miles or fraction thereof that such distance exceeds 60 miles. Distances applied pursuant to this paragraph shall be the shortest hard-surfaced highway distances as determined by the market administrator from the latest Mileage Guide as published by the Household Goods Carrier's Bureau.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and cooperative associations pursuant to § 1050.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants; such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

* * * * *

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7 CFR Parts 1065 and 1079

[Docket Nos. AO-178-A40, AO-86-A44, and AO-295-A37]

Milk in the Upper Midwest, Nebraska-Western Iowa, and Iowa Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts changes in the plant location adjustments for the Nebraska-Western Iowa, and Iowa Federal milk marketing orders. Proposed changes for the Upper Midwest order are denied. The adopted amendments change the location adjustment provisions in the Nebraska and Iowa orders to conform with the new Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986.

The amendments are based on industry proposals and a record of a public hearing held at Minneapolis, Minnesota on April 8–10, 1986. The amendments are necessary to reflect current marketing conditions and to assure orderly marketing in the Upper Midwest, Nebraska-Western Iowa and Iowa marketing areas. Cooperative associations will be polled to determine whether producers favor the issuance of the amended orders.

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

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The 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 7 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers. This decision changes only the plant location adjustments to prices in the Nebraska-Western Iowa and Iowa markets. The use of a location adjustment rate of 1.7 cents rather than a 1.5-cent rate reduces the cost of milk supplies to some of the regulated handlers in these two markets.

Prior documents in this proceeding:

Notice of Hearing: Issued February 25, 1986; published March 3, 1986 (51 FR 7280).

Recommended Decision: Issued August 6, 1986; published August 12, 1986 (51 FR 28819).

Extension of Time for Filing Exceptions to Recommended Decision: Issued August 27, 1986; published September 2, 1986 (51 FR 31133).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and orders regulating the handling of milk in the Upper Midwest, Nebraska-Western Iowa, and Iowa marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Minneapolis, Minnesota, on April 8–10, 1986. Notice of such hearing was issued on February 25, 1986 and published March 3, 1986 (51 FR 7280).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Programs, on August 6, 1986, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "1A. The location adjustment provisions of the Upper Midwest order.":

a. Three new paragraphs are added after paragraph 85.

2. Under the heading "1B. Plant location adjustments for Nebraska-Western Iowa.":

a. Nine new paragraphs are added after paragraph 73.

3. Under the heading "1C. Plant location adjustments for Iowa.":

a. Three new paragraphs are added after paragraph 21.

b. A new paragraph is added after paragraph 27.

c. Paragraph 31 is revised.

d. Six new paragraphs are added after paragraph 31.

e. Delete paragraph 32.

f. Paragraph 33 is revised.

g. Paragraph 34 is revised.

h. A new paragraph is added after paragraph 37.

i. Two additional paragraphs are added after paragraph 40.

j. A new paragraph is added after paragraph 42.

The material issues on the record of the hearing relate to:

1. The location adjustment provisions of the following orders:

A. Upper Midwest;

B. Nebraska-Western Iowa; and

C. Iowa

2. Whether emergency conditions warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background

The Food Security Act of 1985 increased the Class I milk price differentials in 35 of the 44 Federal milk marketing orders. The Class I differential is the dollar amount specified in each Federal order that is added to the Minnesota-Wisconsin manufacturing grade milk price for the second preceding month to establish for each order the minimum Class I milk price for the current month. The three orders that are involved in this proceeding are among the 35 orders in

which increased Class I differentials became effective May 1, 1986.

Since the late 1960's, Class I milk pricing within the system of Federal milk order markets has been based on the principle that as distance from the heavy milk producing area (Eau Claire, Wisconsin, for example) increased, the minimum order Class I price for the various markets increased proportionately to reflect the cost of alternative supplies. Under this system, prices in the local markets would not be expected to exceed the cost of milk from reserve supply sources. Thus, there has been in place a pricing system that generally reflected a milk transportation cost of 1.5 cents per hundredweight per 10 miles to the Southeast, South, or Southwest from Eau Claire.

The mandated differential increases per hundredweight in the markets at issue in this proceeding were 8 cents for the Upper Midwest order and 15 cents for the Iowa and Nebraska-Western Iowa orders. Thus, the Class I price spreads between the Upper Midwest order and the other two orders are now 7 cents per hundredweight larger than prior to May 1, 1986. It is within this context that the proposals were sought and the hearing held.

1A. The Location Adjustment Provisions of the Upper Midwest Order

The Upper Midwest order currently provides four milk pricing zones. Zone 1 is comprised of a 3-county metropolitan area that includes the twin cities of Minneapolis and St. Paul, Minnesota, and all other territory not specifically included in Zones 2, 3, or 4.

Zone 2 contains 49 Minnesota counties, 15 Wisconsin counties, four Michigan counties and one Iowa county.

Zone 3 is made up of 28 Wisconsin counties and Zone 4 includes 13 Wisconsin counties.

This pricing structure has been in effect since the Upper Midwest order became effective in 1976, except that in 1982 Washington County was removed from Zone 2 and added to the twin cities metropolitan portion of Zone 1.

At the present time, the Class I price to handlers and the uniform price to producers is adjusted as follows:

Zone	Adjustment
1	No adjustment.
2	Minus 6 cents.
3	Minus 10 cents.
4	Minus 16 cents.

The current location adjustments should be continued without any changes.

Proposals to amend the Upper Midwest order were proposed by Associated Milk Producers, Inc. (AMPI), Mid-America Dairymen, Inc. (Mid-Am), and the National Farmers' Organization, Inc. (NFO).

AMPI proposed that the Minnesota counties of Anoka, Carver, Dakota and Scott be removed from Zone 2 (minus 6 cents) and be a part of Zone 1 (no adjustment).

AMPI also proposed a new Zone 5 to include the Minnesota counties of Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lyon, Martin, Mower, Murray, Olmsted, Redwood, Watonwan and the Iowa counties of Howard, Kossuth, Mitchell, Winnebago, Winneshiek and Worth. The location adjustment for Zone 5 would be plus 3 cents.

Mid-Am proposed that the Upper Midwest order continue to have four pricing zones as follows:

Zone	Adjustment
1	No adjustment.
2	Plus 7 cents.
3	Minus 10 cents.
4	Minus 16 cents.

Mid-Am's proposed Zone 2 would include the Iowa counties of Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth, and the Minnesota counties of Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lyon, Martin, Mower, Murray, Olmsted, Redwood and Watonwan. At the hearing Mid-Am modified proposal No. 5 so that it was exactly the same as AMPI's proposals.

NFO proposed that the present Zone 2 be expanded to include the Minnesota county of Lac Qui Parle and the South Dakota counties of Brown, Day, Edmunds, Grant, Marshall, McPherson, Roberts and Walworth. At the hearing, however, NFO abandoned their proposal.

A witness for AMPI testified that the Minnesota counties of Anoka, Carver, Dakota and Scott should be removed from Zone 2 and placed in Zone 1. The witness referred to the 1976 final decision of the Upper Midwest order, which concluded that there was not enough milk produced in Zone 1 to satisfy all of the fluid demand on a day-to-day basis throughout the year and, therefore, it was necessary to provide a differential to implement the movement of supplemental supplies from Zone 2.

In his opinion, supplemental supplies also are needed for distributing plants located in Carver and Dakota counties. Dakota County, he said, had nine percent less milk in December 1985 than in December 1973. He maintained that the metropolitan population is encroaching on the counties and is forming a common distribution area.

The AMPI witness indicated that the Minneapolis-St. Paul fluid milk handlers face considerable competition for sales in and around this area from fluid milk plants located in Zone 2 who are paying 6 cents less for their milk than handlers in Zone 1. On cross-examination, he said that Minneapolis-St. Paul fluid milk plants compete in this 7-county area with the Marigold Foods plant located at Rochester, Minnesota (Olmsted County), two small handlers located in Brown County, Minnesota, a handler located at Fargo, North Dakota, and a handler located at Duluth, Minnesota.

Including Carver and Dakota counties in Zone 1, AMPI's witness maintained, would give producers delivering to distributing plants in these counties a 6-cent higher price. Producers delivering their milk to distributing plants in the nearby Minnesota counties of Hennepin, Ramsey, and Washington (Zone 1) are receiving 6 cents more than producers delivering to distributing plants in Zone 2. Although Anoka and Scott counties do not contain any distributing plants, they should be included, he said, because these two counties would be bordered on three sides by Zone 1 counties and including these counties in Zone 1 would make for a contiguous common area.

The proponent's witness stated that the only manufacturing plants located in the four counties that they proposed to add to Zone 1 are the Marigold Foods plant located in Dakota County and a AMPI plant located in Scott County. The witness said that in 1985 a significant amount of milk associated with the AMPI plant in Scott County was shipped to a distributing plant in Zone 1 and, therefore, would receive the 6-cent higher Zone 1 price regardless of whether Scott County was added to Zone 1.

On cross-examination, the witness stated that he did not have any data to show that supplies needed by distributing plants located in Carver and Dakota counties exceeded the milk supplies available in these two counties. Producers in Scott County, he said, deliver into Carver and Dakota county and there are producers from Scott County who deliver into Hennepin, Ramsey, and Washington counties. The additional 6 cents that these producers receive for deliveries into Zone 1, the witness said, is at least partial compensation for the additional transportation costs that they incur. He indicated that if Scott County were not included in Zone 1, there would be a 6-cent location credit on milk moving to

the Marigold Foods manufacturing plant in Dakota County.

The proponent witness, on cross-examination stated that there are ample milk supplies available relatively close to the Minneapolis-St. Paul area. He also indicated that there is more overlap in competition for fluid milk sales in this 7-county area than there was 10 years ago and that these handlers are not all paying the same price for their milk supply.

AMPI's proposal to add the Minnesota counties of Anoka, Carver, Dakota and Scott to Zone 1 was supported in its entirety by three proprietary handlers and Mid-Am. Land O'Lakes, Inc. (LOL), in their brief, supported adding only Carver County and the City of Hastings in Dakota County. Kraft, Inc., although not offering testimony at the hearing, filed a brief opposing the addition of Anoka and Scott counties. Le Sueur Cheese Company, Inc. opposed the inclusion of Scott County and NFO opposed the inclusion of Anoka and Scott counties. Oak Grove Dairy objected, in their brief, to Carver County. Falls Dairy Company, Universal Foods and Twin Town Cheese Factory (Falls Dairy, et al.) objected to the addition of Scott County.

A witness for Marigold Foods (Marigold) testified in support of the AMPI proposals. He stated that Marigold operates distributing plants at Rochester, Minneapolis, and Duluth and a manufacturing plant at Farmington in Dakota County.

Since about 1976, he said, fluid milk plants are concentrating in the areas of what is referred to as the 5 or 7-county metro area of Minneapolis-St. Paul, plus the Minnesota areas of Rochester and Duluth, and Fargo, North Dakota. The witness indicated that packaged milk from all these plants move both within and among orders in substantial amounts and in all directions. The Marigold plant at Minneapolis sells about 55 percent of its packaged milk in Zone 1 and about 45 percent in Zone 2. Its Rochester plant, he said, sells about 65 percent in Zone 1 and 35 percent in Zone 2 and their Duluth plant disposes of approximately 71 percent of its fluid milk products into Zone 1 and 29 percent into Zone 2.

On cross-examination, the Marigold witness acknowledged that AMPI's proposal would cost them 6 cents on the movement of bulk milk from their manufacturing plant at Farmington to their distributing plant at Rochester. He said this was because the order presently provides 6 cents on the movement of this milk and this 6 cents would not be available to them if Dakota County were added to Zone 1. The witness indicated, however, that Marigold is willing to give up the 6 cents on this milk movement in order to create more equity among all fluid milk plants with whom they compete throughout Zone 2.

The witness said that Marigold now moves more packaged milk "back out" from the metropolitan Minneapolis-St. Paul area than in 1976. He indicated that there were more fluid milk handlers operating in Zone 2 in the past and, therefore, there was less movement of packaged fluid milk products from Zone 1 to Zone 2.

The Marigold witness said that there are only two fully regulated distributing plants in the four counties proposed to be deleted from Zone 2 and added to Zone 1: Oak Grove Dairy in Carver County and Hastings Cooperative Creamery Company in Dakota County.

The Marigold witness stated that even though there are no distributing plants in Anoka and Scott counties, these counties should be added to Zone 1 because they are contiguous to the present Zone 1 area where there is substantial competition for fluid milk sales. Also, he said, there is enough population in these two counties that it is possible a processing plant could be constructed there which could cause a competitive problem in the future. The witness acknowledged that location of the manufacturing plant in Scott County could provide a disincentive for milk to be moved from that plant to a distributing plant if Scott County were in Zone 1.

Witnesses for two proprietary handlers located in Zone 1 briefly testified in support of the inclusion of the proposed four counties into Zone 1.

At the hearing a witness for Falls Dairy, et al., all of whom located in Zone 3, expressed reservations about the proposal to expand Zone 1. In their brief, however, they stated that they are opposed to the proposal.

A witness for Land O'Lakes, Inc. (LOL), opposed the proposal to expand Zone 1 by adding four Zone 2 counties. He maintained that adding Scott County to Zone 1 would increase the price that producers would receive at the AMPI manufacturing plant located at New Prague in Scott County. LOL, he said, operates a reserve supply plant in Rice County, which adjoins Scott County. Therefore, these two plants with similar operations would be competing for a milk supply, but the AMPI plant would be able to pay producers 6 cents more under the order.

LOL, in its brief, supported adding Carver County and the City of Hastings in Dakota County to Zone 1. In the brief, LOL pointed out that the manufacturing facilities located in Scott and Dakota counties transfer milk to distributing plants. In LOL's view, this would not promote orderly marketing because there would be no incentive to transfer milk from the two manufacturing plants to distributing plants. Also LOL claimed that pool funds would be redistributed in favor of producers whose milk is received and priced at the two manufacturing plants at the expense of producers whose milk is received and priced at all other locations.

A witness for Le Sueur Cheese Company also testified in opposition to the proposal to add the four counties to Zone 1. He testified that they operate a reserve supply plant in Le Sueur County and they were concerned that these proposals would disrupt the competitive situation in this area for milk supplies.

In their briefs, Le Sueur Cheese and Glencoe Butter and Produce Association opposed adding Scott County to Zone 1. Both contended that the AMPI plant in Scott County competes for a milk supply from the same area that they do and, therefore, AMPI would have a competitive advantage in acquiring milk supplies because of the additional 6 cents that AMPI would be able to pay.

A witness for Oak Grove Dairy (Oak Grove), a handler that operates a pool distributing plant located in Carver County, opposed adding Carver County to Zone 1. The witness said that it does not take the same price to get milk to the Oak Grove plant that it does to get milk to a plant in Minneapolis-St. Paul. He said that Carver County is distinct from Hennepin and Ramsey counties in that Carver is a rural county and the other two counties are urban. Carver County, he said, produced more milk than Hennepin and Ramsey counties combined and that Carver County has only a fraction of their population.

The Oak Grove witness stated that the minus 6 cents will continue to provide an adequate incentive to move milk to its plant without causing any disruption in the competitive balance among plants distributing in the Minneapolis-St. Paul area. According to the witness, marketing conditions have not changed since the 1967 merger decision and the 8-cent increase in the Class I differential for the Upper Midwest order should not have any effect on the long-existing price relationship between the Minneapolis-St. Paul handlers and Oak Grove.

The Oak Grove spokesman stated that about 60 percent of its milk supply is direct-shipped milk within a 25-mile radius of its plant and that the plant receives milk from the counties of Carver, Wright, McLeod, Sibley and

Scott. Oak Grove's brief notes that its plant is the only distributing plant in this 5-county area. The brief further pointed out that milk production in these five counties accounts for more than nine percent of the total milk pooled on the Upper Midwest market, and that production in these counties has increased at a lesser rate than the total of the milk pooled under this order.

NFO supported the addition of Carver and Dakota counties only. In their brief, NFO pointed out that the number of handlers in the Upper Midwest order has declined while the sales area of those that remain has expanded. Therefore, NFO claims, the remaining handlers have a higher degree of overlap in distribution, suggesting the need for uniform Class I pricing.

NFO's brief stated that the 6-cent differential between Zone 1 and Zone 2 covers part of the cost of moving milk to distributing plants and should be applicable at fluid milk plants in Carver and Dakota counties. NFO opposed the inclusion of Scott County in Zone 1 because it would create unnecessary and inequitable competitive problems among various supply plants and manufacturing plants in Central Minnesota. To increase the price at the AMPI manufacturing plant in Scott County by 6 cents would give it an unfair competitive advantage in acquiring a supply of milk and would eliminate the incentive for this plant to make milk available to distributing plants, according to NFO.

The proposal to shift four Zone 2 counties to Zone 1 is denied. Various alternatives to the proposal were proposed in the testimony at the hearing and in briefs filed by interested parties.

The addition of Anoka and Scott counties was opposed on the basis that there are no pool distributing plants located within those counties, and that higher prices at any manufacturing plants in those counties would discourage the movement of milk to Zone 1 distributing plant handlers that compete for supplies of milk in these counties.

Anoka and Scott counties are contiguous to other counties that are in Zone 1. Although there are no distributing plants in either county, there is a reserve supply plant located in Scott County. The plant is at New Prague, Minnesota, is operated by AMPI, and was described as a small nonfat dry milk plant. In 1985, a significant amount of New Prague Grade A milk was shipped to a distributing plant in Zone 1, and to a plant at Farmington, Minnesota. The milk at the Farmington plant is used for Class II uses or is shipped to the Marigold distributing plant in Minneapolis (Zone 1).

Both counties should remain in Zone 2. There is no evidence, in either case, to support a higher price. Adoption of a higher price in these two counties would simply remove the 6 cents per hundredweight incentive that now exists for milk to move to distributing plants in Zone 1.

Similarly, Carver County should not be added to Zone 1, even though there is one distributing plant in the county. Oak Grove Dairy, in Norwood, Minnesota is in Carver County. Oak Grove obtains 60 percent of its milk supplies from farms located within about 25 miles of the plant. The remainder of Oak Grove's milk supply comes from Glencoe, Minnesota, which is 12 miles west of Norwood (McLeod County) and from Litchfield, Minnesota, which is about 50 miles northwest of Norwood (Meeker County). Norwood, on the other hand, is about 40 miles southwest of downtown Minneapolis, and is on the western side of Carver County. The plant is located in a more rural county (1983 population—38,600), and on the opposite side of the county from an area where the record indicates that the metropolitan area is expanding. Thus, the plant is more appropriately described as located in a production area rather than in the heart of the metropolitan area.

The Norwood handler maintained that it cost producers or cooperatives less to supply the Oak Grove plant than to ship milk to plants located in Hennepin, Ramsey, or Washington counties. The brief submitted by Oak Grove Dairy quotes from the 1976 final decision, which found that Carver County should not be included in Zone 1. We must conclude from the evidence contained in this proceeding that there is no basis for reaching a different conclusion now.

The situation for Dakota County is not the same as for Carver County. However, the same conclusion must be reached. A pool distributing plant which is operated by Hastings Cooperative Creamery Company, is located in Hastings, Minnesota. Marigold Foods operates a reserve supply plant at Farmington, which also is in Dakota County.

The city of Hastings is just across the county line from the southern boundary of Washington County, which is in Zone 1. Thus, the Hastings Cooperative's distributing plant is in closer proximity to the metropolitan counties presently included in Zone 1. Dakota County is an urban county, having a 1983 population of over 207,000 persons.

One basis of opposition to including Dakota County in Zone 1 was that it would result in a 6-cent increase in returns for producer milk delivered to a manufacturing plant. Marigold's witness indicated that the 6-cent differential between Farmington and Minneapolis helped cover the cost of moving bulk milk from Farmington to the Minneapolis distributing plant also operated by Marigold. Marigold nevertheless supported shifting Dakota County to Zone 1.

One approach to overcoming the concern about increasing returns for milk delivered to a manufacturing plant would be to just add the city of Hastings to Zone 1, as was suggested. However, the record in this proceeding simply does not warrant such a decision.

The principal argument for adding Carver and Dakota counties to Zone 1 was that the distributing plants in those two counties compete with Zone 1 plants for sales over a broad geographic area. This argument, by itself, is not a sufficient reason to increase the Class I and blend prices at a given plant location.

The principal function of a location adjustment is to reflect the cost of moving milk from the production area to distributing plants located in or near the major population (consuming) centers of the market, and to provide a price that will attract an adequate supply of milk to such locations. Location adjustments may also be used to achieve price alignment between plants subject to different orders.

There is no basis in the record of this proceeding for concluding that higher Class I and blend prices are needed at the Dakota County plants, especially the Hastings plant. There is no information in the record about where the plant obtains its milk supplies or whether there has been any problem attracting adequate supplies of milk.

Moreover, the production-by-county data provided in the market administrator's exhibit indicate that December 1985 milk production in Dakota County was over 7.3 million pounds. Since the record does not indicate the size of the Class I operation at the Hastings plant, or where the milk produced in Dakota County is used, there is no basis for concluding that a higher price is needed, either for Dakota County or for just the city of Hastings. Dakota County, in its entirety, should remain in Zone 2.

Similarly, the order should not be amended to provide a new Zone 5. AMPI proposed (Proposal no. 3) that a new Zone 5 be created that would include the Minnesota counties of Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lyon, Martin, Mower, Murray, Olmsted, Redwood and

Watonwan as well as the Iowa counties of Howard, Kossuth, Mitchell, Winnebago and Worth.

The proponent's witness testified that blend prices should increase about 4 cents for the proposed Zone 5 of the Upper Midwest order. This calculation, he said, is based on multiplying the Class I utilization percentage for that market by the increase in the Class I differential (14%×$.08=$.01). This 1-cent increase plus the proposed 3-cent location adjustment for Zone 5 would result in a 4-cent increase in blend prices for producers in Zone 5. Similar calculations provided by an exhibit submitted by the proponents projected that blend prices under surrounding orders would increase in the proposed Zone 5 area by about 4 to 6 cents per hundredweight. The purpose of the exhibit was to show that the proposed 3-cent adjustment would maintain blend price alignment in the proposed Zone 5 srea.

The AMPI witness stated that the proposed Zone 5 is the primary area of the Upper Midwest market where both milk procurement and Class I sales overlap among surrounding orders. Because of the new Class I differentials, the Order 68 price in this area needs to be adjusted, he maintained.

AMPI's spokesman said that Brown and Olmsted counties are the only proposed Zone 5 counties with distributing plants. Excluding Brown and Olmsted counties, the remaining proposed Zone 5 counties have more than two-thirds of their remaining milk pooled under the Nebraska-Western Iowa or Iowa orders. Each of the proposed Zone 5 counties has some milk pooled on one of these two neighboring markets and there is considerable blend price competition between these orders. He said that blend prices, premiums, and shipping requirements, for example, can cause milk to move from one market to another, but that it was important to maintain historical price relationships between competing and overlapping procurement areas. AMPI maintains that a higher price at Rochester, Minnesota (Olmsted County) is needed because the difference between the new Class I differentials applicable to Minneapolis and the other orders is too large.

Proponent's witness stated that the Marigold fluid milk plant at Rochester is one of the largest plants in the Upper Midwest, and that it purchases a substantial amount of the milk produced in Olmsted County and distributes packaged milk throughout Iowa, Illinois, Wisconsin and Minnesota.

The witness indicated that the proposals to enlarge Zone 1 and create a Zone 5 represent a compromise between the need to maintain reasonable blend price relationships as they have been in the past and also recognizes the need to maintain Class I price alignment among competing handlers.

AMPI in their brief, referred to Exhibit no. 15 and said that the plus 3-cent adjustment for Zone 5 with a $1.23 Class I differential at Rochester results in better alignment with nearby markets and other basing points. The plus 3-cent adjustment will provide competitive equity between the Upper Midwest handlers located in the southern part of this market and handlers regulated under adjoining orders.

The AMPI proposal was supported by the spokesman for Marigold. He said that Marigold sells a substantial amount of packaged milk below the top tier of Iowa counties, and outside Zones 1 and 2 of the Upper Midwest order. He said that while this proposal would put Marigold at a disadvantage with Zone 1 handlers, Mid-Am's original proposals no. 5 and 6 would create an even greater discrepancy between Zone 1 of the Upper Midwest order and the proposed new Zone 5.

Swiss Valley Farms, Co. filed a brief in support of the AMPI proposal for a Zone 5 and said that it would better align blend prices between the adjoining counties of the Upper Midwest and the Iowa orders.

Mid-Am, as indicated previously, amended their proposals no. 5 and 6 so that they were identical to the AMPI proposals. In their brief, however, they said that they supported including only Olmsted County in a new Zone 5.

At the hearing, the witness for Falls Dairy, et al. testified in opposition to the proposed new Zone 5. He contended that the proposed plus 3-cent location adjustment for this area would violate the principal of flat or zone down-pricing from major consumption areas within the order. The proposal would also create some inequity between Marigold at Rochester and the two fluid milk plants located in Brown County who compete with the Minneapolis-St. Paul handlers, in his view.

The witness stated that this proposal also would create some equity problems between producers in Zone 5 and other producers on the Upper Midwest order. He contended that the proposal is an attempt to solve a problem of inequity caused by the mandated Class I price increase of 15 cents for the Iowa order and an 8-cent increase for the Upper Midwest order.

The spokesman for Falls Dairy, et al. maintained that this proposal would impede the flow of milk southward by a higher-priced zone in Southern Minnesota and Northern Iowa. In the absence of this proposal, he said, some milk may move from the Upper Midwest order to the Iowa order and milk from the Iowa order may move to a higher-priced zone to the south and that there is nothing wrong with such milk movements. Inter-market Class I price alignment problems should not be solved at the expense of maintaining price alignment between handlers and producers within the Upper Midwest order, according to the Falls Dairy, et al. witness.

A spokesman for LOL testified in opposition to the proposed Zone 5 on the basis that it would create some distorted competitive relationships similar to that described with respect to adding Scott County to Zone 1.

LOL, the spokesman said, operates s cheese plant at Pine Island, Minnesota, just one mile north of Olmsted County in Goodhue County. This plant competes for a milk supply over the same territory as the AMPI manufacturing plant at Rochester. Thus, he contended that the AMPI proposal would put LOL at a 9-cent competitive disadvantage (minus 6 cents in Zone 2 combined with a plus 3 cents in Zone 5).

The LOL witness disagreed with the AMPI position that their proposals would properly neutralize the impact on blend prices. Differences in blend prices, he said, are a normal and healthy adjustment associated with higher Class I prices. Higher Class I prices exist in markets with higher Class I utilization and therefore represent a greater need for Class I milk. Federal orders, he said, have a natural adjusting mechanism in that as the Class I utilization and Class I prices are higher, blend prices will be higher, thereby, attracting additional milk supplies. In its brief, LOL expressed the view that all markets in the region are abundantly supplied with milk, so minor shifts of milk in Southern Minnesota among markets will have no damaging impact.

The LOL brief further contends that even if substantial blend price differences exist among markets, they can be largely dealt with through the ability of the cooperatives to reblend the proceeds from the sale of their members' milk.

LOL's brief also stated that a new Zone 5 would redistribute pool funds in favor of AMPI at Rochester and New Ulm, and to a lesser extent, LOL at Mountain Lake, Minnesota, at the expense of producers whose milk is priced at all other locations. Producers whose milk is processed at a Zone 5 manufacturing facility, said LOL, would receive a more favorable price than producers whose milk was processed in

a Minneapolis-St. Paul distributing plant.

A witness for the Le Sueur Cheese Company (Le Sueur), testified that Le Sueur operates a reserve pool supply plant and a cheese manufacturing operation in Le Sueur County (Zone 2), Minnesota. Le Sueur also opposed the Zone 5 proposal. At the hearing and in their brief, Le Sueur indicated concern about the adverse impact that this proposal would have among competing handlers in acquiring milk supplies in the Zone 5 area. The Le Sueur witness stated that Le Sueur already has a 6-cent disadvantage in competing with the AMPI plant in Scott County, and that the AMPI proposal would increase this disadvantage an additional 3 cents.

NFO supported creating a Zone 5 consisting of only Olmsted County. The NFO witness stated that Olmsted County is unique and that the two fluid milk plants in Brown County are small volume plants with sales only in the Upper Midwest order.

In their brief, NFO stated that including Olmsted County in Zone 5 is appropriate because of the distribution pattern of the Rochester plant. Outside of Olmsted County, there are no other metropolitan centers, or major distributing plants in the counties of southern Minnesota or northern Iowa. There are, the brief notes, a number of reserve supply plants including the AMPI manufacturing plant in Brown County. The AMPI plant and other plants located in the proposed Zone 5 compete with plants located in Zone 2 for milk supplies. This proposal would increase the blend price at manufacturing plants in the proposed Zone 5. This price difference would amount to 9 cents and could lead to disorderly marketing conditions in areas of procurement overlap.

In NFO's view, any substantial misalignment of prices in those areas should be addressed in connection with the proposed amendments to the Nebraska-Western Iowa and Iowa orders. If prices are appropriately aligned, blend prices of the other orders attract milk to those orders and that is an appropriate situation that should not be addressed by creating an inappropriate plus differential in the Upper Midwest order.

A representative of Anderson-Erickson Dairy Company (A–E), a handler fully regulated under the Iowa order, testified in support of the proposals to amend the Upper Midwest order.

In its brief, A–E stated that the proposal to create a plus 3-cent location adjustment is the only proposal which can be said to be necessitated by the new prices established by the Food Security Act of 1985. In their view, this proposal to create a new Zone 5 would improve the alignment between the new base price at Minneapolis-St. Paul and the price in Iowa. The brief, concluded, however, that the plus 3-cent location adjustment should apply for milk delivered to plants in Olmsted County, Minnesota.

Kraft, Inc. filed a brief and stated that the proposal for a plus 3-cent location adjustment for southern Minnesota should apply, if at all, only to Olmsted County. The AMPI proposal, in Kraft's view, represents an attempt to use this proceeding to gain an advantage for its own manufacturing operations to the disadvantage of competitors in adjacent counties. Kraft contends that it is unnecessary to raise prices, predominately to manufacturing plants, outside of Rochester.

Mid-Am, as indicated previously, amended their proposals for the Upper Midwest order so that they were identical to the AMPI proposals. The Mid-Am brief, however, suggested that only Olmsted County be added to Zone 5.

At the hearing, the Mid-Am witness said the plus 3-cent location adjustment for Olmsted County would improve the alignment between the Upper Midwest and Iowa orders and would help cover the cost of supplying milk to the Rochester location. Olmsted County was their main concern because of the Marigold plant at Rochester which has considerable distribution in Iowa.

Mid-Am's brief stated that to the extent that producer milk in the proposed Zone 5 counties exceeds the amount of producer milk classified in Class I in the same counties, the blend price to all producers will be reduced and producers in Zone 5 would be rewarded for producing milk for non-Class I purposes. In Mid-Am's view, limiting the 3-cent location adjustment to only Olmsted County would minimize this unwarranted result.

The proposal to create a new Zone 5 consisting of 13 Minnesota counties and six Iowa counties should not be adopted.

The area that AMPI proposed to include in Zone 5 is an area where substantial overlap of milk procurement occurs for the Upper Midwest, Nebraska-Western Iowa, and Iowa orders. Three of the counties in the proposed Zone 5 have pool plants located in them. In Minnesota there are two distributing plants in Brown County, and a distributing plant in Olmsted County. There is a reserve supply plant in Winneshiek County, Iowa. In addition, there are several nonpool plants that receive milk diverted under the Iowa order, and at least some nonpool plants that receive milk diverted under the Upper Midwest order in these counties. In the latter case, testimony by witnesses for the various parties reveals the presence of manufacturing plants in Brown, Olmsted, and Goodhue Counties in Minnesota. There may be others. The record indicates there is keen competition for milk supplies in this area. Some of the competition must be from manufacturing plants that are not pool plants under any of the three orders being considered here.

The two pool distributing plants in Brown County are small operations that dispose of most of their Class I milk in the Upper Midwest market. There is no basis in the record for concluding that a higher price is needed to help attract milk to distributing plants in Brown County. The distributing plant in Olmsted County is a relatively large plant that distributes milk over a wide area that includes sales in competition with handlers regulated under the Iowa, Nebraska-Western Iowa and Eastern South Dakota orders. Also the plant secures part of its supply from sources other than Olmsted County, including sources in Wisconsin.

Rochester is about 85 miles south (and a little east) of Minneapolis-St. Paul. It is closer to the boundary of the Upper Midwest and Iowa marketing areas than it is to the twin cities. Since the Rochester distributing plant is so located, snd competes with handlers regulated under other orders subject to higher Class I milk prices, it is important that there be reasonable alignment of Class I prices between Rochester and the Nebraska-Western Iowa, and Iowa orders.

Prior to May 1, 1986, the Class I price at Rochester under the Upper Midwest order was 28 cents less than the base zone Class I prices at Omaha, Nebraska, and Des Moines, Iowa. On May 1, the difference increased to 35 cents per hundredweight. Thus, adding 3 cents to the Class I price at Rochester would restore reasonable alignment of Class I prices between the Upper Midwest order at Rochester and the Class I prices at the principal consumption centers of the Nebraska-Western Iowa, and Iowa orders. Inter-order Class I price alignment is one of the functions of location adjustments. However, increasing the Class I price 3 cents per hundredweight to Rochester would create an unacceptable pricing difference between the plants in Rochester and a manufacturing plant located at Pine Island in Goodhue

County. The matter of price alignment with other order plants will be addressed through revising the location adjustment rate in the Nebraska-Western Iowa, and Iowa orders.

The distance from Pine Island to Rochester is approximately 17 miles. Rochester (Olmsted County) is in Zone 1, which has a zero location adjustment. Pine Island (Goodhue County) is in Zone 2, which has a minus 6-cent location adjustment. Adding 3 cents to Class I and uniform prices for Olmsted County would create a 9-cent differential between Goodhue and Olmsted counties. At 17 miles, the rate per 10 miles would be about 4.5 cents per hundredweight, which exceeds the cost of hauling milk. Such a price differential would tend to result in milk being moved just to get the higher price, perhaps at one manufacturing plant rather than another. Moreover, there is no sound basis for increasing producer returns for milk delivered to a manufacturing plant that also is located in Rochester. Therefore, even Olmsted County, by itself, should not be designated as a separate pricing zone with a higher price.

AMPI took exception to the recommended decision not to include a plus 3-cent location adjustment for Olmsted County.

AMPI's exception argues that the decision fails to consider the appropriateness of a plus location adjustment going south from Minneapolis to Des Moines. The distance between Rochester and Des Moines is 207 miles. AMPI maintains that a 1.5-cent location adjustment rate would result in an adjusted Class I price at Des Moines of $1.545 ($1.23 at Rochester plus 31.5 cents) compared to the mandated Des Moines Class I price of $1.55. Also, AMPI stated that it is appropriate to align Class I prices between Class I handlers located at Rochester, Sioux Falls, Omaha and Des Moines even though there are manufacturing plants in and around Olmsted County competing for milk supplies.

The concerns raised in the exceptions were fully considered in reaching a recommended decision. As indicated previously, the potential 9-cent differential between Olmsted and Goodhue counties would not contribute to orderly marketing. Alignment of Class I prices between Rochester and several major population centers in the Nebraska-Western Iowa and Iowa markets has been appropriately dealt with in these markets. The use of a location adjustment rate of 1.7 cents for plants located outside of the existing zones of Orders 65 and 79 provides reasonable price alignment between these locations. The exceptions filed by AMPI must be denied.

A major argument in support of the proposed Zone 5 was that the higher price to Upper Midwest producers in the area would maintain a historical blend price relationship in an area where there is a substantial overlap of milk procurement for several orders.

As noted earlier, the procurement overlap in the proposed Zone 5 area is substantial. Nevertheless, it is not a function of location adjustment provisions to provide alignment of blend prices among orders in a common procurement area.

The record indicates that cooperatives may, and do, shift milk from one order to another when it is in their best interests to do so. Blend prices of course may be affected by adding milk to the pools, or removing it from the pools. There is no basis for concluding that any alignment of blend prices that was achieved by the application of location adjustments would or should endure. The blend price for a particular order results from a combination of the Class I price and the percentage of the market's milk priced as Class I milk. If the blend price in one market is higher than for another order with respect to a common production area, it should serve to attract more milk to the order that has the higher price. Over time, as milk shifts from one market to another, blend price alignment should result. If blend prices are improperly aligned, the adjustment should be made through changing the Class I differential, not through location adjustments in the milkshed.

1B. Plant Location Adjustments for Nebraska-Western Iowa

The Nebraska-Western Iowa order should be amended to provide a higher rate of location adjustment for plants located outside of the present Zones 1 and 2. As recommended, the plant location adjustment rate of 1.5 cents per 10 miles per hundredweight should be increased to 1.7-cents with respect to plants located outside of Zones 1 and 2 but located in the States of Nebraska, Iowa, Minnesota, North Dakota, South Dakota (east of State Highway 73 only) or Wisconsin. Norfolk and Omaha would continue to be basing points.

The Nebraska-Western Iowa order presently provides for two zones with a zero location adjustment for Zone 1 and a plus 15.0-cent location adjustment for Zone 2. This decision does not recommend any changes to these two zones, or to the 15-cent location adjustment for Zone 2. Zone 1 includes 55 Nebraska counties and Zone 2 includes 13 Nebraska counties.

The order also provides that for a plant located outside of Zones 1 and 2 but located in the States of Nebraska, Iowa, Minnesota, North Dakota, South Dakota (east of State Highway 73 only), or Wisconsin, the location adjustment shall be 1.5 cents per 10 miles or fraction thereof (the shortest hard-surfaced highway and/or all weather road distance as measured by the market administrator) that such plant is located from the nearer of the city hall's in Norfolk or Omaha, Nebraska. At any other location, no adjustment applies.

Proposals to amend the Nebraska-Western Iowa order were filed by Gillette Dairy, Inc. (Gillette), Mid-Am, Neu Cheese Company and Orchard Dairy, Inc., and Wells Dairy, Inc. (Wells). At the hearing, AMPI also proposed changing this order.

Gillette proposed that the Nebraska counties of Boone, Madison, and Stanton be removed from Zone 1 and that Norfolk, Nebraska be removed as a basing point leaving only Omaha, Nebraska as a basing point.

Gillette's spokesman testified that they operate a fluid milk plant at Norfolk (Madison County), Nebraska, and for several years have competed with Wells, the operator of a fluid milk plant at Le Mars (Plymouth County), Iowa. The witness said that both Gillette and Wells are fully regulated plants and that Wells receives a minus 16.5-cent location adjustment; Gillette, he said, does not receive any location adjustment because it is located at Norfolk.

The witness for Gillette said that this 16.5-cent price advantage that Wells has is not necessary to provide an adequate supply of milk for Gillette. Both Norfolk and Le Mars, he said, are small population centers compared to Omaha, Nebraska.

Gillette's witness testified that location adjustments have been used to reflect a lesser value for milk at points some distance (production area) from the major population centers. A minus differential for Le Mars, he said, fits the pattern in this market with the exception that the differential should be based off of Omaha. The witness said that the same reasons that warrant a lower price for Le Mars as compared to Omaha are valid for a lower price at Norfolk as compared to Omaha. The spokesman said that there is no rational basis for a price difference between Le Mars and Norfolk.

The spokesman for Gillette stated that one way of measuring whether an area has a sufficient or surplus supply of milk

is to compare the population in an area with the pounds of milk produced in that area. He said that milk production in Madison County and the counties adjacent or within 10 miles of it in December 1985 was 12.5 million pounds. According to the witness the population in that same area was 111,078 and results in a daily ratio per capita of 3.6 pounds per day. This ratio, he said, compares to a U.S. average of .058 pounds per day of fluid use and a 1.42 pounds per day of total dairy products use. Therefore, he said, the Norfolk area can be called a surplus Production area.

The witness testified that milk production in Plymouth County in Iowa and the adjacent counties or within 10 miles of it was 12.2 million pounds for December 1985. He said that the population of this area was 233,197 and results in a ratio of 1.6 pounds of milk production per capita per day and, therefore, is a surplus production area. A similar computation for the Omaha area, he said, results in a ratio of 0.4 pounds and, therefore, it is an area that must attract milk.

The spokesman for Gillette said that a more complex measurement of an area's milk needs is to compare the milk production in the direct-shipped area of a local market to the needs of the fluid milk distributing plants. The witness said that it is reasonable to presume that a plant receiving a significant portion of its milk from supply plants has needs beyond the production available in the direct-shipped area. By this standard, he said, Plymouth and adjacent counties would be a deficit area, while Madison and adjacent counties have a surplus of milk production. The Gillette spokesman said that Gillette receives almost all of its milk directly from farms. This standard of measurement, he said, supports a lower price for Norfolk.

The witness for Gillette stated that since there is no need to attract milk to Norfolk, that Norfolk is not a logical point from which to start such a measurement. Omaha, he said, is the logical point to start and the rate of 1.5 cents now used would produce a minus 18 cents for Norfolk which is 111 miles from Omaha and a minus location adjustment of 19.5 cents for Le Mars which is 122 miles from Omaha.

The witness said Gillette distributes milk to the northeast of Norfolk where it competes with milk originating in a lower-priced zone and has been serving this area for over 30 years. In the last five years, he said, Gillette has lost a number of accounts in the Norfolk area to Wells because of the lower cost available to Wells.

No parties, either at the hearing or in briefs, supported the Gillette proposals.

A witness for Wells testified in opposition to the Gillette proposals. The witness said that the Gillette plant is the only distributing plant in the counties of Boone, Madison or Stanton. The Gillette proposals, he said, have nothing to do with the new Class I differentials and that the net effect to Gillette through its proposals would be an 18-cent location adjustment in place of its zero location adjustment.

The spokesman for Wells stated that Gillette is simply trying to gain a competitive advantage over Wells. The witness referred to the 1981 decision for this market that he said concluded that milk marketing would best be served by the Gillette plant being in Zone 1 and the Wells plant benefiting from a 1.5-cent per 10 mile location adjustment. The witness indicated that there have been no changes in Gillette's purchasing patterns with respect to raw milk since the 1980 hearing that would justify any change in Gillette's location adjustment.

The Wells' witness noted that most of Gillette's sales are southwest of Norfolk and that the Department concluded in the earlier decision that since Gillette sold its packaged milk in the area southwest of Norfolk, it would retain its competitive advantage over Le Mars even if Le Mars received a higher location adjustment.

The witness stated that the use of Norfolk and Omaha as basing points results in price alignment with federal orders to the north and west. The witness said that these basing points provide the necessary price alignment to the various plant locations within the marketing area. The spokesman said that nothing has changed in the last five years and that Norfolk is an appropriate basing point because Class I differentials increase as you move west from the Minnesota-Wisconsin area. The plus 15-cent location adjustment, he said, for plants in Zone 2 of the Nebraska-Western Iowa order reflects this milk pricing policy. The witness stated that the Class I differential for the Eastern Colorado order was 70 cents higher than the Nebraska-Western Iowa order and that the Food Security Act of 1985 has increased this difference to 98 cents.

A witness for AMPI testified that AMPI was opposed to all other proposals to amend the Nebraska-Western Iowa order except their own. In their brief, they stated that Gillette's proposals, as well as proposals by Neu Cheese Company and Orchard Dairy, were abandoned by their proponents in favor of the Mid-Am modified proposal no. 10, which is discussed later.

The witness for A–E voiced opposition to all the proposals to change the Nebraska-Western Iowa order. The A–E brief supported only the AMPI proposal to impose a plus 3-cent location adjustment for Olmsted county in the Upper Midwest order. The brief further commented that with this change, no other changes would be necessary in the Nebraska-Western Iowa or Iowa orders and that the adoption of any other changes would distort existing alignment without having any impact on fluid milk supplies.

Mid-Am proposed that the present Zone 1 of the Nebraska-Western Iowa order be amended by deleting the Nebraska counties of Madison and Stanton and adding the Nebraska county of Washington. A new Zone 3 would be added consisting of the Nebraska counties of Antelope, Burt, Cuming, Holt, Madison, Pierce, Stanton, Thurston, and Wayne. Also, their proposal would create a new Zone 4 consisting of Dakota and Dixon counties in Nebraska and Plymouth and Woodbury counties in Iowa. The rate of location adjustment was as follows:

Zone	Adjustment
1	No adjustment.
2	Plus 15 cents.
3	Minus 10 cents.
4	Minus 15 cents.

For a plant located outside of Zones 1, 2, 3, and 4 and in the States of Nebraska, Iowa, Minnesota, North Dakota, South Dakota (east of State Highway 73 only), or Wisconsin, the price would be reduced by 2.0 cents per 10 miles or fraction thereof (by shortest hard-surfaced highway as measured by the market administrator) that such plant is located from the city hall in Omaha, Nebraska. At any other location, no adjustment would apply.

At the hearing, Mid-Am modified their proposal. As modified, Zone 3 would include the Nebraska counties of Pierce, Wayne, Thurston, Madison, Stanton, Cuming, and Burt with a minus location adjustment of 10 cents. Zone 4 would include the Nebraska counties of Holt, Knox, Antelope, Cedar, Dixon, and Dakota, and the Iowa counties of Plymouth and Woodbury with a location adjustment of minus 15 cents. Washington County in Nebraska would be added to Zone 1. Zones 1 and 2, except for adding Washington County to Zone 1, would remain as the order presently provides. Norfolk would also be used as a basing point.

The spokesman for Mid-Am testified that the milkshed for the Nebraska-Western Iowa order extends about 350 miles north of Omaha into North Dakota. Exhibit 5, he says, shows that the amount of milk in South Dakota increased 20 percent between December 1983 and December 1985 while the total milk pooled on the Nebraska-Western Iowa order increased less than eight percent.

The Mid-Am witness said that in designing the proper pricing structure for the Nebraska-Western Iowa order, the first and foremost consideration must be to provide the proper economic incentive to transport milk from the production areas such as South Dakota to the fluid milk distributing areas. The spokesman for Mid-Am said that the combined population of Douglas County (Omaha) and Council Bluffs (Iowa) was 454,333 or about 28 percent of the total of Nebraska plus Council Bluffs.

The spokesman for Mid-Am said that, in determining the proper location adjustment, unless the price is reduced at distant points, pool proceeds would be utilized to pay producers for freight not actually incurred, resulting in lower blend prices to other producers. The rate of location adjustment, he said, should be established at a level that will provide an economic incentive for milk to move from distant points to the central market such as Omaha and at the same time will not result in a penalty for shipping to the central market. Both objectives, he said, can be met by providing that the location adjustment rate be approximately the same as the cost of transporting milk from distant points to the central market.

At the present time, the witness said, the cost of hauling bulk milk is about 3.5 cents per 10 miles per hundredweight. Nevertheless, a rate of 2.0 cents was proposed for two reasons. First, he said, the 2.0-cent rate is the approximate location adjustment rate between Eau Claire and Omaha as reflected in the Class I differentials provided by the Food Security Act of 1985. Second, the resulting Class I differential at the South Dakota locations of Corsica, Freeman, Lake Preston, and Sioux Falls as well as Dawson, Minnesota, will be approximately the same as those provided by the Upper Midwest and Eastern South Dakota orders.

The Mid-Am witness stated that the new Upper Midwest Class I differential at Dawson, Minnesota, for example, would be $1.20 and it would be $1.21 under the Nebraska-Western Iowa order. At Sioux Falls, he said, the new Eastern South Dakota Class I differential would be $1 50. The Nebraska-Western Iowa adjusted Class I differential at Sioux Falls would be $1.47 under their proposal. Their proposed Zone 3, he said, provides a reasonable relationship between Norfolk and Omaha and their proposed Zone 4 provides an economic incentive for milk to move from the five plants in the proposed Zone 4 to the major population area.

The Mid-Am witness further said that under their proposal the Wells plant in Plymouth County would receive a 15-cent location adjustment, and Gillette at Norfolk would receive a 10-cent location adjustment. He said that the pricing points at South Dakota or outside of the proposed Zone 4 would be calculated at the rate of 2 cents from Norfolk but that sum would be subtracted from the Omaha price rather than the Norfolk price.

The witness further stated that about 50 percent of the milk needed at Omaha is supplied from direct-shipped milk around Omaha and that the remainder comes from Iowa. Also, the witness stated that even though there is little milk from South Dakota moving to Omaha, that there still should be an incentive for that milk to move.

The Mid-Am proposal was supported by Neu Cheese and Gillette. NFO in its brief, supported the proposal with some modifications. Beatrice Dairy Products (Beatrice), and Wells opposed the modified Mid-Am proposal. A–E opposed any changes to the Nebraska-Western Iowa order. The LOL brief suggested several changes to the Mid-Am proposal.

Neu Cheese and Orchard Dairy proposed adding 10 Nebraska counties and two Iowa counties to Zone 1. Their proposal would delete Norfolk as a basing point. At the hearing, the owner and President of Neu Cheese stated that they could support the modified Mid-Am proposal. This modified proposal, he said, would make them competitive with other nearby plants and the elimination of Norfolk as a basing point would also make the costs of acquiring milk more competitive between msnufacturing plants.

At the hearing, counsel for Neu Cheese stated that Neu Cheese and Orchard Dairy had not abandoned their proposal but that they could support the modified Mid-Am proposal. Their brief stated thst the price at their locations should be the same as those plants in Zone 1. They said the Secretary should adopt location adjustments with as small a differential as possible between their location and Norfolk and Zone 1 (Omaha), and in no event greater, than the modified Mid-Am proposal.

The witness for Gillette stated that Gillette also had not abandoned their proposal but that Gillette could support the modified Mid-Am proposal. Gillette's witness said that the two proposals were consistent insofar as they tend to equate the applicable prices at Le Mars and Norfolk.

NFO's brief supported the Mid-Am proposal with a modification to provide that when milk is priced based on a plant's distance from Norfolk, that the Norfolk price be used and that the Norfolk price be reduced by an additional 2 cents for each 10 miles that a plant is distant from Norfolk. In NFO's view, this would avoid a situation in areas just outside Zone 4 where the price would be higher than in Zone 4. NFO stated in their brief that basing the price at locations such as Freeman, South Dakota on the Norfolk price also would provide an additional incentive to move milk from Freeman to points of Class I need such as Omaha and Le Mars.

Beatrice, the operator of a distributing plant in Lincoln, Nebraska, opposed the Mid-Am modified proposal. A spokesman for Beatrice stated that the new mandated Class I differential increases for the Nebraska-Western Iowa order and surrounding orders do not significantly change the relative pricing relationships between the orders. He further maintained that the Omaha market is adequately supplied with fluid milk under the current provisions of the order. Also, the creation of new pricing zones within the Nebraska-Western Iowa order is unnecessary and would disrupt existing competitive relationships.

Wells also opposed the Mid-Am proposal. Their reasons for opposing the Mid-Am proposal, according to the spokesman, were very similar to the reasons presented in opposition to the Gillette proposal. Wells expressed the view that the creation of a new Zone 4 would affect only the Wells plant at Le Mars. The Mid-Am proposal, Wells noted, would decrease the present location adjustment at Le Mars from 16.5 cents to 15 cents and would change the location adjustment applicable at Norfolk from zero to a minus 10 cents. Also, the Mid-Am proposal would apply the location adjustment rate of 2 cents per 10 miles from either Norfolk or Omaha, for plants outside of these zones. This, in Wells' view, would only affect manufacturing plants because there are no pool distributing plants geographically located that could be subject to the 2-cent location adjustment rate.

Wells, in its brief, charged that the Mid-Am proposal to provide a minus 10-cent location adjustment at Norfolk is not unbiased. The brief noted that Mid-Am has an ownership interest in Gillette and, therefore, has a direct vested interest in the location adjustment received by Gillette.

The Well's brief stated that the record contains no substantial evidence to support putting Le Mars in a special zone and thus reducing its current location adjustment. The Mid-Am proposal, in Wells' view, would provide the AMPI plant at Sibley, Iowa, with a minus 36-cent location adjustment. Sibley is only s short distance away from Le Mars. This minus 36-cent location adjustment, according to the brief, appears to be aimed more at inflicting an economic injury upon a competitive cooperative than toward establishing appropriate location adjustments in response to the Food Security Act of 1985.

Wells proposed that the rate of location adjustment for plants outside Zones 1 and 2 but subject to the Nebraska-Western Iowa order, be changed from 1.5 to 2.8 cents per 10 miles and that Norfolk be retained as a pricing point.

The spokesman testified that because of its location, Wells is sensitive to competition from plants located in neighboring orders. Lakeside Dairy (Sioux Falls, South Dakota) is about 85 miles from Le Mars; Anderson-Erickson and Prairie Farms (Des Moines, Iowa) are about 225 miles; Oak Grove (Norwood, Minn.) is about 176 miles; and Marigold (Rochester, Minn.) is about 240 miles from Le Mars. Wells, he said, distributes about 11 percent of its fluid milk products in the Upper Midwest order, eight percent in the Iowa order, 21 percent in the Eastern South Dakota order, 14 percent in Iowa outside of any order, and 47 percent in Nebraska-Western Iowa. The witness said that Wells purchases about 50 percent of its milk from producers within the State of Iowa, 23 percent from farms in South Dakota and 27 percent from producers in the State of Minnesota.

The spokesman testified that a 2.2-cent location adjustment rate per 10 miles would be adequate to restore the current price relationship between the Le Mars plant and the plants subject to the Upper Midwest order, the Eastern South Dakota order, and the Iowa order. However, the Well's witness said, the Food Security Act of 1985 requires that location adjustments more closely reflect the actual costs of transporting bulk milk. Thus, Wells proposed a location adjustment rate of 2.8 cents, whereas the actual cost is between 3 and 3.4 cents per 10 miles. The witness, in referring to Wells' exhibit, said that the current cost for hauling bulk milk is 3.3 cents.

Well's witness said that while the Le Mars plant would benefit from a 30.8-cent lower price than plants located in Zone 1, the actual transportation costs of bulk milk for the 125 mile distance from Le Mars to Omaha is over 36 cents. The 30.8-cent location adjustment, he said, would not be disruptive to Zone 1 handlers in competing with Wells for sales in Omaha. Zone 1 handlers, in his view, would still have the cost advantage over Wells for retail sales in Lincoln.

In its brief, Wells maintained that its proposal would not be disruptive with respect to handlers in any neighboring orders. The brief noted that no pool distributing plant operator located in either the Eastern South Dakota or Upper Midwest orders appeared at the hearing in opposition to the proposal.

The proposed 2.8 cents per 10 miles location adjustment rate was not supported at the hearing or in brief by any proprietary handlers or cooperative associations. A–E did not want any changes to the Nebraska-Western Iowa order, and LOL's brief proposed several changes.

The witness for AMPI stated that they were opposed to the Wells proposal. That opposition was amplified in AMPI's brief, which claimed that the purpose of the Wells proposal was to achieve a competitive advantage over the handlers in surrounding markets.

AMPI noted that the Wells proposal would provide a Class I differential at Le Mars of $1.44 while Well's competitor in Sioux Falls, South Dakota, will have its Class I differential increased from $1.40 to $1.50. A–E in Des Moines, Iowa, another Wells' competitor, will have its Class I differential increased from $1.40 to $1.55 and Gillette's Class I differential will be increased from $1.60 to $1.75.

LOL, in its brief, proposed a $1.65 Class I differential for Madison County. In LOL's view, Norfolk and Madison County are part of the general supply area for Omaha, and should be priced in a manner that reflects part of the transportation cost to the central market.

LOL opposed the proposed Zone 4 because there are three manufacturing plants located in this proposed zone. The milk supply for these plants, LOL said, has to be delivered to pool distributing plants in Norfolk and/or Omaha to qualify for pooling. The marketing arrangements for this milk, according to LOL, are no different than for milk from South Dakota, Minnesota or Iowa that is pooled on this order and, therefore, all milk from supply plants moving to distributing plants should be priced on the basis of its distance from the market.

In LOL's view, Norfolk should be maintained as a basing point with a 10-cent lower price than Omaha. Norfolk represents a fluid milk market for much of the producer milk located in northern Nebraska and South Dakota and, therefore, it should be a basing point. The price at Norfolk, according to LOL, should be lower because Norfolk is located within the larger procurement area of the Omaha market.

LOL, in its brief, urged that the rate of location adjustment be 2.0 cents per 10 miles. Such rate, in LOL's view, would more closely reflect the differences in Class I prices resulting from the mandated Class I price increases and would also provide a greater price credit for hauling milk long distances to the fluid market.

AMPI proposed that the Nebraska-Western Iowa order be restructured by deleting the Nebraska counties of Madison and Stanton from Zone 1, and adding to Zone 1 the Nebraska county of Washington.

A new Zone 3 would be created that would include the Nebraska counties of Burt, Cuming, Madison and Stanton and the Iowa counties of Cass, Crawford, Freemont, Harrison, Mills, Monona, Montgomery, Page, Pottawattamie and Shelby.

Also, a new Zone 4 would be created that would include the Nebraska counties of Antelope, Cedar, Dakota, Dixon, Knox, Pierce, Thurston and Wayne.

The rate of location adjustment proposed would be as follows:

Zone	Adjustment
1	No adjustment.
2	Plus 15 cents.
3	Minus 10 cents.
4	Minus 13 cents.

For a plant located outside of Zones 1, 2, 3, and 4 and in the States of Iowa, Minnesota, Nebraska, North Dakota, South Dakota (east of State Highway 73 only), or Wisconsin, the price would be reduced by 13 cents and by an additional 1.7 cents per 10 miles or fraction thereof (by shortest hard-surfaced highway and/or all weather road distance as measured by the market administrator) that such plant is located more than 75 miles from the nearer of the city halls in Norfolk or Omaha, Nebraska. At any other location, no adjustment would apply.

However, AMPI, in its brief, stated that no changes in the location adjustment provisions are warranted. Therefore, no further consideration of the AMPI proposed modification is necessary.

As indicated previously, the location adjustment rate of 1.5-cents per 10 miles per hundredweight should be increased to 1.7 cents with respect to a plant located outside of Zones 1 and 2 and located in the States of Nebraska, Iowa, Minnesota, North Dakota, South Dakota (east of State Highway 73 only), or Wisconsin, Norfolk and Omaha would continue to be basing points.

This 0.2-cent increase in the location adjustment rate reflects that transportation costs of hauling bulk milk have increased. It is undisputed on the record that actual hauling costs at the present time exceed 3.0-cents per 10 miles per hundredweight. The use of a rate higher than 1.7 cents for the Nebraska-Western Iowa or Iowa markets, however, would create some misalignment problems with other orders at major population centers where distributing plants are located. Some examples of misalignment problems that would arise by the use of a rate higher than 1.7 cents is set forth later in this decision.

Mid-Am and Wells both proposed the use of a location adjustment rate higher than 1.7 cents at certain plant locations. The Mid-Am proposal would apply a location adjustment rate of 2.0-cents for plants outside of their proposed Zones 1 through 4 but located within the States of Nebraska, Iowa, Minnesota, North Dakota, Wisconsin or parts of South Dakota.

The Mid-Am proposal would restructure the Nebraska-Western Iowa order by creating two additional zones. The proposal would not change the counties included in the present Zone 2 or the amount of the location adjustment for that zone.

The Wells' proposals would apply a location adjustment rate of 2.8-cents with respect to plants located outside of the present Zones 1 and 2 but geographically located in the same areas as defined in the present plant location adjustment provisions.

The Gillette proposal to remove the Nebraska counties of Boone, Madison, and Stanton from Zone 1 and to eliminate Norfolk as a basing point should not be adopted. Gillette's primary concern is competition for retail sales with Wells. The witness for Gillette indicated that Gillette sells most of its packaged milk in areas southwest of Norfolk. Wells is located at Le Mars in Plymouth County, Iowa, which is approximately 100 miles northeast of Norfolk. Thus, the 16.5 cents higher price that Gillette incurs, as the result of being located in Norfolk, does not cover the costs that Wells would incur in hauling packaged milk from Le Mars to Norfolk.

Much of the testimony presented on this issue dealt with the competition for sales of packaged milk among the various handlers. The sales area for packaged milk is not a key factor to consider in determining plant location adjustments. The areas where a handler chooses to sell packaged milk reflect a business decision on the handler's part and, as such, is subject to change.

One of the proposed findings included in the brief submitted on behalf of Neu Cheese and Orchard Dairy would conclude thst milk from specific counties moves in a specific direction. This finding is rejected. While the evidence shows that plants in the Omaha area are supplied primarily with milk produced in Nebraska and Iowa, it is not possible to demonstrate from the record that milk from any particular county moves to any particular plant. Moreover, there is no reason to conclude that distributing plants are experiencing any substantial difficulty in acquiring a supply of milk.

Only one instance of difficulty attracting adequate supplies of milk to a distributing plant was alluded to in the testimony of Wells Dairy. However, Wells' own proposal would, if adopted, result in a lower Class I price at the Le Mars location, which would be expected to make it more difficult to attract milk.

The Omaha-Lincoln area comprises the major consumption center in the Nebraska-Western Iowa market. But this has long been the case, and the fact is that fluid milk plants in this area are supplied almost totally by milk produced in Nebraska and Iowa.

The record further shows that although dairy farms in South Dakota produced a larger proportion of the total milk pooled under the order in December 1985 than in December 1983, the South Dakota milk does not generally move to the Omaha area. Some of it does move into the Norfolk plants, according to the testimony. The current organization of zones and location adjustments accommodates that movement. However, in the fall months the limited movements of supply plant milk from Norfolk to Omaha may include South Dakota milk.

The purpose of location adjustments is to provide an incentive for milk to move from the production areas to distributing plants located at or near major population centers and to provide a price that will attract an adequate supply of milk to such locations. Location adjustments may also be used to achieve price alignment between plants subject to different orders.

The recently mandated Class I differential for the Upper Midwest order is $1.20. An adjustment rate of 2.0-cents per ten miles between Omaha, Nebraska, and Minneapolis, Minnesota, a distance of 360 miles, would result in a location adjustment of 72.0 cents. The new Omaha Class I differential of $1.75 less the 72 cents results in an Order 65 Class I differential at Minneapolis of $1.03 or 17 cents less than the $1.20 Minneapolis Class I differential under the Upper Midwest order. A 1.7-cent adjustment rate (61.0 cents) between these same locations would provide a Class I differential at Minneapolis of $1.14, or just 6 cents less than the $1.20 Upper Midwest differential.

Similarly, the new Class I differential at Sioux Falls, South Dakota, under the Eastern South Dakota order is $1.50. It is 139 miles from Norfolk to Sioux Falls, so the location adjustment at 2.0 cents per 10 miles would be 28 cents. The Norfolk Class I differential, $1.75, minus 28 cents would yield an adjusted differential at Sioux Falls of $1.47. Using 1.7 cents per 10 miles gives an adjustment of 23.8 cents, or an adjusted Class I differential at Sioux Falls of $1.512, which is only 1.2 cents different than the $1.50 Class I differential under the Eastern South Dakota order.

These examples demonstrate that the 1.7-cent adjustment rate more nearly reflects the Class I price alignment established between these major population centers by the Congressionally mandated differentials. In addition the 1.7-cent rate provides more incentive under the order for milk to move from production areas to major population centers where distributing plants are located.

Finally, Norfolk should be continued as a basing point. Madison County is one of the more populated counties in northeastern Nebraska and there is a distributing plant at that location. Also, Norfolk has been a basing point for many years. Norfolk, Omaha, and Lincoln historically have been in the base zone of the order. There is no compelling reason to change this historic relationship on the basis of this proceeding.

Exceptions to the recommended decision were filed by Mid-Am, Gillette and Wells.

Mid-Am excepted to the failure of the recommended decision to adopt their modified proposal in its entirety. However, most of the discussion in their exceptions focused on the denial of a minus location adjustment at Norfolk and adoption of a location adjustment

rate of 1.7 cents per 10 miles. In Mid-Am's view, the decision ignores the location value at Norfolk and justifies the price at Le Mars by concluding that the 16.5-cent higher price at Norfolk does not cover the cost of hauling packaged milk from Le Mars to Norfolk.

Mid-Am stated that the decision is inconsistent because the Department says, on the one hand, that the sales area for packaged milk is not a key factor to consider in determining plant location adjustments and then bases the 1.7-cent rate on hauling packaged milk from Minneapolis to Omaha. According to Mid-Am, the 1.7-cent rate must be based on packaged milk movements because no bulk milk moves between these two locations.

According to Mid-Am's exceptions, the Omaha-Lincoln area is a deficit production area. The exception further points to their testimony that 10 to 15 percent of the Omaha needs are supplied from the Norfolk location during the short production months. The decision, according to Mid-Am, fails to provide a price incentive for milk to move from Norfolk to Omaha. Many of the other points raised in their exceptions were points that Mid-Am raised at the hearing and in their post-hearing brief.

Gillette's exceptions are directed to the recommendation not to lower the price at Norfolk. Gillette had proposed that Norfolk be deleted as a basing point. Gillette's exceptions in many respects parallel the exceptions filed by Mid-Am with respect to a need to lower the price at Norfolk in order to attract milk to move from Norfolk to Omaha.

The exception filed by Wells is based primarily on their interpretation of the Food Security Act of 1985. In their view, that Act clearly prescribes a significantly different legal footing for location adjustments than what Congress had prescribed in the Agricultural Marketing Agreement Act of 1937 as amended.

In Wells' view, the 1985 legislation required the Secretary to reflect the actual cost of transporting bulk milk in determining the new location adjustments. Wells, in their exceptions, state that if the Department were only concerned with inter-order alignment, a 2.2-cent rate should be adopted. The other points contained in their exceptions were points that they presented at the hearing and in their post-hearing brief.

The exceptions filed by Mid-Am, Gillette and Wells, except for Wells' legal interpretation of the new legislation, raise points that were fully considered in the recommended decision and therefore are denied. With respect to the new legislation, the Food Security Act of 1985 does not prescribe the narrow approach to setting these new location adjustments that Wells thinks Congress intended.

With respect to proposals for a location adjustment at Norfolk, the new Act precludes the Department from adopting a minus location adjustment because Norfolk is part of the base zone. The mandated Class I differentials, which became effective May 1, 1986, were minimums applicable to the existing base zones as of that date. Accordingly, it would be contrary to the Act to lower the Class I differentials at any location within that base zone during the two-year period that the differentials were mandated under the 1985 Act.

For these and other reasons set forth in the foregoing discussion, it is concluded that the most appropriate action for this market is to disturb the current situation the least amount necessary to recognize the impact of the Class I differentials that became effective May 1, 1986. This will be accomplished by adopting a 1.7-cents per 10 miles per hundredweight location adjustment rate and otherwise leaving in place the current pricing structure.

1C. Plant Location Adjustments for Iowa

The Iowa order should be amended to provide a higher rate of location adjustment for plants located in Zone 3. For Zone 3, the price would be reduced by 7 cents and by an additional 1.7 cents for each 10 miles or fraction thereof (by shortest hard-surfaced highway distance as measured by the market administrator) that such plant is located from the nearer of the Post Offices of Ames, Marshalltown, or Cedar Rapids, Iowa.

The Iowa order provides for three zones. Zone 1 includes the territory both inside and outside the marketing area not included in Zones 2 and 3.

Zone 2 includes 15 Iowa counties.

Zone 3 includes 32 Iowa counties, the States of Minnesota, Wisconsin, and that portion of Illinois that is north of Interstate 80.

The Iowa order presently provides for a zero location adjustment for Zone 1 and a minus 7.0 cents for Zone 2. For Zone 3, the price is reduced by 7 cents and by an additional 1.5 cents for each 10 miles or fraction thereof (by shortest hard-surfaced highway distance as measured by the market administrator) that such plant is located from the nearer of the Post Offices of Ames, Marshalltown, or Cedar Rapids, Iowa.

Mid-Am and NFO both proposed changes to the Iowa order.

The proposal by Mid-Am would increase the location adjustment rate from 1.5 to 2.0 cents for plants located in Zone 3. The NFO proposal would provide for five zones as follows:

Zone 1 would include the territory both inside and outside the marketing area not included in Zones 2 through 5.

Zone 2 would include the Iowa counties of Benton, Cedar, Clinton, Iowa, Johnson, Jones, Keokuk, Linn, Louisa, Marshall, Muscatine, Poweshiek, Scott, Tampa, and Washington, and the Illinois counties of Henry, Mercer and Rock Island.

Zone 3 would include the Iowa counties of Black Hawk, Brenner, Buchanan, Butler, Cerro Gordo, Chickasaw, Delaware, Dubuque, Fayette, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Jackson, Pocahontas, Webster and Wright.

Zone 4 would include the Iowa counties of Allamakee, Clay, Clayton, Dickinson, Emmet, Howard, Kossuth, O'Brien, Osceola, Palo Alto, Winnebago and Winneshiek.

Zone 5 would include the States of Minnesota, Wisconsin, and that portion of the State of Illinois that is north of Interstate 80.

The NFO proposed location adjustment rates were as follows:

Zone	Adjustment
1	No adjustment.
2	Minus 10 cents.
3	Minus 20 cents.
4	Minus 30 cents.

In Zone 5, the price would be reduced by the greater of 30 cents or an amount equal to 2.0 cents for each 10 miles or fraction thereof (by shortest hard-surfaced highway distance as measured by the market administrator) that such plant is located from the Post Office in Des Moines, Iowa.

In the notice of hearing the Iowa county of Pocahontas was included in Zone 4. At the hearing, NFO modified their proposal by placing Pocahontas in Zone 3.

At the hearing, the witness for Mid-Am stated that in considering changes in the pricing structure of the Iowa order, the first and foremost consideration must be to provide the economic incentive for bulk milk to move from the production area to the Class I distributing area. The witness said that the 1980 population for Polk County (Des Moines) was 303,170 and 169,775 for Linn County (Cedar Rapids).

The Mid-Am spokesman said that at the present time, the cost of transporting bulk milk is about 3.5 cents per hundredweight per 10 miles. The witness

said that Mid-Am chose the rate of 2.0 cents because it is about the same as the location adjustment rate between Eau Claire, Wisconsin and Des Moines as reflected in the Class I differentials provided by the Food Security Act of 1985.

In their brief, Mid-Am indicated that the NFO proposal provides for a comprehensive restructuring of the location adjustment section of the Iowa order. The NFO proposal, they said, provides the appropriate Class I price relationship between the Iowa order, the Upper Midwest and Chicago orders at plants located in Minnesota and Wisconsin. Mid-Am endorsed the NFO proposal, and emphasized the need for more incentive for Wisconsin milk supplies to move into the major metropolitan areas of the Iowa order.

LOL, in their brief, suggested the use of a 2.0-cent location adjustment rate, which would provide a greater amount of pool compensation for the cost of hauling milk for Class I use. LOL noted that most of the milk delivered to Des Moines originates in northeastern Iowa.

The Mid-Am proposal was opposed by Swiss Valley Farms, Wisconsin Dairies (Swiss, et al.) and AMPI. A–E stated that they were opposed to any changes to the Iowa order.

The witness for Swiss, et al. stated that they were opposed to any changes in the location adjustment provisions of the Iowa order. In their view, the Congressional intent of the Food Security Act of 1985 was to raise Class I prices in the Iowa order by 15 cents and not allow the 15 cents to be applied discriminately.

Their witness stated that the present location adjustments are serving producers and maintaining equity with the other contiguous marketing orders. He testified and demonstrated that Class I differentials for various Iowa area locations are at a rate of approximately 1.7 cents per 10 miles.

The spokesman testified that the pooling standards of Orders 68 and 79 and the net return to producers will determine the order to which bulk milk will move. He explained, that as an accommodation to A–E in Des Moines, a large supply of Wisconsin milk normally associated with the Upper Midwest order, was pooled on the Iowa market. At the same time, he said, milk produced in Iowa and associated with the Iowa order, was pooled on the Upper Midwest order. These shifts of milk, he says, has nothing to do with the location adjustment provisions of the order.

The Swiss, et al. witness stated that Class I differentials between markets will cause packaged milk to move but not bulk milk. Bulk milk movements, he says, are in response to blend prices.

In their brief, Swiss, et al. pointed out that no fluid milk handlers testified that they had experienced any shortage of milk for Class I use. The NFO proposal, says Swiss, et al., would increase benefits to only direct-shipped milk received in Zones 1 and 2, while penalizing all producers whose milk is received in Zone 3.

The spokesman for NFO, in support of the NFO proposal, said that the most important problem to be addressed is the need to align Iowa prices with those in the nearby reserve supply areas in Minnesota and Wisconsin. In the Iowa order, he said, pooling can be accomplished with very little or no milk moving to the fluid milk markets because of order provisions such as unit pooling, 9(c) provisions, as well as the relaxed shipping percentages during recent years. The NFO proposal, he said, would eliminate the present dual system of flat price zones for part of the state and plant-specific prices elsewhere.

The NFO brief stated that the proposed Zone 4, which represents the tier of counties along the Minnesota and Wisconsin borders, would provide the appropriate pricing for producer milk in those locations to align blend prices with the Upper Midwest and the Chicago orders. The brief states that substantial quantities of Wisconsin milk have recently been pooled on the Iowa order because of misalignment of prices in the Wisconsin area.

NFO commented in their brief that to obtain good alignment in the Wisconsin area it is necessary to remove the eastern Iowa basing points from the order and use only Des Moines to facilitate nearly precise alignment in both Minnesota and Wisconsin.

Kraft, in their brief, stated that the NFO proposal was an equitable proposal. In Kraft's view the need to attract milk from distant sources to Iowa's metropolitan areas is not critical, therefore, location adjustments need not fully or even approximately account for actual costs of transportation at the 3.4-cent rate referred to by Congress. On the other hand, Kraft notes that if location adjustment rates are inadequate as they presently are, then distant manufacturing plants will be compensated for transportation which never takes place and will result in a reduction of blend prices to producers who deliver to the major population centers.

AMPI opposed both the Mid-Am and NFO proposals. They pointed out that both proposals were opposed by A–E, and Swiss, et al. AMPI noted that all opposing parties testified that no change in the pricing structure was warranted on the basis of the Class I differential changes mandated by Congress.

The witness for AMPI stated that both the Mid-Am and NFO proposals increase location adjustments more than necessary causing blend prices to unduly change in areas of procurement overlap with adjoining orders. Location adjustments, he said, should be changed only to reflect the changes in mandated Class I differentials and that this would cause relatively small changes in blend price relationship between orders and areas of procurement overlap.

In their brief, AMPI stated that the Eau Claire-Des Moines price difference offered by the Mid-Am witness as the basis for increasing the location adjustment rate to 2.0 cents does not support the increase. AMPI stated that the 51-cent difference ($1.55–$1.04) when divided by the 270 mile distance results in a location adjustment rate of $.0169 and similar adjustment rate at several other Iowa locations.

The AMPI brief also commented that the mandated Class I price increase of 14 cents for the Chicago order and 15 cents for the Iowa orders provides no support for NFO's proposed pricing structure. The NFO proposal, they said, would result in changes in price and value at each of 37 locations (exhibit 7) ranging from 2 to 24 cents.

The proposal to restructure the pricing zones of the Iowa order should not be adopted. The principal issue raised by the proponents was that Class I prices under this order should approximately equate with Class I prices under the Chicago Regional order at several Wisconsin locations. NFO's proposal was designed to provide such alignment through adjustments and related provisions.

As evidence of disorderly marketing conditions, NFO pointed to a substantial increase in Wisconsin-produced milk being pooled under the Iowa order in December 1985 compared to December 1983. In December 1983, milk produced in Wisconsin comprised 7.3 percent of the Iowa market's producer milk. In December 1985, Wisconsin production amounted to 17.6 percent of the milk pooled under the order. Compared to 1983, 1985 receipts from farms in Illinois and Missouri also increased as a percent of the total. The main change in the opposite direction was in Iowa, which dropped from just above two-thirds of the total to just under two-thirds, and Minnesota, which fell from 21.8 percent of the total in December 1983, to 11.4 percent in December 1985. Total producer milk in December 1985 was up 11.7 percent from December

1983. These changes were cited as resulting from misalignment of Class I prices between the Chicago Regional and Iowa orders in areas of production overlap, i.e., Southwestern Wisconsin. In NFO's view, the Iowa order's Class I prices adjusted to the Wisconsin locations are too high relative to the Chicago order prices at those locations. NFO cites such misalignment as the primary factor that has caused Wisconsin milk to be attached to the Iowa order.

Exceptions were filed to the recommended decision by both Mid-Am and NFO.

Mid-Am, in their exceptions, stated that the use of a location adjustment rate less than 2.0 cents results in milk being worth less when it is shipped to population centers than when it is left in the more distant areas where it is produced and processed into manufacturing products. Also, Mid-Am stated that the recommended decision correctly indicated that the purpose of location adjustments is to provide an incentive for milk to move from the production areas to distributing plants located at or near major population centers and to provide a price that will attract an adequate supply of milk to such locations. However, the Deputy Administrator's recommended decision, says Mid-Am, ignores its own language and bases the Iowa location adjustment rate totally on Class I price alignment with other orders.

The exception of Mid-Am to the use of a location adjustment rate less than 2.0 cents is denied. As shown by AMPI and as demonstrated in the recommended decision, the 1.7 cents per 10 mile location adjustment rate is appropriate in maintaining Class I price alignment between Orders 79 and 68. The use of this rate will provide an increased incentive under the order for milk to move from the production areas to distributing plants located at or near major population centers, although the incentive will be less than if a two-cent rate had been adopted.

NFO excepted to the Deputy Administrator's recommendation not to adopt their proposal in its entirety. The major point raised by NFO, in their exceptions, was that the Deputy Administrator premised his decision on an erroneous finding. NFO stated that the Deputy Administrator erroneously found that the principal issue raised by the proponents was that blend prices under the Iowa order should approximately equate with blend prices under the Chicago Regional order at several Wisconsin locations. NFO says that all of the proponents and opponents agreed that Class I prices should be aligned at various locations in Wisconsin and Minnesota. NFO indicated that the Secretary correctly applied the principle of maintaining "inter-order Class I alignment" between Orders 68 and 79 in southern Minnesota but failed to apply that principle to the area of southwestern Wisconsin.

NFO is correct in that the recommended decision characterized the thrust of their testimony as being based on a need to align blend prices under the Iowa order with blend prices at several Wisconsin locations under the Chicago Regional order.

NFO's exception also is correct in pointing out that the testimony in support of their proposal focused on Class I price alignment. Their principal argument was that location adjustments on Class I milk that are too small at Wisconsin locations cause producer price inequities. This occurs, in their view, because such location adjustments result in lower returns to producers who deliver their milk to Class I plants at the population centers of the market. Accordingly, that section of the decision has been revised to more correctly characterize NFO's views.

The NFO proposal would attempt to provide the price alignment desired by NFO through two changes in location adjustments. One factor would be to declare Des Moines as the single basing point for computing location adjustments. The other change would fix a minimum 30-cent location adjustment at locations in Illinois north of Interstate 80 and in Minnesota and Wisconsin. If a location adjustment, based on the distance from Des Moines to the applicable plant at a rate of 2.0 cents per 10 miles, exceeded 30 cents, the higher rate would be applicable. The effects of these changes would be substantial at some Wisconsin plant locations. For example, the Iowa order location adjustment at a Shullsburg, Wisconsin, plant currently is 22 cents. As proposed by NFO, the location adjustment would jump to 44 cents per hundredweight.

Shullsburg is in Zone 9 of the Chicago order. The Zone 9 location adjustment is 21.2 cents per hundredweight. In December 1985, the Chicago order Class I price adjusted to Shullsburg was $12.47 minus 21.2 cents zone differential, or $12.258 per hundredweight.[1] The Iowa order Class I price for the same month at Shullsburg was $12.61 minus 22 cents zone differential, or $12.39. Thus the Iowa order Class I price at Shullsburg was about 13 cents higher than the Chicago Class I price. If the NFO proposal had been in effect, the Iowa Class I price would have been only $12.61 minus 44 cents, or $12.17, or 8.8 cents less than the Chicago Class I price. Under the mandated differentials that became effective May 1, 1986, the difference at Shullsburg would be one cent less (7.8 cents). Similarly, the December 1985 Iowa uniform price adusted to Shullsburg was $11.50, which was 6 cents higher than the Chicago blend at Shullsburg. As proposed by NFO, the Iowa blend would have been 15.8 cents below the Chicago blend at Shullsburg.

Thus, if the NFO proposal were adopted, the pendulum could swing the other way, which would likely discourage the pooling of milk supplies from the Shullsburg area on the Iowa order. However, there is no assurance that these price differences would be maintained. A change in the location adjustment provisions of the Chicago order could change the relationship again.

This example merely serves to demonstrate that location adjustments are not an appropriate device to achieve equality of blend prices. If prices are determined to be misaligned to the extent that disorderly marketing conditions exist, other means should be utilized to change the alignment.

As has been noted in recapping the testimony, there was substantial opposition to the proposals by other cooperatives and proprietary handlers. One point of view was that if the proposed plus 3-cents adjustment at Rochester, Minnesota, was adopted, there would be no need for any changes to the Iowa order.

Although the NFO representative testified on the need to align Class I prices at a number of Wisconsin locations, it nevertheless must be concluded that Class I prices are not the real issue. The record indicates that very little, if any, Wisconsin milk actually moves to the market for Class I use; instead, it is retained at the Wisconsin locations for manufacturing. Since there is no indication in this record that milk is priced as Class I milk under the Iowa order at any of the Wisconsin locations noted, it must be presumed that the Iowa blend price is attracting that milk to the order.

The record does not provide compelling evidence that any serious marketing problems need to be addressed by changing the location adjustment zones of the order. The higher Class I differential (effective May

[1] Official Notice is taken of Federal Milk Order Market Statistics for December 1985, FMOS–312. Published May 1986, by the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250.

1, 1986) uniformly affects all handlers regulated under the Iowa order.

The mandated Class I differentials did not present any significant alignment changes with respect to the Chicago Regional order, since the difference in the increase between Iowa and that order was only one cent. As noted earlier, there was no change in alignment between the Nebraska-Western Iowa and Iowa orders, except that as recommended in this decision, the location adjustment applicable to Wells Dairy will increase from 16.5 to 18.7 cents.

We do not conclude that disorderly marketing conditions exist just because the proportion of milk pooled on the Iowa order from Wisconsin sources increased from December 1983 to December 1985. Total producer milk pooled in December 1985 was 11.7 percent greater than in December 1983. However, the percentage utilized as Class I milk was slightly higher in December 1985. Moreover, as long as the pooling provisions of the orders accommodate the shifting of milk supplies between orders with minimal performance requirements, handlers may be expected to take advantage of such provisions whenever there is an economic incentive to do so.

The witness for Swiss et al. explained, to a large extent, why additional milk from Wisconsin became associated with the Iowa pool. The witness correctly explained that the shift of milk supplies between these orders had nothing to do with the location adjustment provisions of the order.

The NFO proposed location adjustments for the nine Wisconsin locations would have increased the Iowa blend price approximately 3.8 cents. The 3.8 cents results from dividing an $87,650.00 increase in the pool (40.6 million pounds of Wisconsin milk for December 1985 multiplied by 21.6 cents) by the total producer milk for December 1985 (229.9 million pounds). The 21.6 cents represents the average difference between the present location adjustments (AMPI exhibit 46) and NFO's proposed location adjustment for the nine Wisconsin locations. A 3.8-cent increase in the blend price would not likely provide substantially greater incentive for Wisconsin milk to move to Des Moines for Class I use, nor is there any demonstrated need for milk to so move.

There is no question that inter-order Class I price alignment to the north was changed by the Class I differentials that became effective May 1, 1986. Nevertheless, even the proposed 2.0 cents per 10 miles location adjustment rate is more than the amount needed to restore alignment of Class I prices. In fact, the rate per 10 miles reflected in the mandated Class I differentials for the Iowa and Upper Midwest orders indicates that a rate of 1.7 cents per 10 miles is necessary to provide appropriate inter-market price alignment. The difference between the Class I differential for these two markets was increased 7 cents per hundredweight by the mandated differentials to 35 cents per hundredweight. The distance between Des Moines and the nearest Upper Midwest distributing plant at Rochester is 207 miles, which yields a rate of 1.69 cents per 10 miles per hundredweight. Thus, a change in the current rate of 1.5 cents per 10 miles to 1.7 cents is considered appropriate to maintain Class I price alignment.

Additionally, it is concluded that some increase should be incorporated into the location adjustment rate in recognition that hauling rates are now higher than when the current rate was adopted. Thus, the rate per 10 miles should be increased to 1.7 cents per 10 miles per hundredweight to equate the Iowa order Class I price to the Upper Midwest Class I price in the vicinity of Rochester, Minnesota, where handlers under both orders compete in the procurement of milk supplies.

Also, it is impossible to achieve blend price alignment through the use of location adjustments. While it may be possible to equalize prices at a given location, there is no assurance that the alignment would be maintained. Blend prices are primarily a function of Class I price levels and Class I utilization of producer milk. The level of Class I utilization is determined by the amount of producer milk pooled relative to the demand for Class I use.

2. Whether an Emergency Exists To Warrant the Omission of a Recommended Decision and the Opportunity To File Written Exceptions

The notice of hearing stated that evidence will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure with respect to proposals Nos. 1 through 15. At the hearing, counsel for Wells' Dairy Inc. stated that the orders should be amended by May 1, 1986, because the Food Security Act of 1985 mandated that the new Class I differentials for these three markets be effective on May 1, 1986. Mid-Am's brief urged issuance of a decision and amendment of the orders at the earliest possible date. No other parties requested the omission of a recommended decision. One proprietary handler, in its brief, commented that the omission of a recommended decision would be an abuse of the Secretary's discretion because the record would not support such a finding. We conclude that no information of a compelling nature was presented on the record from which to conclude that the issuance of a recommended decision should be omitted. Accordingly, a recommended decision has been issued.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Determination

The findings and conclusions of this decision do not require any change in the regulatory provisions of the order regulating the handling of milk in the Upper Midwest marketing area. It is hereby determined that this proceeding shall have no further applicability to this order.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Nebraska-Western Iowa and Iowa orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect

the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in marketing agreements upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Nebraska-Western Iowa and Iowa marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

March 1986 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Nebraska-Western Iowa and Iowa marketing areas is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1065 and 1079

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on: December 5, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order [1] Amending the Order, Regulating the Handling of Milk in the Nebraska-Western Iowa and Iowa Marketing Areas

Findings and Determinations

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

(a) Findings

A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Nebraska-Western Iowa and Iowa marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice snd procedure (7 CFR Part 900).

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

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Nebraska-Western Iowa and Iowa marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the recommended decision issued by the Deputy Administrator, Marketing Programs, on August 6, 1986 and published in the **Federal Register** on August 12, 1986 (51 FR 28819), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

1. The authority citation for 7 CFR Parts 1065 and 1079 continues to read as follows:

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

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

§ 1065.52 [Amended]

2. In § 1065.52, paragraph (b)(3) is amended by changing the number "1.5" to read "1.7."

PART 1079—MILK IN THE IOWA MARKETING AREA

§ 1079.52 [Amended]

3. In § 1079.52, paragraph (b)(3) is amended by changing the number "1.5" to read "1.7."

[FR Doc. 86–27871 Filed 12–10–86; 8:45 am]

BILLING CODE 3410–02–M

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–ANE–24]

Airworthiness Directives; Rolls-Royce plc (R–R) (Formerly Rolls-Royce Limited) Spey 506–14, 506–14A, 506–14D, 511–5W, 511–14, 511–14W, 511–8, 511–8/Mod 2970, 512–14E, 512–14DW, 512–5, 512–5W, 555–15, 555–15H, 555–15N, and 555–15P Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require inspection for, and repair of, cracks in the primary airscoops of the combustion section on certain R–R

Spey turbofan engines. The proposed AD is needed to prevent uncontained engine failure due to hot gas impingement on the combustion case inner wall and subsequent burnthrough.

DATES: Comments must be received on or before February 16, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attn: Rules Docket Number 86–ANE–24, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 86–ANE–24".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from the Service Manager, Spey Engine, Rolls-Royce plc, East Kilbride, Glasgow G74 4PY, Scotland.

A copy of the SB is contained in Rules Docket Number 86–ANE–24, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chung C. Hsieh, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7091.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86–ANE–24". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that Spey engine combustion liner primary airscoop failure due to cracks may cause burner stem (fuel nozzle) frettage, fuel leakage, and subsequent flame penetration of the engine casings. There have been two instances of combustor case burnthrough in service to date.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require inspection and repair of the primary airscoops on certain R–R Spey engines in accordance with R–R Mandatory SB Number SP72–997, dated October 1985.

Conclusion: The FAA has determined that this proposed regulation involves approximately 970 Spey engines (domestically) at an approximate total cost of $155,000. It has also been determined that less than one-third of the operators affected by this rule are small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) if 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 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

ROLLS-ROYCE plc (formerly Rolls-Royce Limited): Applies to Rolls-Royce (R–R) Spey 506–14, 506–14A, 506–14D, 511–5W, 511–14, 511–14W, 511–8, 511–8/Mod 2970, 512–14E, 512–14DW, 512–5, 512–5W, 555.15, 555–15H, 555–15N, and 555–15P turbofan engines.

Compliance is required at the next engine shop visit after the effective date of this AD, unless already accomplished.

To prevent failure of the primary airscoop and subsequent burnthrough of the engine case, accomplish the following:

Inspect, and repair or replace, the primary airscoops in accordance with R–R Mandatory Service Bulletin (SB) Number SP72–997, dated October 1985, or FAA approved equivalent.

Note.—For the purpose of this AD, shop visit is defined as the input of an engine to a repair shop where the subsequent engine maintenance entails any of the following:

(a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit".

(b) Removal of a disk, hub, or spool.

(c) Removal of the main gearbox.

(d) Removal of the fuel nozzles.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on November 28, 1986.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 86–27780 Filed 12–10–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AWP–38]

Proposed Amendment to Winnemucca, NV, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Winnemucca, Nevada, 1200

foot transition area. This action will provide controlled airspace for aircraft transitioning from the Battle Mountain, Nevada, very high frequency omnidirectional range/tactical air navigation (VORTAC) to a new instrument approach procedure serving the Winnemucca Municipal Airport, Nevada. This action will also provide controlled airspace for aircraft executing the procedure turn on the existing non-directional beacon (NDB) approach to the Winnemucca Municipal Airport.

DATES: Comments must be received on or before January 30, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 86-AWP-38, Air Traffic Division, P.O. Box 90027, World Way Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260, telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should indentify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-38." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to §71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Winnemucca, Nevada, 1200 foot transition area and provide controlled airspace for aircraft executing instrument approach procedures to the Winnemucca Municipal Airport, Nevada. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

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.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Winnemucca, NV—[Amended]

Remove "that airspace extending upward from 1,200 feet above the surface within 5 miles each side of the 342° and 162° bearings extending from the NDB to the southeast edge of V-113 and the north edge of V-6N." and substitute "that airspace extending upward from 1,200 feet above the surface within 5 miles northeast and 11 miles southwest of the 342° and 162° bearings extending from the southeast edge of V-113 to 11 miles southeast of the NDB; within 5 miles each side of the 162° bearing extending from 11 miles southeast of the NDB to the north edge of V-32; within 5 miles each side of the Battle Mountain VORTAC 296° radial extending from 12 miles to 50 miles northwest of the Battle Mountain VORTAC."

Issued in Los Angeles, California, on December 1, 1986.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 86-27781 Filed 12-10-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

[Docket Nos. RM79-27-000, RM79-76-252, RM80-12-000, RM80-38-000, RM81-30-000, RM81-35-000, RM82-1-000, RM82-8-000, RM82-17-000, RM82-19-000, RM82-20-000, RM82-26-000, RM82-32-000, RM82-33-000, RM83-46-000, RM84-7-000, RM84-13-000, RM84-17-000; Order No. 459]

Basket Termination Order; Withdrawal; Proposed Rulemaking and Denial of Petitions

Issued December 5, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Termination order.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is terminating eighteen rulemaking dockets. In particular, the Commission is withdrawing five Notices of Proposed Rulemaking (NOPRs), terminating two Notices of Inquiry (NOI), and is denying eleven petitions for rulemaking. Some petitions and notices fail to state a convincing case for revising current Commission policy, because of present gas market conditions. Others no longer require action, in light of recent Commission initiatives that address the same or similar issues raised in these petitions and notices.

FOR FURTHER INFORMATION CONTACT: Michael A. Stosser, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, (202) 357-8530

SUPPLEMENTARY INFORMATION:

Federal Energy Regulatory Commission

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Petition for Rulemaking in the Matter of Determinations Whether Wells Drilled in More than 500-Foot Water Depth Should be Determined to be "High Cost Gas" Under section 107(c)(5) of the Natural Gas Policy of 1978; Docket No. RM79-27-000.

Petition of Montana-Dakota Utilities Company to Reopen Order No. 99; Docket No. RM79-76-252.

New, Onshore Production Wells; Proposed Rulemaking Amending Final Regulations Implementing the Natural Gas Policy Act of 1978; Docket No. RM80-12-000.

High-Cost Natural Gas Produced from Wells Drilled in Deep Water; Docket No. RM80-38-000.

Petition for Rulemaking to Restrain Prices for Deregulated Gas; Docket No. RM81-30-000.

Petition for Rulemaking for Implementation of the Commission's Rulemaking Authority to Require Filing of Contracts Under section 315(c) of the Natural Gas Policy Act; Docket No. RM81-35-000.

Petition for Rulemaking to Establish Revised Policies Under the Natural Gas Act Respecting the Purchase and Use of Gas; Docket No. RM82-1-000.

High-Cost Natural Gas Produced from Intermediate Deep Drilling; Docket No. RM82-8-000.

Petition for Rulemaking to Investigate and Establish Rules Mitigating Market Distortions Under the Natural Gas Policy Act; Docket No. RM82-17-000.

Petition to Institute a Proceeding, Pursuant to the Natural Gas Policy Act, sections 104(b) and 106(c), to Increase the Price of Flowing Interstate Natural Gas; Docket No. RM82-19-000.

Petition for Rulemaking to Require Filing of Contracts Under section 315(c) of the Natural Gas Policy Act; Docket No. RM82-20-000.

Impact of the Natural Gas Policy Act on Current and Projected Natural Gas Markets; Docket No. RM82-26-000.

Limitation on Incentive Prices for High-Cost Gas to Commodity Values; Docket No. RM82-32-000.

Comments in Opposition to Proposed Rulemaking in the Matter of High-Cost Gas Produced from Tight Formations, Docket No. RM79-76 (Ohio-2); Docket No. RM82-33-000.

Petition for Rulemaking in the Matter of Take-or-Pay Clauses in Producer/Pipeline Contracts; Docket No. RM83-46-000.

Impact of Special Marketing Programs and Natural Gas Companies and Consumers; Docket No. RM84-7-000.

Petition for Rulemaking on the Effect of Price Escalator Clauses; Docket No. RM84-13-000.

Petition for Rulemaking in the Matter of Reformation of Take-or-Pay Clauses; Docket No. RM84-17-000.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is terminating eighteen rulemaking dockets. In particular, the Commission is withdrawing five Notices of Proposed Rulemaking (NOPRs), terminating two Notices of Inquiry (NOI), and is denying eleven petitions for rulemaking. Some petitions and notices fail to state a convincing case for revising current Commission policy, because of present gas market conditions. Others no longer require action, in light of recent Commission initiatives that address the same or similar issues raised in these petitions and notices.

II. Background

Briefly, the Commission began several rulemaking actions and others were requested. The Commission now believes that further action in these dockets is unwarranted. When withdrawing a Notice of Proposed Rulemaking, an agency must adequately explain the facts and policy bases on which it relies,[1] must rationally consider the relevant evidence submitted and must respond to significant comments raised by the public.[2]

An agency's decision to deny a petition for rulemaking will be upheld if "it violates no law, is blessed with an articulated justification that makes a 'rational connection between the facts found and the choice made,' and follows upon a 'hard look' by the agency at the relevant issues."[3]

Recently the Commission implemented a comprehensive transportation program in Order No. 436.[4] Also, in Order No. 451, the Commission revised the maximum lawful prices for natural gas prices under sections 104 and 106 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3314 and 3316 (1982).[5] Orders Nos. 436 and 451 were designed to enable all segments of the gas industry to participate in an open and competitive gas market with non-discriminatory access to self-implementing and blanket transportation and flexible transportation rate structures. These programs involved major changes to the natural gas industry that resolve many of the issues in the dockets terminated in this order. Therefore, as more fully discussed below, the Commission is terminating the dockets.

The discussion of the terminated dockets is organized by the following issues presented: incentive prices under NGPA section 107(c)(5), market distortions due to artificial gas pricing structure, take-or-pay and similar contract provisions, filing of gas purchase contracts with the Commission under section 315(c) of the NGPA, special marketing programs, and allocation of production between proration units. Although the dockets are being terminated by this order, the Commission does not necessarily foreclose future consideration of the issues raised.

III. Discussion

A. Incentive Prices under NGPA Section 107(c)(5)

Six dockets relate to establishing an incentive price for high-cost natural gas under NGPA section 107(c)(5).

1. In Docket No. RM79-27-000, Exxon Corporation and other producers of natural gas (Producers) filed a petition for a rulemaking proceeding to determine whether natural gas produced from new wells on submerged land located beneath more than 500 feet of water should be classified as "high cost natural gas" under section 107(c)(5) of the NGPA. No comments in response to Exxon's petition were received.

[1] Natural Resources Defense Council v. SEC, 606 F.2d 1031, 1053 (D.C. Cir. 1979).

[2] Action of Smoking and Health v. CAB, 609 F.2d 1290, 1217 (D.C. Cir. 1983).

[3] WWHT, Inc. v. FCC, 656 F.2d 807, 817 (D.C. Cir. 1981), *quoting* Action for Children's Television v. FCC, 564 F.2d 458, 479 (D.C. Cir. 1977).

[4] Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 424089 (Oct. 18, 1985); Order No. 436-A, 50 FR 52217 (Dec. 23, 1985).

[5] Order No. 451, Ceiling Prices; Old Gas Pricing Structure, 51 FR 22168 (June 18, 1986).

2. In Docket No. RM80–38–000, the Commission issued an NOPR to identify gas produced from wells drilled in water deeper than 500 feet as "high-cost" gas under NGPA section 107(c)(5).[6]

Generally, producers of gas supported the proposed rule, while consumers of gas expressed reservations about the proposal. There is record evidence to conclude that once natural gas production on the Continental Shelf reaches completion depths of approximately 300 feet, significantly higher costs and risks are incurred. *See, e.g.,* Comments of the U.S. Department of Energy, Docket No. RM80–38, filed December 30, 1980. However, one commenter noted that some of the information considered by the Commission on comparative costs of drilling in various water depths was complied in 1975, and urged that more recent data be obtained. (Trunkline Gas Company Comments at 4). Another commenter noted that studies upon which the rule would be based should be up-to-date, and that a price that leads to retail levels above the price of competitive fuels would be counter-productive. (Associated Gas Distributors Comments at 3–4).

3. In Docket No. RM82–8–000, the Commission issued an NOPR to identify gas produced from wells drilled from depths between 10,000 and 15,000 feet, as "high-cost gas" under NGPA section 107(c)(5) and to establish an incentive price for the gas.[7]

The proposed rule was issued in 1982. Producers of gas generally supported the proposed rule, while consumers of gas generally opposed it. The comments indicate that drilling and other costs are significantly higher at these depths than form shallower depths. *See, e.g.,* Comments of Southland Royalty Company, Docket No. RM82–8, filed January 28, 1982.

4. In Docket No. RM82–32–000, the Commission issued a NOPR proposing to establish a ceiling price for gas subject to NGPA section 107(c)(5) at the lesser of (1) an imputed commodity value based on the price of alternative fuels, or (2) the incentive ceiling price which would otherwise apply to that gas.[8]

Commenters in support of the NOPR argue that the average price of gas was at market-clearing levels. Therefore, they question whether the Commission can justify incentive prices at all. Other commenters favoring a limitation on the price of high-cost gas argue that incentives were not required to foster additional production of gas because of the existing oversupply.

Commenters opposed to the NOPR argue that the Commission lacked the legal authority to limit the maximum lawful prices under section 107. Specifically, they argue that the NOPR ignores the conclusions and findings by the Commission in establishing tight formations as high-cost gas, Order No. 99, 45 FR 56034 (August 22, 1980). These commenters also argue that the increases in the ceiling price for gas in general were not the primary cause for increased retail price and therefore the premise for the NOPR was incorrect.

5. In Docket No. RM82–33–000, the Energy Action Project of the Citizen/Labor Energy Coalition (EAP) raised an issue concerning the need for incentive pricing under section 107(c)(5). This docket was assigned when EAP filed Comments on March 8, 1982, in Docket No. RM79–76 (Ohio-2). EAP took no position on whether the proposed formation in Ohio met the Commission's geological definition of a "tight formation." Instead, EAP opposed the designation because it believed a price above the market clearing level would be collected if the designation were approved. EAP urged the Commission to undertake a general rulemaking to announce that no other locations will be designated as tight formation and that no price above the level of high sulphur No. 6 fuel oil, less transportation and distribution costs, will be allowed for gas from any tight formation wells. After approving the Ohio-2 tight formation, the Commission announced it would treat EAP's comments as a request for rulemaking. (See III FERC Stats. & Regs. ¶ 30360 (1982)). No comments were filed in this docket.

6. In Docket No. RM79–76–252, the Montana-Dakota Utilities Company (MDU) filed a petition on March 2, 1984, to reopen and to rescind Order No. 99; or, alternatively, to amend Order No. 99 to temporarily withdraw incentive pricing for gas produced from tight formations until economic conditions require incentive pricing for such gas production. MDU argues that with the current gas supply surplus, no incentive price will encourage additional production of new gas, since producers are unable to sell curreent production at the existing lower prices. No comments were filed in this docket.

The Commission is withdrawing the NOPRs and denying the petitions for rulemaking because the information in those dockets must be updated. Order No. 451 was a final rule issued in response to a NOPR proposed by the Secretary of Energy. The Secretary proposed that the Commission establish a single new just and reasonable ceiling price, equivalent to the current price for post-1974 old gas, for all old "flowing" gas subject to NGPA sections 104 and 106(a), including elimination of the current system of pricing such old gas by the vintage of its production. Order No. 451 adopted this proposal.

The Secretary also proposed that the Commission establish an incentive ceiling price under NGPA section 107, equivalent to 60 percent of the section 102 price in 1986 and escalated in annual increments to the full section 102 price in 1991, for certain old gas for which recovery involves "extraordinary risks or costs," namely production enhancement projects, new infill wells and existing low production or "marginal" wells. The Commission did not adopt this proposal in Order No. 451. Instead, it deferred action on the incentive price proposal and stated that it would rule on this proposal at a later date.

The Commission is still reviewing the need for revising the maximum lawful prices for high-cost gas. If it decides to do so, it will require additional, updated information to enable it to determine whether a higher price is necessary. The six dockets that relate to high-cost gas are all at least two years old and the proposals in those dockets may be no longer relevant to current conditions in the natural gas market. Therefore, the Commission is terminating these dockets. However, although the Commission is terminating these dockets, it takes notice of the information in them, and may use that information in conjunction with any further action it takes.

B. Market Distortions Due to Artificial Gas Pricing Structure

Four dockets relate to market distortions due to gas prices.

1. In Docket No. RM82–26–000, the Commission issued an NOI on the impact of the NGPA on current and projected natural gas markets.[9] The NOI was intended to gather information concerning the existence of economic distortions in the nation's natural gas markets, to examine the Commission's administrative authority to reduce such distortions, and to explore the advantages and disadvantages of taking any action.

The NOI sought comments on three main areas: (1) Whether to eliminate

[6] 45 FR 47863 (July 17, 1980), FERC Stats. & Regs. (Proposed Regs. 1977–1981) ¶ 32074.

[7] 47 FR 638 (Jan 6, 1982), IV FERC Stats. & Regs. ¶ 32187.

[8] 48 FR 7469 (Feb. 22, 1983).

[9] 47 FR 19157 (May 4, 1982), IV FERC Stats. & Regs. ¶ 35512 (1982).

vintaging and establish new just and reasonable rates under NGPA sections 104, 106 and 109; (2) whether to apply restrictions to price escalation terms in contracts to avoid a price "spike" in 1985; and (3) whether revisions to pipeline regulations, such as prohibiting the use of rolled-in pricing for gas above a certain price, were appropriate.

The Commission received 1,485 comments. Distribution companies generally expressed the view that the real market ordering problem was that gas prices at the burner tip were nearing or exceeding market clearing levels. Some companies blamed rolled-in pricing, take-or-pay provisions, and indefinite price escalators. However, the majority were in favor of retaining rolled-in pricing, while also seeking some administrative or legislative action to lower prices. Distributors were divided on the question of the Commission's legal authority to suspend contract provisions, and most believed the Commission lacked authority to eliminate vintaging.

Interstate pipelines generally disagreed with the notion that gas cushions were the cause of any market ordering problem. Some said the most serious problem was that gas prices were approaching market-clearing levels. The majority of interstate pipelines stated that market forces would correct the problems. The majority also favored retaining rolled-in pricing and believed that the Commission's authority to suspend contract provisions or eliminate vintaging was either nonexistent or limited. Further, most believed that while legislative action was desirable, administrative reform was not.

Producers generally expressed the view that price controls were the source of market problems. The majority urged decontrol of gas pricing and strongly defended take-or-pay and indefinite escalator provisions. Rolled-in-pricing contract provisions was challenged. Producers did support efforts to raise old gas prices through the elimination of vintaging.

Twenty-two commenters were in favor of requiring the filing of gas purchase contracts with the Commission; thirteen commenters opposed the idea.

The NOI also specifically referenced previously-filed petitions for rulemaking in Docket Nos. RM81-30-000, RM82-17-000, and RM82-19-000, addressed below.

2. The People of the State of California (California) and the Public Utilities Commission of the State of California (PUC) filed a petition for rulemaking on April 29, 1981, Docket No. RM81-30-000, requesting that the Commission initiate a rulemaking to determine whether the purchase of deregulated gas at prevailing prices is in the public interest and, if not, whether an appropriate regulatory mechanism can be instituted to restrain prices for deregulated gas. Michigan-Wisconsin Pipe Line Company filed a response in support of the petition; no other comments were received.

3. In Docket No. RM82-17-000, the Process Gas Consumers Group and certain other industrial users of natural gas (Industrial Groups) filed a petition for rulemaking on March 1, 1982, requesting that the Commission investigate and promulgate rules designed to mitigate market distortions under the NGPA. Battle Creek Gas Company filed a request for the initiation of informal conferences. No other comments were received. The second and third parts of the Industrial Groups' petition concern pipeline purchasing practices and whether the Commission should require the public filing of all new gas purchase contracts under NGPA section 315.

4. In Docket No. RM82-19-000, the Northeast Coalition for Energy Equity filed a petition for a rulemaking on March 3, 1982, requesting an increase of the price of flowing interstate natural gas under NGPA sections 104(b) and 106(c) to achieve a "smooth transition to decontrol" on January 1, 1985. No comments were filed in this docket.

The Commission is terminating the NOI proceeding and denying these petitions. The Commission issued Order No. 451 in response to market disorders attributable to the distortions in wellhead purchasing practices caused by vintage pricing and the NGPA itself.[10] The comments submitted in Docket No. RM86-3-000 provided the Commission with the information to conclude that the distortions in the natural gas market emanated primarily from the old gas vintage price structure. The Commission collapsed the vintaged price structure in NGPA section 104 and established a procedure to allow first sellers to collect a higher maximum lawful price for gas priced under NGPA sections 104 and 106, subject to certain conditions.

The Commission believes that Order No. 451 addresses the issue relating to market distortions due to gas prices, and therefore any further action in these dockets is unnecessary at this time.

[10] 51 FR at 22175.

C. Take-or-Pay and Similar Provisions

Four petitions for rulemaking relate to marketing contract provisions such as take-or-pay.

1. Docket No. RM82-1-000, Laclede Gas Company (Laclede) filed a petition for rulemaking on October 2, 1981. Laclede requests the Commission to consider limitations on "take-or-pay" and indefinite price escalation clauses in producer contracts and to institute nondiscriminatory pipeline tariffs for the transportation of distributor-owned gas reserves by interstate pipelines from producers to the marketplace. The Minnesota Public Utilities Commission filed in support of the petition. AGD and Columbia Gas Transmission Corporation moved to consolidate the petition with related dockets, including Docket Nos. RM84-17-000 and RM82-26-000.

2. In Docket No. RM83-46-000, the Citizen/Labor Energy Coalition (C/LEC) filed a petition for rulemaking on December 21, 1982, to alleviate the impact on ultimate gas users of take-or-pay clauses in producer/pipeline contracts. C/LEC asked the Commission to issue a rule that would limit take-or-pay levels in existing contracts, construe existing contracts as containing market-out clauses, prohibit take-or-pay levels that exceed 50 percent of deliverability in new contracts, and deny passthrough of costs from clauses that exceed that level, or alternatively, deny passthrough of any NGPA section 107 gas purchases or imported gas supplies if lower cost supplies exist which the pipeline is not taking. No comments were filed in this docket.

3. In Docket No. RM84-17-000, the Attorney General of the State of New York, and various other states, state agencies, and state officials (Petitioners) filed a petition for rulemaking, on June 28, 1984, asking the Commission to limit take-or-pay requirements that cover new or high-cost gas to 50 percent of deliverability, thereby reforming existing contracts administratively.

Commenters were split on the petition. The United Distribution Companies were against issuing generic rules permanently reforming take-or-pay clauses. Conoco Inc. argued that the petition should be dismissed or acted on so that the take-or-pay obligations of any interstate pipeline under gas purchase agreements with Conoco would not be unilaterally modified or altered. Columbia Gas Transmission Corp. and AGD filed in general support of the petition and moved to consolidate it with other related dockets, including Docket No. RM82-26-000.

4. In Docket No. RM84–13–000, Michigan Consolidated Gas Company (Michcon) filed a petition requesting the Commission to issue a statement of policy and to institute a rulemaking proceeding to deny recovery of excessive purchased gas costs attributable to the operation of indefinite price escalator clauses on partial deregulation of wellhead prices January 1, 1985. Illinois Power Company moved to intervene in support of the petition.

The Commission is denying these petitions. The Commission believes that the market-based pricing scheme of the NGPA has effectively moderated the impact of indefinite price escalator, take-or-pay and similar contract provisions on wellhead prices. For example, partial deregulation of natural gas prices occurred on January 1, 1985, and no "price spike" or drastic increase in the deregulated price of natural gas occurred as widely predicted. Instead, the price of deregulated gas declined. Similary, and as the Commission noted in Order No. 451, by addressing the problems related to the old gas vintages, it expects that the market itself will exert pressure on uneconomic gas contracts containing take-or-pay clauses.[11] The Commission also noted that the open access to alternative supplies made available through Order No. 436 would result in increased competitive pressure on gas prices in the future.[12] This additional competitive pressure on gas prices should further moderate the impact on wellhead prices caused by indefinite price escalator and similar provisions.

The Commission also has supported efforts by the parties to a contract which contains a take-or-pay clause themselves to renegotiate their contract. The Commission has established procedures to facilitate take-or-pay settlements and to consider the results of renegotiations.[13] Accordingly, pipelines may seek to recover certain costs associated with renegotiating take-or-pay provisions in their contracts.

[11] See 51 FR at 22183.

[12] *Id.*

[13] *See* Statement of Policy and Interpretive Rule, *Regulatory Treatment of Payments in Lieu of Take-or-Pay Obligations*, Docket No. PL85–1–000, issued April 10, 1985 (31 FERC ¶ 61,040). The Commission provided that producers could receive lump sum payments as consideration for waiving or amending take-or-pay provisions of their contracts. However, pipelines must file under section 4 of the Natural Gas Act to recover payments made. In Order No. 436, the Commission reaffirmed the approach of the policy statement toward resolving these problems.

D. Filing of Gas Purchase Contracts With the Commission

Three petitioners request the Commission to promulgate regulations under NGPA section 315(c) to require interstate pipelines to file copies of their gas purchase contracts with the Commission.

1. In Docket No. RM81–35–000, on June 1, 1981, Associated Gas Distributors filed a petition requesting the Commission to institute a rulemaking under NGPA section 315(c) to require interstate pipelines to file copies of their gas purchase contracts with the Commission. AGD primarily contended that a contract filing requirement would permit customers of each interstate pipeline and other consumer representatives to better evaluate their pipeline-suppliers' purchased gas costs and determine whether to protest filings made to recover those costs. No comments were filed in this docket.

2. In Docket No. RM82–17–000, the Process Gas Consumers filed a petition that, in addition to the market distortion issue discussed in Part II of this order, requested the Commission to require the routine filing of gas purchase contracts.

3. In Docket No. RM82–20–000, the National Association of Regulatory Utility Commissioners filed a petition requesting a rulemaking to require routine filing of gas purchase contracts. No comments were filed in this docket.

The Commission is denying these petitions. The Commission has broad discretion to act under NGPA section 315(c), including requiring the filing of contracts. However, the Commission does not believe it is necessary to require the routine filing of gas purchase contracts. Such routine filings would be unduly burdensome for the pipeline and the Commission, and would serve no regulatory purpose that could not as well be served by other, less burdensome, means. Existing regulations are adequate to provide consumers with the opportunity to examine their pipeline-suppliers' purchased gas costs. Preserving the confidentiality of contract terms does not present an unreasonable barrier to customers with legitimate contract concerns. If a particular contract becomes an issue in a proceeding, Commission staff or an interested party may request that the gas purchase contract be produced in such a proceeding. Further, if confidentiality is justifiable, the contract at issue may be supplied under a protective order.

The Commission believes the best balance between administrative burden on pipelines and the need of other parties to know particular contract terms is served fully by the existing case-by-case approach.

E. Special Marketing Programs

In Docket No. RM84–7–000, the Commission on January 16, 1984, issued a NOI into the impact of special marketing programs on natural gas companies and consumers. On October 31, 1985, such special marketing programs were terminated pursuant to the order of the U.S. Court of Appeals for the D.C. Circuit in *Maryland People's Council v. FERC.*[14] Accordingly, the NOI into such programs is terminated.

F. Allocating of Allowables by Proration Unit

In Docket No. RM80–12–000, the Commission issued a NOPR proposing to allow gas from the second well in a proration unit to qualify for the NGPA section 103 price without requiring the jurisdictional agency to set separate allowables for each of the two wells.

Under current Commission regulations, additional wells in a proration unit may qualify as NGPA section 103 (new, onshore production) gas if it is determined by a state agency that both the existing well and the additional wells are necessary to drain effectively and efficiently the reservoir covered by the proration unit. The maximum rate of production (the maximum "allowable") is set by rules which vary among states. Allowables may be expressed in terms of individual wells, or by proration unit. The proposed rule was intended to address the concern that producers operating both a new and an old well in the same proration unit may produce a disproportionate amount of gas from the new well where a state does not assign a separate allowable for each well.

Six commenters offered varying views on the need for the NOPR. Generally, commenters stated that the NOPR invades the jurisdiction of state conservation agencies. Specifically, State agencies would not grant authorization for second wells unless the proration unit otherwise could not be drained effectively and efficiently. (Sonat Exploration Company Comments at 3). Further, producers cannot ignore their investments in old wells and will

[14] 761 F.2d 768 (D.C. Cir. 1985). The court found that such programs were flawed to the extent that they allowed transportation of direct sale gas to fuel-switchable end-users without requiring pipelines to furnish the same service to local distribution companies and captive customers on the same terms. The "SMP" program, according to the court, should die a natural death on October 31, 1985, and not be renewed. Maryland People's Council, 768 F.2d 450, Nos. 85–1029 and 85–1086 (D.C. Cir. Aug. 6, 1985).

seek to maximize the total production of their reserves (Pennzoil Company, *et al.*, comments at 3). Finally, all commenters agreed that the factual circumstances in which the NOPR would apply are rare.

The Commission agrees with the comments it received and believes the NOPR is unnecessary at this time. Present jurisdictional agency procedures, actual production practices, and negotiated contract terms are adequate to prevent the problem assumed in the NOPR. Accordingly, the NOPR in Docket No. RM80-12-000 is withdrawn and the docket is terminated.

Conclusion

For the reasons stated above, the following dockets are terminated.

Docket Nos. RM79-27-000, RM-79-76-252, RM80-12-000, RM82-32-000, RM80-38-000, RM81-30-000, RM81-35-000, RM82-1-000, RM82-8-000, RM82-17-000, RM82-19-000, RM82-20-000, RM82-26-000, RM82-25-000, RM82-33-000, RM83-46-000, RM84-7-000, RM84-13-000, and RM84-17-000.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27863 Filed 12-10-86; 8:45 am]

BILLING CODE 6717-01-M

PEACE CORPS

22 CFR Part 309

Collection of Claims by Administrative Offset

AGENCY: Peace Corps.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the Director of the Peace Corps proposes to amend Chapter III of Title 22, Code of Federal Regulations, with a new Part 309, which provides for use of administrative offset for the collection of monies or property owed the Agency in every instance in which collection is feasible and not prohibited by law. The proposed regulation establishes internal policy and procedures to meet the requirements of the Debt Collection Act of 1982.

DATES: Comments must be submitted on or before, February 9, 1987.

ADDRESSES: Comments should be submitted to and are available for examination from 8:30 a.m. to 5:00 p.m., Monday through Friday, except holidays, at the Peace Corps, 806 Connecticut Avenue NW., Washington, DC, in Room 1207, Office of the General Counsel.

FOR FURTHER INFORMATION CONTACT: Marty Mueller, Director, Office of Financial Management, 202-254-7960.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Peace Corps has determined that the proposed rule is not a major rule because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This proposed rule imposes no obligatory information on the public.

Regulatory Flexibility Act of 1980

The Director certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Reasons for this Proposed Rule

The proposed rule is necessary to implement the requirements set forth in the Debt Collection Act of 1982.

List of Subjects in 22 CFR Part 309

Credit, Debts.

Proposed Rule

The Peace Corps hereby proposes to add a Part 309 to 22 CFR Chapter III to read as follows:

PART 309—COLLECTION OF CLAIMS BY ADMINISTRATIVE OFFSET

Sec.

Authority: 31 U.S.C. 3701-3719; Pub. L. 97-365, 96 Stat. 1749.

§ 309.1 Purpose.

This part sets forth the policy and procedures for collecting claims of the Peace Corps and other U.S. Government Agencies by administrative offset. This regulation meets the requirements of the Debt Collection Act of 1982 Pub. L. 97-365, 96 Stat. 1749, as amended by Pub. L. 98-167, 97 Stat. 1104 and is consistent with the Federal Claims Collections Standards issued jointly by the Department of Justice and the General Accounting Office.

§ 309.2 Policy.

The policy of the Peace Corps is to use administrative offset for the collection of monies or property owed the Agency in every instance in which such collection is deemed feasible and not otherwise prohibited. Whether collection by administrative offset is feasible will be determined on a case-by-case basis. The Peace Corps, in making the determination, will consider not only whether administrative offset can be accomplished practically and legally, but whether it is best suited to further and protect all of the government's interests. In appropriate circumstances, the Peace Corps will consider the debtor's financial condition. It is not required to use offset in every case in which there is an available source of funds. The Peace Corps will also consider whether offset would tend to substantially interfere with or defeat the purposes of the legislation authorizing the payments against which offset is contemplated.

§ 309.3 Definitions.

(a) "Administrative offset" means withholding money payable by the United States Government to a person to satisfy a debt the person owes the Government.

(b) "Billing office" means a Peace Corps organizational unit which performs the issuance, control, follow-up, and settlement of billings for claims or debts.

(c) "Claim" means an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

(d) "Creditor agency" means the agency to which a debt is owed.

(e) "Debt" means a claim which has not been paid by the date specified in the agency's initial written notification or applicable contract agreement.

(f) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or other authorized pay remaining after the deduction of any amount required by law to be withheld.

(g) "Paying agency" means the agency employing an individual and authorizing the payment of his or her current pay.

(h) "Payrolling office" means an office that prepares and processes payroll transactions and authorizes and requests the issuance of payroll checks.

§ 309.4 Feasibility of offset.

The billing office will determine the feasibility of collection by administrative offset on a case-by-case basis for each claim established. Billing officials will consider the following

issues in making a determination to collect a claim by administrative offset:

(a) Can administrative offset be accomplished?

(b) Is administrative offset practical and legal?

(c) Does administrative offset best serve and protect the interest of the U.S. Government?

(d) Is administrative offset appropriate given the debtor's financial condition?

§ 309.5 Required notification.

(a) Whenever possible, the billing office will seek written consent from the debtor to initiate immediate collection before starting the formal notification process.

(b) In cases where written agreement for collection cannot be obtained from the debtor, the formal notification process will be followed. Prior to collecting a claim by administrative offset, the billing office will provide the debtor with a written notice by certified or registered mail with return receipt requested. This notice will include:

(1) The nature and amount of the debt,

(2) The Agency's intention to collect the debt by administrative offset on or after a specified date not less than 30 days after the date of delivery of the notice,

(3) Applicable charges for interest, penalties, and administrative costs associated with the collection action,

(4) The right of the debtor to receive a copy of the record pertaining to the debt,

(5) The right of the debtor to request a review of the determination of indebtedness and, in the circumstances specified in § 309.7 below, to request an oral hearing from the billing office,

(6) The right of the debtor to enter into a written agreement with the Agency to repay the debt in some other way, and

(7) The right of the debtor to request waiver of collection of a claim for erroneous overpayment of pay or allowances.

(c) Claims for payment of travel advances and employee training expenses require 30 days notification prior to administrative offset as described in § 309.5(b). Because no oral hearing is required, notice of the right to a hearing need not be included in the notification.

(d) Administrative offset may be effected prior to completing the above actions in those cases where:

(1) Failure to take the offset would jeopardize the Agency's ability to collect the debt, and

(2) The time before the payment is to be made does not reasonably permit the completion of those actions.

(e) Such prior offset must be immediately followed by the completion of those actions required.

(f) Amounts recovered by offset but later found not to be owed the U.S. Government will be promptly refunded.

§ 309.6 Exceptions to collection by offset.

Administrative offset under this Part may not be initiated against:

(a) Debts owed by any State or local Government.

(b) Debts where more than 10 years have elapsed since the Government's right to collect first accrued, unless facts material to the governments rights to collect were not known and could not reasonably have been known by responsible officials.

(c) Claims with respect to which another statute specifically provides for or prohibits the use of administrative offset to collect the type of claim involved.

§ 309.7 Administrative review.

(a) Before initiating offset against a Peace Corps employee's salary, the Peace Corps shall attempt the collection procedure specified in 4 CFR Parts 101–104. If the debtor does not respond to the written notification of intended offset described in § 309.5 by the proposed effective date, the billing office will initiate offset. Collection by offset from individuals receiving pay or compensation will be made over a period not greater than the period during which such pay or compensation is to be received.

(b) If the debtor requests a repayment agreement in place of offset, the billing office has discretion and should use sound judgment to determine whether to accept a repayment agreement in place of offset. If the debt is delinquent and the debtor has not disputed its existence or amount, the billing office should not accept a repayment agreement in place of offset unless the debtor is able to establish that offset would cause undue financial hardship or be unjust.

(c) If the debtor disputes a debt, the billing office will provide a copy of the record and advise the debtor to furnish available evidence to support his or her position. Upon receipt of the evidence, the billing office will review the written record of the indebtedness and inform the debtor of its findings.

§ 309.8 Hearing.

A debtor will be provided a reasonable opportunity for an oral hearing when:

(a)(1) By statute consideration must be given to a request to waive the indebtedness;

(2) The debtor requests waiver of the indebtedness; and

(3) The waiver determination rests on an issue of credibility or veracity or;

(b) The debtor requests reconsideration and the Peace Corps determines that the question of indebtedness cannot be resolved by reviewing the documentary evidence.

In cases where an oral hearing is provided to the debtor, the billing office will conduct the hearing, and provide the debtor with a written decision.

§ 309.9 Administrative offset procedures.

(a) *Travel advance.* The billing office will deduct outstanding advances provided to Peace Corps travelers from other amounts owed the traveler by the agency whenever such a case exists. Monies owed by an employee or other person for outstanding travel advances which cannot be deducted from other travel amounts due that individual will be collected through salary offset whenever possible, subject to the advance notice requirements described in § 309.5.

(b) *Salary.* The billing office will instruct the proper payrolling office in writing to deduct an amount not to exceed fifteen (15) percent of the disposable pay of an employee for an official pay period. Normally, debts should be collected in one lump-sum payment. However, if the employee is financially unable to pay in one lump-sum or the amount of the debt exceeds fifteen percent of the disposable pay for a pay period, offset will be made in installments according to the size of the debt and over a period not greater than the anticipated tour of duty or employment (unless the employee has agreed in writing to the deduction of a greater amount). The payrolling office will be requested to execute the offset effective the next possible pay period. In cases where more than one payroll deduction is to occur, the payrolling office will continue offset each pay period until the full amount of offset is achieved. As soon as the payrolling office has verified the total offset, they will forward written confirmation to the billing office to ensure that the proper fiscal coding to credit the debt by offset is entered into the accounting system.

(c) *Final check.* The billing office will inform the payrolling office of any outstanding debts owed by an employee terminating duty. The payrolling office will be requested to make arrangements to offset the amount owed to the U.S. Government from subsequent payments of any nature due the employee, such as final salary payment, lump-sum leave, etc. The same offset action will take

place to recover amounts of indebtedness from employees who have separated from the Agency but have not yet been issued final check payment.

(d) *Volunteer allowance.* The Volunteer Support Services staff of the Accounting Division, M/FM will deduct, through administrative offset, amounts owed the U.S. Government by Volunteers and Trainees from the readjustment allowance account whenever possible.

(1) Overseas posts will obtain written consent from Volunteers or Trainees who are indebted to the Agency upon close of service or termination, to deduct amounts owed from their readjustment allowance. Posts will immediately submit the written consent to the Volunteer Support Services staff to initiate offset.

(2) In cases where prior written consent from indebted Volunteers or Trainees cannot be obtained in advance of their departure, overseas posts will immediately report the documented debts to the Volunteer Support Services staff. The Volunteer Support Services staff may then initiate offset against the readjustment allowance. Prior to offset action, the Volunteer Support Services staff will notify the indebted Volunteers or Trainees and inform them of their rights as required in § 309.5.

Volunteer and Trainee debt collection data will be entered into the Agency accounting system by the Volunteer Support Services staff.

(e) *Contract.* The contracting official will make an appropriate offset against a contract payment to a contractor who is indebted to the Agency and from whom contractor invoices have been received. The offset action, explanation, and follow-up will be performed in accordance with 48 CFR Part 32, subpart 32.6 on "Contract Debts" of the Federal Acquisition Regulation.

(f) *Civil or Foreign Service Retirement.* The billing office may request the Director of the Accounting Division, M/FM to approve a request for collection by offset against the Civil Service Retirement and Disability Fund, the Foreign Service Retirement Fund, or any other Federal Retirement fund in installments determined to be reasonable using the standards specified in § 309.9 (b) and (c). Requests approved by the Director of Accounting will be submitted to the U.S. Office of Personnel Management (OPM) or the U.S. Department of State. The requests for administrative offset will certify in writing the following:

(1) The debtor owes the United States a debt and the amount of the debt;

(2) The Peace Corps has complied with applicable regulations and procedures;

(3) Peace Corps has followed the requirements of the Standards for collection by administrative offset as described in this Part 309.

(g) Requests to the Office of Personnel Management or Department of State should be made as soon as possible to enable those Agencies to identify and "flag" the debtor's account in anticipation of the debtor's eligibility or request to receive payments from the Retirement funds. If a year has elapsed since the original offset request was made, the debtor is permitted to offer a satisfactory repayment plan in place of offset upon establishing difficult circumstances. In cases where the billing office received payment for part or all of the debt by other means before deductions from the retirement fund occur, the billing office will immediately notify the Office of Personnel Management, Department of State or other pension fund to modify or terminate the request for offset.

§ 309.10 Procedures for requesting offset by another agency.

The following procedures will be used when a separated employee now employed by another federal agency owes a debt for which no provision for collection has been made.

(a) The billing office will complete and certify a debt claim to request collection by salary offset. The certification will provide the following information to the employee's paying agency:

(1) The amount and basis of the debt owed by the separated employee, the date on which payment is due, the date Peace Corps' right to collect the debt first accrued (the date the debt actually accrued), and that the Peace Corps' regulations on collection by salary offset have been approved by the Office of Personnel Management.

(2) Using the standard specified in § 309.9, the number and amount of installments to be collected if the collection must be made in installments. If a starting date of the first installment must be other than the next officially established pay period, the required effective date must be provided.

(3) The dates and actions previously taken to collect the debt unless the separated employee has agreed to the salary offset in writing or signed a statement acknowledging receipt of the required procedures. The writing or statement must be attached to the debt claim form sent to the paying agency.

(b) Hearings (see § 309.8) may consist of informal conferences before a hearing official in which the separated employee and the appropriate Peace Corps official will be given full opportunity to present evidence, witnesses, and argument. The separated employee may represent him or herself or be represented by an individual of his or her choice. Peace Corps will provide for a summary record of the hearing.

(c) In cases where a separated employee transfers from one paying agency to another before the debt is collected in full, notification will be made to the Peace Corps billing office by the paying agency from which the employee separates. It is the responsibility of the Peace Corps billing office to review the status of the debt to ensure collection is resumed by the new paying agency.

§ 309.11 Procedures for processing requests for offset from another agency

The following procedures will be used when Peace Corps receives a request from a creditor agency to collect by offset a debt owed the creditor agency by a current employee.

(a) The Accounting Division, M/FM, will review the completed debt claim form submitted by the creditor agency.

(1) If the claim form is incomplete, the Accounting Division will return the request with a notice that the required information as listed in § 309.10 is incomplete and a completed debt claim form must be furnished before collection action can be taken.

(2) If the claim form is complete and required information supplied, deductions will be scheduled effective the next possible pay period. The Payroll Office must give a copy of the debt claim form, to the debtor, along with a notice of the date deductions have been requested to begin if different from the date stated on the debt claim form.

(b) The Accounting Division is not required or authorized to review the merits of the creditor agency's determination concerning the amount or validity of the debt as indicated on the debt claim form.

(c) If an employee transfers to another paying agency before the debt is collected in full, the Peace Corps Payroll Office must certify the total collection made on the debt. One copy of the certification will be mailed or delivered to the employee, and another copy furnished to the creditor agency along with notice of the employee's transfer. The original of the debt claim form along with a copy of the certification of the total amount which has been collected, will be forwarded to the Personnel

Office for inclusion in the employee's official personnel folder.

(d) If the employee separates from the Federal Service before the debt is collected in full, the certification form indicating total collection made on the debt, accompanied by the original debt claim form and notice of separation will be returned to the creditor agency.

(e) When a debt is collected in full, the Peace Corps Payroll Office will certify the total collection made and send a copy to both the creditor agency and the employee.

§ 309.12 Accounting for monies collected by either Peace Corps or another creditor agency.

The billing office of the paying agency will complete a Standard Form 1081, "Voucher and Schedule of Withdrawals and Credits", or similar form, to credit the appropriation of the creditor agency when monies are collected. A copy of the form will be sent to the creditor agency for each collection made.

Dated: December 1, 1986.

Loret Miller Ruppe,

Director.

[FR Doc. 86-27688 Filed 12-10-86; 8:45 am]

BILLING CODE 6051-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 67

[CGD11-86-02]

Lines of Demarcation for Classification of Structures; Eleventh Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish lines of demarcation for the classification of structures in the waters of the Eleventh Coast Guard District. Classification of structures is currently determined at the time an application for a permit to establish and operate lights and fog signals is received. The implementation of lines of demarcation will establish clearly defined boundaries for classifying structures.

DATE: Comments must be submitted on or before January 26, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822-5399. The comments and other materials referenced in this notice will be available for inspection and copying at the Union Bank Building, Room 415, 400 Oceangate, Long Beach, CA. Normal office hours are between 8:00 A.M. and 4:00 P.M., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Van Houten, Supervisory Aids to Navigation Specialist, Eleventh Coast Guard District, at (213) 590-2222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11-86-02) and the specific section to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Mr. Mike Van Houten, Supervisory, Aids to Navigation Specialist, Eleventh Coast Guard District, project officer, and Lieutenant Commander Arthur E. Brooks, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

The proposed regulations would simplify the procedure for classifying oil platform structures in the Eleventh Coast Guard District. Structures located beyond the seaward limit of the territorial seas or within a half nautical mile of Traffic Separation Scheme (Los Angeles/Long Beach) will be classified as type "A" structures. The traffic separation scheme is depicted on National Ocean Service Charts 18740, 18720, 18725, 18746, and 18721. Structures located within the territorial seas and more than half a nautical mile from the traffic separation scheme will be classified as either type "B" or "C" structures. Only five of the existing structures would be affected by this change in the regulations. The structures that would be affected by the change in the regulations will be allowed five years from the effective date of the change to comply with the revised requirements for lighting and fog signals on the structures.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Only five structures will be affected and the costs of compliance will not be significant. Because the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small business entities.

List of Subjects in 33 CFR Part 67

Continental Shelf, Navigation (Water), reporting and recordkeeping requirements.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 67 of Title 33, Code of Federal Regulations as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: Secs. 83, 85, 92, 633, 63 Stat. 500, 503, 545, sec. 4, 67 Stat. 462, sec. 6(b)(1), 80 Stat. 938; 14 U.S.C. 83, 85, 92, 633, 43 U.S.C. 1333, 49 U.S.C. 1655(b), 1657 (e); 49 CFR 1.4(a)(2), (f), (g), unless otherwise noted.

2. Section 67.50-35 is revised to read as follows:

§ 67.50-35 Eleventh Coast Guard District.

(a) *Description.* See 3.55-1 of this chapter.

(b) *Line of demarcation.* The line of demarcation described in this section is for administrative purposes to distinguish between the areas in which structures shall be subject to Class "A", "B", or "C" requirements. The line delimits the areas to seaward of which Class "A" requirements are imposed.

(1) The line of demarcation within the jurisdiction of the District Commander is defined as follows:

(i) Commencing at a point at latitude 34°57′ N., longitude 120°44′ W., thence southward along the seaward limit of the territorial sea to;

(ii) A point at latitude 32°32′ N., 117°11′ W.

(c) Structures located within a half nautical mile of Traffic Separation Scheme Los Angeles/Long Beach will also be subject to class "A" requirements. The traffic separation scheme is depicted on National Ocean Service Charts 18740, 18720, 18725, 18746, and 18721.

Dated: November 30, 1986.

A. Bruce Beran,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 86-27850 Filed 12-10-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3104-9]

Review of Standards of Performance for New Stationary Sources; Primary Aluminum Reduction Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: Under Section 111 of the Clean Air Act, EPA is required to review standards of performance for new, modified, or reconstructed stationary sources every 4 years. A review of the existing standards of performance for primary aluminum reduction plants (40 CFR 60, Subpart S) has been completed. The review indicates that no revision to the standard is necessary at this time.

ADDRESSES: Document. The document summarizing information gathered during the review may be obtained by written request to the EPA Library (MD-35). Research Triangle Park, North Carolina 27711, or by telephone at (919) 541-2777. Please refer to "Review of New Source Performance Standards for Primary Aluminum Reduction Plants" [EPA-450/3-86-010].

Docket. A docket, number A-86-07, containing information considered by EPA during the review, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (A-130), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information and official interpretations of compliance requirements and reporting aspects of the standards, contact the appropriate regional, State, or local office contact as listed in 40 CFR 60.4. For further information concerning the technical aspects of the standards, contact Mr. William H. Maxwell, Industrial Studies Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5595. For further information concerning the policy aspects of the standards, contact Ms. Debbie W. Stackhouse, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111 of the Clean Air Act, the new source performance standards (NSPS) for primary aluminum reduction plants were proposed on October 23, 1974 (39 FR 37730), and promulgated on January 26, 1976 (41 FR 3826). The standards limit total fluoride (TF) emissions from new, modified, or reconstructed potroom groups and anode bake plants to: 1.0 kilogram per megagram (kg/Mg) [2.0 pounds per ton (lb/ton)] of aluminum produced for potroom groups at Soderberg plants, 0.95 kg/Mg (1.9 lb/ton) of aluminum produced for potroom groups at prebake plants, and 0.05 kg/Mg (0.1 lb/ton) of aluminum equivalent for anode bake plants. Compliance with these limits would have been determined through performance tests at the time of start-up and at such later time as required by the Administrator.

The standards also limit visible emissions to less than 10 percent opacity from any potroom group and less than 20 percent opacity from any anode bake plant.

Following promulgation of the NSPS, petitions for review were filed by four U.S. aluminum companies. These companies alleged that modern well-controlled facilities could not consistently comply with the NSPS. In response to these petitions, the Agency conducted additional testing to provide data on the achievability of the NSPS over time. These data subsequently were the basis for amending the standards.

Amendments to the NSPS were proposed on September 19, 1978 (43 FR 42186), and promulgated on June 30, 1980 (45 FR 44202). The main purpose of the amendments was to add the requirement that performance tests be conducted monthly and to add never-to-be-exceeded limits for TF emissions from potroom groups. Under the current NSPS, if the owner or operator can demonstrate that proper control equipment and exemplary operation and maintenance are used, then TF emissions from a potroom group may exceed the levels set by the original standard. However, under no circumstances are TF emissions from potroom groups allowed to exceed 1.3 kg/Mg (2.6 lb/ton) for Soderberg plants and 1.25 kg/Mg (2.5 lb/ton) for prebake plants.

Alternatives to the requirement for monthly performance tests of the anode bake plant or the primary control systems for the potroom groups may be permitted, if the owner or operator can show that emissions have low variability during day-to-day operations. On this basis, the monthly test requirement has been waived, in favor of annual testing, for the primary potroom groups and anode bake furnace control systems at the three plants with prebake potlines subject to the NSPS.

Section 111(b)(1) of the Act (as amended) requires review of the NSPS at least every 4 years and, if appropriate, revision of the standards. The principal purpose of such review and appropriate revisions is to ensure that the standards reflect a current assessment of best demonstrated technology (BDT).

In 1985, EPA began the first review of the primary aluminum reduction plant NSPS. During this review, EPA regional offices, State agencies, and industrial organizations were contacted to determine the number, type, and location of new, modified, and reconstructed facilities subject to the NSPS. Available NSPS compliance test data were requested, and the opinions of control agency and industry personnel were solicited on all facets of the NSPS. In addition, four plants were visited to obtain information on the procedures and practices used to minimize potroom secondary TF emissions, on the long-term performance of the TF capture and control equipment, and on their maintenance requirements.

Discussions with EPA offices, State agencies, and plant personnel revealed no problems in achieving the NSPS limits. One plant contact commented that the monthly test requirements for secondary emissions monitoring are excessive. The EPA evaluated the secondary emissions monitoring requirements and concluded that any reduction in these requirements would have to be evaluated on a plant specific basis because of the large variability in TF emissions and work practices. The same plant contact also suggested that the number of secondary emissions monitors required by the NSPS has not been interpreted consistently. The correct interpretation is one secondary emissions monitor is required for each potroom group affected by the NSPS.

Based on the data and information obtained during this review, an information document was prepared that summarizes the current status of the primary aluminum industry and

industry compliance with the NSPS. A summary of the findings of the review follows.

II. Findings

A. Affected Facilities and Projected New Facilities

Ten U.S. plants have closed in the last 5 years (1981–1985), at least six of them permanently, and most of the remainder are operating at reduced capacity. In December 1985, the domestic primary aluminum industry operated at 66 percent of capacity. In addition, more plants in the U.S. may be shut down due to unfavorable energy and labor rates as compared to those in the rest of the world.

Five new potlines and eight new anode bake furnaces have been placed in service since proposal of the NSPS. However, no potline or bake furnace has come on-line in the U.S. in the last 3 years (1984–1986). Forecasts indicate that no new, modified, or reconstructed primary aluminum facilities will be constructed in the next 5 to 10 years.

B. Emission Control Technology

The standards limit emissions of TF from primary aluminum reduction potlines and anode bake furnaces. No significant changes have occurred in the add-on control devices defined as BDT for these sources. For potroom groups, they are either wet scrubbers followed by wet electrostatic precipitators or dry scrubbers. For anode bake plants, they are either dry or wet scrubbers. All plants with potroom groups or anode bake plants subject to the NSPS have elected to use dry scrubbers for TF control and all have demonstrated the capability to comply with the NSPS. A primary consideration is that dry scrubbers can provide a high level of TF control and also recover TF for reuse.

Some changes have occurred in the design and operation of primary aluminum reduction pots in the last decade. These changes were stimulated by the need for higher aluminum production efficiencies and a higher, more consistent capture efficiency. Many modern pots use lower bath ratios, have multiple point feeders and crust breakers, utilize computers to control pot operations, and use improved material handling methods. The above improvements, in combination with improved work practices and better maintenance, have reduced the frequency, magnitude, and duration of hood openings, maintained the capture efficiency of the hoods, and minimized the amount of emissions generated outside the pots.

C. Achievability.

All primary aluminum plants with aluminum reduction potlines and anode bake plants subject to the NSPS have demonstrated the ability to comply with the NSPS. Average TF emissions for potroom groups range from 0.8 to 1.3 lb/ton of aluminum produced for center-worked prebake plants and are 1.5 lb/ton for vertical stud Soderberg, compared to their respective limits of 1.9 and 2.0 lb/ton. Average anode bake plant emissions range from 0.01 to 0.02 lb/ton of aluminum equivalent (as compared to an NSPS limit of 0.1 lb/ton). Three plants have exceeded an NSPS limit due to equipment failure or operator error, but corrective actions have been successful in each case.

D. Costs.

Information on the capital and annualized costs of dry scrubbers for controlling potlines and anode bake furnaces was supplied by plants subject to the NSPS. Additional cost data were extracted from a report published by the International Primary Aluminum Institute (IPAI), titled "Fluoride Emissions Control: Update Costs for New Aluminum Reduction Plants," February 1985. These data show that the installation of TF emission controls can either increase or decrease aluminum production costs. The potential percentage increase in the price of aluminum resulting from the installation of controls is estimated to be less than 2 percent for each facility type evaluated. These cost impacts are considered to be reasonable for this industry.

The cost impacts of TF emission controls are reported by the IPAI to range from a credit of $11.60 to a cost of $10.60 for each ton of aluminum produced. Similar information on three domestic plants subjects to the NSPS show net costs of $11.80 to $17.60 per ton of aluminum. Two of the NSPS plants utilize anode bake furnaces and those costs are included. The plants listed in the IPAI report did not include bake furnace control costs. For the two domestic plants having only anode bake furnaces subject to the NSPS, control costs are $3.60 and $4.50 per ton of aluminum produced.

E. Test Requirements.

In addition to initial performance tests, compliance tests are required on a monthly basis. These tests are required to verify continued compliance from potroom groups and anode bake plants. There are provisions for establishing an alternative (less frequent) test schedule for the primary potroom control systems (scrubber exhaust) and anode bake plants.

Secondary emissions from potrooms are fugitive emissions which escape the pothoods (or are generated outside the pots) and are vented through the potroom roof vents. Secondary emissions are much more variable than primary emissions and contribute the majority of the total potroom emissions (primary control device emissions plus secondary roof vent emissions). There are no provisions in the NSPS to specifically allow for a reduction in the frequency of secondary potroom group testing. However, Section 60.8(b)(4) of the General Provisions gives to the Administrator, and subsequently to the States whose delegation requests have been approved, the authority to evaluate on a case-by-case basis whether a reduced test frequency is reasonable.

There are two aspects which must be considered before an alternative test frequency could be established. First, a demonstration is needed to show that the probability of variations in emissions resulting in exceedances of the NSPS are low. Produces that may be used to demonstrate the probability of an exceedance of the NSPS are documented in a report titled "Primary Aluminum NSPS: Statistical Analysis of Potline Fluoride Emissions and Alternate Sampling Frequency" (EPA–450/3–86–012) (Docket No. A–86–07, item No. II–A–25). In this report, test data from a well-controlled plant meeting an average emission limit of 1.02 lb/ton (lower than the NSPS) are used to develop formulae for determining the statistical probability of a random failure. The analysis assumes no changes in the level of maintenance, in work practices, or in the frequency and thoroughness of potroom inspections. Thus, the second aspect that must be considered is the possibility that plants granted a less stringent test schedule might cut back on maintenance activities and relax work practices. Therefore, an operation and maintenance plan would need to be tailored to the specific plant to assure continued compliance if the frequency of secondary testing was reduced.

III. Conclusions

The conclusions of this NSPS review are as follows:

(1) No new, modified, or reconstructed facilities are expected in the next 5 to 10 years.

(2) The present standards are appropriate, and

(3) The present standards are achievable when control devices are operated and maintained properly.

Therefore, no changes in the standards are being made at this time.

IV. Paperwork Reduction Act

The information collection requirements (ICR) for the standards were recently reapproved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been asigned OMB control number 2060–0031. The exiration date of the ICR is May 31, 1989.

The information generated by the monitoring, recordkeeping, and reporting requirements of the standards is necessary and reasonable for EPA to ensure compliance with the NSPS. The total annual burden asociated with these requirements is estimated to be 1,529 person-hours per year for all respondents. Under the standards, the data collected by the affected industry would be retained a minimum of two years and made available for inspection as necessary.

The standards implicitly require initial reports required by the General Provisions of 40 CFR 60.7. The initial reports include notification of construction, modification, reconstruction, and startup, shutdown, or mulfunction. Following the initial performance tests, owners or operators are also required to conduct monthly performance tests. A report must be submitted to EPA whenever a monthly performance test shows that emissions are higher than allowable. The standards allow exceedances up to a certain level if exemplary operation and maintenance procedures are being used but are not resulting in lower emissions. The report must describe these operation and maintenance practices and be submitted within 30 days of the performance test.

The standards also require the owner or operator to document process information relating to the aluminum and anode production rates, raw material feed rates, and cell or potline voltages. No specific burden results from this requirement as the information is generally available from plant records.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Primary aluminum reduction plants, Reporting, and Recordkeeping requirements.

Dated: December 2, 1986.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86–27708 Filed 12–10–86; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 51, No. 238
Thursday, December 11, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the pub'ic. 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.

ACTION

MiniGrants; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds.

SUMMARY: This notice announces the availability of funds for Fiscal Year 1987 under the ACTION MiniGrant Program authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part C, 42 U.S.C. 4993).

Pursuant to MiniGrant Guidelines published in the **Federal Register** on October 12, 1984, (49 FR 40063), ACTION has established two MiniGrant funding priorties for Fiscal Year 1987. The two project areas for which MiniGrant will be considered are:

—Projects that address the following problems of adolescent parents and pregnant teenagers and their families: inadequate prenatal care and parenting skills; job training and educational attainment; illiteracy; and child abuse and neglect; and
—Projects that address drug abuse through local drug education activities.

Subject to the availability of Fiscal Year 1987 funding, approximately $120,000 will be available for grants averaging $8,000–$9,000 is size.

Eligibility: Public or private non-profit organizations which utilize, or will utilize volunteers as an integral part of their provision of services may apply for grants.

Deadlines: The deadline for submission of applications is Febraury 16, 1987. Applications will be submitted to appropriate ACTION State Offices. Addresses of the State Offices will be included in the application package. In addition to the address list, the application package will contain an application form, a copy of the MiniGrant guidelines which were published in the **Federal Register**, October 12, 1984, and a guide to help individuals complete the application.

Application packages are available from ACTION's Office of Voluntarism Initiatives, Washington, DC. To receive an application package, write to the MiniGrant Program/OVI, ACTION, Room M–516, 806 Connecticut Ave. NW., Washington, DC 20525.

Signed in Washington, DC, on November 25, 1986.

Donna M. Alvarado,

Director ACTION.

[FR Doc. 86–27777 Filed 12–10–86; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forest Service

Electronic Communication Rental Fee Schedule for the Pacific Northwest Region

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of rental fee schedule for electronic communication sites.

SUMMARY: The Forest Service hereby gives notice that it is adopting a new schedule of rental fees for communication uses on National Forest System lands located in the Pacific Northwest Region.

The fee schedule provides a rental fee for communication use based on type of use for a given area or zone. The fee schedule will be adjusted every 5 years based on an updated market analysis. The schedule is based on sound business management principles, and as far as practicable, is in accordance with comparable commercial practices for establishing fair market rental fees.

EFFECTIVE DATE: The fee schedule is effective December 10, 1986.

FOR FURTHER INFORMATION CONTACT: Walt Bennett, Lands Staff, Forest Service at Portland, Oregon, office at (503) 221–2921.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1986, the Pacific Northwest Region of the Forest Service published a notice of a proposed fee schedule for electronic communication sites (51 FR 25073). That schedule set forth proposed annual rental fees for different types and intensity of use for areas or zones of similar value in the States of Oregon and Washington. Comments on the proposal were due by September 20, 1986.

Analysis of Public Responses

The notice and individual permittee mailings generated a total of forty-two written and telephone responses. The distribution of respondents was as follows:

Type of respondent	Number of comments received
Individuals	1
Government agencies	10
TV/Cable districts/Cooperatives/Associations	7
Timber industry	4
Utility Companies	2
TV/Radio Companies/Groups/Broadcasters	15
Amateur Radio Operators	3
Total	42

The comments were specific and contained recommendations applicable to the fee schedule proposed by the Agency. Many comments concerned application of the fee schedule rather than the schedule itself. The following is a summary of the public comments and, where applicable, a discussion of policy and fee schedule changes in the proposal based on Agency consideration of the comments.

A. Do the New Rates Apply to State, County, or Other Governmental Agencies?

Several governmental agencies now qualifying for fee waiver expressed concern that they would have to start paying fees under the proposal.

There was no intent in the proposal to change the current waiver policy as it applies to State, County, or other Governmental Agencies.

B. Concern for Fee Schedule As It Relates to Individual Home Owners

One comment felt the schedule was too high for TV receiving antennas adjacent to private homes.

There may have been a misunderstanding of the interpretation of the fee schedule. The intent of the proposal was that only one-half of the schedule rates would be charged for receiving only antennas at isolated locations. The fee for the referenced TV antenna would be $50.00

C. Schedule Fee Rates too High for Nonprofit Organizations

This issue received the most comments. The majority of the responses indicated there should be relief or no charge for nonprofit organizations providing a service to a local community.

Municipal utilities, water, TV, or other special service districts are groups of people pooling their resources to produce a service or benefit they would otherwise have to provide for themselves. They do not ordinarily qualify for waiver of fees. Where the group is both nonprofit and volunteer; that is, all the labor and funds needed to provide the services are donated, they may qualify under current policy for a partial waiver of fees. It should be noted, however, even though a permit operation qualifies for a waiver the Forest Officer issuing the permit is not required to grant one. There may be circumstances such as competition for limited space, duplication of existing services, services that are unwanted by potential users, or other reasons, that would make a waiver inappropriate.

D. Why Rates Are Different Between Zones, Specifically Portland vs. Eastern Oregon

A number of comments were received wondering why the schedule showed proposed fees lower to the Portland area than for sites in Eastern Oregon.

The market analysis was reviewed giving further consideration to consistency from zone to zone. Some rates were adjusted with this in mind. Some valid differences still remain. The fee schedule does not reflect the value of all land in the zones, but only sites located on National Forest System (NFS) lands within a given zone. The NFS land in the Portland-Vancouver area is a considerable distance from the metropolitan area. There are a number of high value sites on private land adjacent to the metropolitan area, but they do not reflect the market value of sites located on NFS lands. The sites in eastern Oregon are nearer higher density use areas and are more competitive in use with private sites.

E. When will the fee schedule be used to set rates?

Questions were raised as to when the fee schedule would be used as opposed to appraisal or competitive bidding. Several respondents were concerned that their investment in existing facilities would be threatened if those facilities were put up for public bids.

The method of establishing fees is at the discretion of the Forest Service. One reason the fee schedule was developed was to avoid the cost of individual appraisals, particularly at small lightly used sites. The fee schedule will be used at most communication sites in the Region.

Competitive bidding will be the preferred method used for the development of new, nonexisting, facilities and will not be used for existing facilities except where buildings or facilities are the property of the Forest Service.

Appraisals will be used at larger or more heavily developed sites where in the judgement of the Forest Service, values appear to exceed the intent of the fee schedule and there is a reasonable chance to recover the appraisal cost.

F. Some of the proposed rates are not typical for a given zone

Some comments questioned the zone values and offered examples of other, usually lower values for a given zone.

Specific examples of other values were reviewed by our Regional appraiser.

While these values can be found at some sites within an applicable zone still other values both higher and lower can also be found within that zone. The zone values represent the rental fee for NFS land typically occupied by communication use in that zone.

G. The proposed fees are too high especially compared to previous rates

Many respondents felt that the proposed fees were too high, questioned the need for any fees, or suggested setting the fees on some other basis such as recovery of costs.

The Region does not have a choice in this regard. Annual fees based on fair market value are required by law. The adopted rates are significantly higher than the old rates but those rates were established in the mid 1960's and are, therefore, quite different from market values of the 1980's.

H. The Schedule Should Consider Quality Factors

Several responses felt that traditional factors important to communication site users such as access, type of power available, and population served should be considered in determining annual rental fees. These factors are important and are incorporated in the fee schedule. Access and power supply are not visible in the schedule but are represented in the figures selected as most typical by the appraiser. The zones were established based on differences in population. Intensity of use also mirrors population since higher intensity uses are more likely to develop near population clusters.

I. Other Changes Made Based on the Administrative Review

a. The zone boundary between zone #6 and #8 involving lands on the Gifford Pinchot National Forest has been revised to follow the Forest boundary to allow for uniformity and consistency.

b. Intensity of use has been further defined by establishing size limitations.

J. Rental Fee Schedule

The following is the narrative zone descriptions and rental fee schedule for each zone.

Fee Schedule for Electronic Communication Sites

Narrative Zone Description

The Region contracted with a private appraiser to prepare a market rent analysis for various types of communication site uses found in Oregon and Washington. The market rent analysis forms the basis for the following narrative zone descriptions. These zones are identified on the fee schedule and on maps available at Forest Supervisor's Offices in Oregon and Washington.

A. Coastal Zone (Oregon and Washington) (Map Zone 1)

This area generally runs from the ocean to the crest of the coast range mountains in Oregon. It also includes the counties of Wahkiakum and Pacific and the lands west of the Olympic mountains in Jefferson, Gray's Harbor, and Clallam Counties of Washington.

The National Forest lands include Soleduck and Quinault Ranger Districts on the Olympic National Forest; Hebo and Waldport Ranger District, Oregon Dunes National Recreation Area, Mapleton Ranger District, and the remainder of the Alsea Ranger District on the Siuslaw National Forest; the Powers, Gold Beach, and Chetco Ranger Districts and the remainder of the Illinois Valley and Galice Ranger Districts in Curry county on the Siskiyou National Forest.

B. Zone for Seattle-Tacoma (Map Zones 2 & 4)

This zone consists of Whatcom and Skagit counties to the crest of the North Cascades. More particularly, this area includes the Glacier and Baker River Ranger District, and that portion of the Darrington Ranger District in Skagit county all on the Mt. Baker-Snoqualmie National Forest.

This zone also includes that portion of the Darrington Ranger District in Snohomish county, Skykomish Ranger District, Monte Cristo Ranger District, North Bend District, White River Ranger District all on the Mt. Baker-Snoqualmie National Forest in Snohomish, King, and Pierce counties.

The easterly boundaries of these ranger districts generally follow the crest of the Cascade mountain range and form the west facing slopes to the Seattle-Tacoma metropolitan area.

C. Zone for West of Seattle-Tacoma (Map Zone 3)

This area includes the Quilcene, Hoodsport, and Shelton Ranger Districts located along the East boundary of the Olympic National Park in Gray's Harbor, Mason, Jefferson, and Clallam counties. These ranger districts form the east facing mountain slopes to the Seattle-Tacoma area.

D. Central Washington Zone (Map Zone 6)

This zone is generally located between Highway 97 and the crest of the Washington Cascade mountain range. The National Forest lands include: Lands administered by the Wenatchee National Forest; lands administered by the Okanogan National Forest except for a portion of the Tonasket Ranger District located east of Highway 97.

E. Northeastern Washington Zone (Map Zone 7)

This involves lands north of Highway 2 and west of Highway 97. The zone includes the Colville National Forest and a portion of the Tonasket Ranger District lying east of Highway 97 in Okanogan county.

F. Southeastern Washington and Eastern Oregon Zone (Map Zone 9 and 11)

This zone includes all lands within the State of Washington, east of Highway 97 and south of Highway 2. The Umatilla National Forest lands involved are the Pomeroy Ranger District and a portion of the Walla Walla Ranger District located in Walla Walla and Columbia counties.

This zone also includes all lands in Oregon from the crest of the Oregon Cascades, east to the Oregon-Idaho border. National Forests included in this zone are the Deschutes, Winema, Fremont, Ochoco, Wallowa-Whitman, Malheur, and Umatilla National Forests in Oregon; and the Bear Springs, Barlow, and Hood River Ranger Districts on the Mt. Hood National Forest.

G. Portland, Vancouver, and Southwest Washington Zone (Map Zone 8)

This zone includes all of the Gifford Pinchot National Forest; Columbia Gorge, Zig Zag, Estacada, and Clackamas Ranger District on the Mt. Hood National Forest, and that portion of Detroit Ranger District in Marion County on the Willamette National Forest.

H. Albany to Ashland, Oregon Zone (Map Zone 10)

This zone includes land area south of Albany to the Oregon/California border and from the crest of the Oregon Cascades to the crest of the Oregon coast range mountains. National Forest lands in this zone include the Umpqua and Rogue River National Forest; the remainder of the Willamette National Forest; a portion of the Alsea Ranger District in Benton County on the Siuslaw National Forest and a portion of the Illinois Valley and Galice Ranger Districts on the Siskiyou National Forest in Josephine County.

I. Olympia Zone (Map Zone 5)

This zone involves mostly private land which is within 20 miles of Olympia. There is no National Forest land in this zone.

Definitions

Electronic Site (ES). A formally designated area of National Forest system (NFS) land suitable for the location of electronic communication equipment. An ES may cover several square yards or several acres and accommodate one or more communication sites.

Communication Site (CS). A parcel of land within an ES used by one or more operators in close association to install and use electronic communication equipment. A typical site has a building, constructed and/or owned by the primary operator, one or more units of equipment, and support facilities such as antenna tower, power supplies, parking areas, etc.

Equipment alone, such as passive reflectors or an antenna tower with tower-mounted equipment, also forms a CS, and may support more than one operator.

Operator. Individual, firm, or agency controlling through ownership, or purchase or rental agreement, electronic communication equipment located at a CS, that provides a specific communication service.

Primary Operator. An operator who is also the initial developer of a CS, or the successor in interest.

Secondary Operator. An operator sharing some or all of the primary operator's facilities.

Power Output. Maximum radio frequency (RF) power output of a communication transmitter as measured at the transmitter output jack.

Communication Equipment Includes:

Receive only, TV and radio receiving antennas, satellite dishes, passive reflectors, community antenna TV (CATV) antennas which retransmit by cable only, and any other equipment or structures designed solely for the reception of electromagnetic signals.

Transmit/Receive

2-Way Radio, base stations, repeaters, mobile telephones, paging systems, telemetry. Characterized by intermittent transmission when operating.

Microwave, continuous and intermittent microwave broadcast and satellite link systems.

Broadcast high and low power AM, FM, and TV stations, relays, and TV translators. Characterized by continuous transmission when operating.

Application of the Fee Schedule

Rates found in the market and shown in the fee schedule at the end of this document apply to Communication Sites (CS) rather than the individual permits.

Currently, all owners of communication equipment on NFS lands must have a separate special-use permit and receive separate bills. In the future, only primary operators, usually a building owner, will hold a permit and be billed by the Forest Service. The primary operator will lease space and/or equipment to tenants as in the past and will have responsibility for management of the facilities and the site. Until this change occurs the rate for a site will be prorated and then billed to the individual operators. In the same way, now and in the future, the fee for a given site would be reduced by a prorated amount for operators qualifying for fee waivers from the Forest Service.

Intensity of use is a factor identified in the market analysis. It has been expanded in the schedule to cover the kinds and range of use found on "typical" communication sites.

Antenna, passive reflectors, and satellite dishes are all considered low intensity uses. The rate applies to each unit of equipment.

Intensity of use for two-way radio is determined by the size of the operation. Low intensity is a single operator, medium intensity is two to six operators, high intensity is more than six operators.

Forest Service policy encourages the use of shared facilities and even requires it in some cases. This classification tends to penalize sharing where the addition of another operator raises the intensity of use from low to medium or medium to high. Where this would occur because the number of operators in a shared facility is increasing raise the fee by the old pro-rata amount as each new operator is added until the new fee level is reached.

Example: Zone 9/11—Lo $450 Medium $1200 High $1500; 1 operator=$450, 2=$900, 3–6=$1,200, 7=$1,400, 8+=$1500.

Microwave operations are rated by the number of dishes. Low intensity one dish, medium intensity is two or three dishes, high intensity is four or more dishes.

Broadcast operations are rated by RF power output. Low intensity is 0–10 watts, medium is 11 to 1,000 watts, high is over 1,000 watts. Where combinations of use exist, the higher applicable fee will be used.

Low intensity uses occupying more than 50 square feet of space with facilities and equipment will be considered medium intensity. Medium intensity uses are similarly limited to 120 square feet before being considered high intensity.

The intent here is to allow a reasonable but not excessive amount of space for the type of operation being considered. Forest Supervisors may adjust these figures ±20 percent by Forest, or by ES, to fit local conditions. Forest Supervisors may also waive this requirement for up to 5 years for operations in place on the date these regulations go into effect.

Isolated Uses—One-half the schedule rates may be used for receive only antenna at isolated locations where electronic site designation requirements have been waived per FSM 2728.11.

James C. Space,

Deputy Regional Forester.

COMMUNICATION SITE FEE SCHEDULE

[Intensity of use]

Geographic zone	Low	Medium	High
A. Coastal (Oregon and Washington) (Map zone 1):			
Receive only:			
Antenna	$100		
Passive reflector and satellite dish	400		
Transmit/receive:			
2-way radio, microwave and broadcast	400	$750	$1,400
B. Seattle Tacoma (Map zones 2 and 4):			
Receive only:			
Antenna	$100		
Passive reflector and satellite dish	400		

COMMUNICATION SITE FEE SCHEDULE—Continued

[Intensity of use]

Geographic zone	Low	Medium	High
Transmit/receive:			
2-way radio, microwave and broadcast	400	1,100	2,500
C. West of Seattle Tacoma (Map zone 3):			
Receive only:			
Antenna	150		
Passive reflector and satellite dish	500		
Transmit/receive:			
2-way radio, microwave and broadcast	500	1,250	3,900
D. Central Washington (Map zone 6):			
Receive only:			
Antenna	100		
Passive reflector and satellite dish	400		
Transmit/receive:			
2-way radio, microwave, and broadcast	400	1,050	2,150
E. NE. Washington (Map zone 7):			
Receive only:			
Antenna	100		
Passive reflector and satellite dish	300		
Transmit/receive:			
2-way radio, microwave, and broadcast	300	750	1,500
F. SE. Washington and Eastern Oregon (Map zone 9 and 11):			
Receive only:			
Antenna	100		
Passive reflector and satellite dish	450		
Transmit/receive:			
2-way radio, microwave, and broadcast	450	1,200	1,500
G. Portland-Vancouver SW. Washington (Map zone 8):			
Receive only:			
Antenna	100		
Passive reflector and satellite dish	300		
Transmit/receive:			
2-way radio, microwave and broadcast	300	1,100	1,950
H. Albany-Ashland (Map zone 10):			
Receive only:			
Antenna	100		
Passive reflector and satellite dish	350		
Transmit/receive:			
2-way radio, microwave and broadcast	350	1,100	2,400

[FR Doc. 86–27791 Filed 12–10–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–004]

Carbon Steel Wire Rod From Argentina; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement.

SUMMARY: On October 29, 1986, the Department of Commerce published the preliminary results of its countervailing duty administrative review and proposed revised suspension agreement on carbon steel wire rod from Argentina. The review covers the period September 27, 1982 through December 31, 1982 and four programs.

We gave interested parties an opportunity to comment on the preliminary results and proposed revised suspension agreement. After reviewing the comment received, we are revising the suspension agreement to specify more clearly the scope of the agreement and to include renunciation of a program found countervailable since the original agreement.

EFFECTIVE DATE: December 11, 1986.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 42393) an agreement suspending the countervailing duty investigation on carbon steel wire rod from Argentina. We began this review under our old regulations. On October 10, 1985, after the promulgation of our new regulations, the petitioners, Atlantic Steel Co., Continental Steel Co., Georgetown Steel Corp., Raritan River Steel Co., and North Star Steel Texas, Inc., requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of the suspension agreement. We published the new initiation on November 27, 1985 (50 FR 48825) and the preliminary results and proposed revised suspension agreement on October 29, 1986 (51 FR 39557). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Argentine carbon steel wire rod. The term "carbon steel wire rod" refers to a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, and not partly manufactured, and valued

over 4 cents per pound. Such merchandise is currently classifiable under item 607.17 of the Tariff Schedules of the United States.

Industria Argentina de Aceros, S.A., is the only known exporter of Argentine wire rod to the United States. The review covers the period September 27, 1982 through December 31, 1982 and four programs: (1) The reembolso; (2) post-shipment financing of exports under Circular OPRAC 1–9; (3) pre-export financing; and (4) incentives for exports from southern ports.

Analysis of Comment Received

We invited interested parties to comment on the preliminary results. We received a written comment from the Argentine government.

Comment: The Government of Argentina argues that, despite the determinations in cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984) and oil country tubular goods from Argentina (49 FR 46564, November 27, 1984) that the post-export financing program under Circular OPRAC 1–9 provided preferential loans, this program does not now provide preferential loans that could be used on exports to the United States. The nominal interest rate on these loans exceeds the rate of inflation and is the same as the regulated interest rate available for normal commercial credit transactions in Argentina.

Department's Position: We disagree. The interest rate charged through this program is a regulated rate, which the Central Bank sets monthly. For our current benchmark in Argentina, we use the weighted-average interest rate of comparable short-term loans available from Argentine banks, which is a combination of the regulated, unregulated and acceptance rates. The interest rate obtainable under OPRAC 1–9 financing is below the benchmark rate, and this program is therefore countervailable.

Final Results of Review

As a result of our review, we have determined that because of a misunderstanding concerning the scope of the suspension agreement, the Government of Argentina did not fully comply with the terms of the suspension agreement with respect to the reembolso during the period of review. After consideration of the comment, we are revising the suspension agreement to specify clearly that the scope of the agreement includes both low and high carbon steel wire rod and to include renunciation of post-shipment financing of exports under Circular OPRAC 1–9. The revised suspension agreement is attached as an appendix to this notice.

This administrative review, revised suspension agreement, and notice are in accordance with sections 704 and 751(a)(1) of the Tariff Act (19 U.S.C. 1671c and 1675(a)(1)) and §§ 355.10, 355.31 and 355.32(b) (19 CFR 355.10, 355.31 and 355.32(b)) of the Commerce Regulations.

Dated: December 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

Revised Suspension Agreement

Carbon Steel Wire Rod From Argentina

Pursuant to section 704 of the Tariff Act of 1930 ("the Act") and § 355.31 of the Commerce Regulations, the Government of the United States through its Department of Commerce ("the Department") and the Government of Argentina through its Ministry of Economy ("the Ministry") enter into the following revised suspension agreement ("the agreement"), on the basis of which the Department revises the suspension agreement that became effective on September 27, 1982 (47 FR 42395) with respect to carbon steel wire rod from Argentina. The agreement shall be in accordance with the terms and provisions set forth below.

A. Scope of the Agreement

The agreement applies to all carbon steel wire rod, both high carbon and low carbon, manufactured in Argentina and exported, directly or indirectly, from Argentina to the United States (hereinafter referred to as the "subject product"). The term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, and not partly manufactured, and valued over 4 cents per pound, as currently provided for in item 607.17 of the *Tariff Schedules of the United States.*

B. Basis of the Agreement

1. The Ministry hereby agrees to eliminate completely the amount of the net bounty or grant determined by the Department to exist with respect to the subject product. The elimination of the net bounty or grant shall be accomplished for all exports of the subject product made on or after the date of publication of the final results of the current administrative review in the Federal Register. The Ministry agrees that:

(a) It will not provide to manufacturers, producers, or exporters of the subject product, either directly or indirectly, any reembolso payment constituting a bounty or grant, as determined by the Department;

(b) The Central Bank shall not provide, either directly or indirectly, preferential dollar-indexed pre-export financing and that the Ministry shall submit documentation that the Central Bank prohibits such financing on any exports of the subject product; and

(c) The Central Bank shall not provide, either directly or indirectly, post-shipment financing for exports under Circular OPRAC 1–9 and that the Ministry shall submit documentation that the Central Bank prohibits such financing on any exports of the subject product.

2. The Ministry certifies that no new or equivalent benefits shall be granted on the subject product as a substitute for any benefits eliminated by the agreement.

3. The elimination of these benefits does not constitute an admission by the Ministry that such benefits are bounties or grants within the meaning of the U.S. countervailing duty law.

C. Monitoring of the Agreement

1. The Ministry agrees to supply to the Department such information as the Department deems necessary to demonstrate that it is in full compliance with the agreement.

2. The Ministry shall immediately provide copies of any resolutions, decrees or legislation governing the changes in the level of reembolso payments or of the indirect taxes rebated by these payments on any exports of the subject product as soon as such changes occur.

3. The Ministry shall notify the Department if any exporters of the subject product transship the subject product through third countries or apply for or receive, directly or indirectly, the benefits of the programs described in paragraph B.1 regarding the manufacture, production or export of the subject product.

4. The Ministry agrees to notify the Department of the volume and value of exports of the subject product within 45 days from the end of each calendar quarter.

5. The Ministry shall certify to the Department within 45 days from the end of each calendar quarter whether it continues to be in compliance with the agreement by eliminating the net bounty or grant referred to in paragraph B.1 and whether it has substituted any new or equivalent benefits for the benefits eliminated by the agreement. Failure to supply such information or certification

in a timely fashion may result in the immediate resumption of the investigation and possible issuance of a countervailing duty order.

6. The Ministry shall permit such verification and data collection as is requested by the Department in order to monitor the agreement. The Department will request such information and perform such verification periodically pursuant to administrative reviews conducted under section 751 of the Act.

7. The Ministry shall notify the Department if it decides to alter or terminate its obligations with respect to any of the terms of the agreement.

8. The Department shall notify the Ministry of any subsequent determination in this proceeding as a result of information provided by the Ministry with respect to the monitoring of the agreement.

9. The agreement shall remain in effect until the conditions of section 751(c) of the Act are met, unless the Department determines that paragraph D of the agreement applies.

D. Violation of the Agreement

If the Department determines that the agreement is being or has been violated or no longer meets the requirements of section 704 (b) or (d) of the Act, then section 704(i) shall apply.

E. Effective Date

The effective date of the agreement will be the date of publication of the final results of the current administrative review in the **Federal Register.** The provisions of paragraph B.1. a–c apply with respect to exports of the subject product on or after the effective date. No applications may be made after the effective date of this agreement for the benefits described in paragraph B on the subject product exported from Argentina before the effective date.

Signed in Washington, DC, on this 2nd day of December, 1986.

For the Argentine Ministry of Economy.

Roberto Jorge Frasisti,

Minister-Counselor, Embassy of the Argentine Republic.

I have determined that the provisions of paragraph B completely eliminate the bounties or grants that the government of Argentina is providing with respect to carbon steel wire rod exported directly or indirectly from Argentina to the United States and that the provisions of paragraph C ensure that this agreement can be monitored effectively pursuant to section 704(d) of the Act. Furthermore, I have determined that the agreement meets the requirements of section 704(b) of the Act and suspension of the investigation is in the public interest.

U.S. Department of Commerce.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–27729 Filed 12–10–86; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory, Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M in Room 1523, U.S. Department of Commerce, 11th and Constitution Avenue NW., Wash1ngton, DC.

Docket No.: 86–189R. Applicant: The New York Medical College, Department of Microbiology, Basic Science Building, Room 318, Valhalla, NY 10595. Instrument: Peptide Synthesizer. Manufacturer: Labortec AG, Switzerland. Original notice of this resubmitted application was published in the **Federal Register** of May 12, 1986.

Docket No.: 87–032. Applicant: University of Louisville, Department of Anatomy, School of Medicine, Louisville, KY 40292. Instrument: Electron Microscope, Model CM 12/S. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument will be used for high resolution ultrastructural studies of the following:

(1) The role of individual molecules (gangliosides) as mediators of neurotogenesis in order to understand their mechanisms,

(2) Distribution of ultrastructure components during neuronal development,

(3) Changes in microtubule distribution and other cytoskeletal structure during cell division and

(4) Degeneration of neuronal terminals and synapses in the trigeminal system.

Application received by Commissioner of Customs: November 13, 1986.

Docket No.: 87–037. Applicant: University of Arizona, College of Pharmacy, Tucson, AZ 85721. Instrument: GC/Mass Spectrometer, Model MAT–90. Manufacturer: Finnigan MAT, West Germany. Intended use: The instrument is intended to be used for research in the general areas of chemistry, biochemistry, medicinal chemistry, pharmacology, nutrition, food science and various areas of medicine. Biological samples will be extracted and submitted for capillary GCMS or direct probe analysis. The objectives of the experiments are to (1) obtain sufficient mass spectral data to permit assignment of structures to synthetic and natural products and drug metabolites, (2) investigate, develop and modify structure fragmentation rules for new heterocyclic ring systems and modified nucleosides and (5) permit the quantitation of compounds or drugs of interest in for the most part, biological systems, including plants, animals and humans. 1n addition, the instrument will be used for educational purposes in various pharmaceutical science courses.

Application received by Commissioner of Customs: Novembcr 12, 1986.

Docket No.: 87–038. Applicant: University of Florida, Department of Chemistry, Leigh Hall, Gainesville, FL 32611. Instrument: FT Interferometric Spectrophotometer, Model DA3.16. Manufacturer: Bomem, Canada. Intended use: The instrument will be used to carry out spectroscopic studies on the Raman scattering, absorption and fluorescence characteristics of a variety of atomic and molecular species over a wide spectral region. Specific projects will include:

(1) Surface Enhanced Raman and Fourier Transform UV/VIS/IR Photoacoustic Spectrometry of Polycyclic Aromatic Hydrocarbons and Related Molecules in Air Particulates.

(2) Surface Enhanced Raman Spectrometry (SERS) and Fourier Transform UV/VIS/IR Photoacoustic Spectrometry of Solvent Extracts of Environmental Materials.

(3) Fourier Transform UV/VIS/IR Emission Spectrometry of Particulates.

(4) Fourier Transform Atomic Absorption Spectrometry.

Application received by Commissioner of Customs: November 12, 1986.

Docket No.: 87–039. Applicant: Colorado State University, Fort Collins, CO 80523. Instrument: Stopped-Flow UV–VIS Spectrophotometer, Model SF–41S/SU–40A. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended use: The instrument will be used for stopped flow kinetic experiments which include systematic variation of the transition metal hydride complexes with respect to specific metal

centers and their ancillary ligands and the standard variations such as concentration and temperature. These experiments will be conducted to determine the rates of hydrogen atom abstraction from H–M, for a variety of transition metal hydride complexes. Application received by Commissioner of Customs: November 13, 1986.

Docket No.: 87–042. Applicant: National Institutes of Health, Division of Procurement, Building 31, Room 3C–07, Bethesda, MD 20892. Instrument: FTI-Spectrophotometer, Model DA3.16. Manufacturer: Bomem, Canada. Intended use: The instrument will be used to obtain the infrared vibrational spectra of biological materials. Specifically, both model and real biological lipid-protein bilayer assemblies will be investigated spectroscopically in an effort to elucidate the conformational, dynamical, thermodynamical and functional properties of a variety of cellular membrane systems. Application received by Commissioner of Customs: November 14, 1986.

Docket No.: 87–043. Applicant: NOAA/National Marine Fisheries Service, 3209 Frederic Street, Pascagoula, MS 39567. Instrument: Towed Underwater Submersible System, Model MANTA. Manufacturer: Sea–I Research Canada Ltd., Canada. Intended use: The instrument will be used for a continuing investigation of the potential of large mesh midwater trawls and high opening bottom trawls as sampling and harvesting gear for coastal pelagics in offshore waters. Application received by Commissioner of Customs: November 14, 1986.

Docket No.: 87–044. Applicant: Carnegie-Mellon University, 4400 Fifth Avenue, Pittsburgh, PA 15213. Instrument: FTI-Spectrophotometer, Model DA3.16. Manufacturer: Bomem Inc., Canada. Intended use: The instrument will be used in conjunction with a krypton-ion laser for studies of electronic states of molecules which are not observable with conventional spectroscopy. Various types of molecules will be investigated, ranging from biologically relevant proteins such as bacteriorhodopsin to molecules which exhibit well defined spectroscopic properties such as benzene. Application received by Commissioner of Customs: November 14, 1986.

Docket No.: 87–046. Applicant: The State University of New York at Stony Brook, Stony Brook, NY 11794. Instrument: Mass Spectrometer, Model MS 80 with Accessories. Manufacturer: Kratos Analytical, United Kingdom. Intended use: The instrument is intended to be used for mass spectrometer analyses in several faculty research programs which will include but is not limited to the following programs in the chemical and biomedical sciences:

(1) Synthesis of carcinogen-modified deoxynucleosides for incorporation into short sections of DNA,

(2) Studies of naturally-occurring antibiotic thermorubin (I),

(3) Synthesis of fluoro-arachidonic acids,

(4) Characterization of synthetic analogs for the active sites of metalloproteins and heterogeneous metal-sulfide catalysts,

(5) Analysis of the biosynthesis and processing of a neuropeptide precursor,

(6) Structural investigations of biological membranes,

(7) Novel approaches to chiral synthesis of peptides,

(8) New chemistry of azetidines and azetidin-2-ones and

(9) Synthetic studies of organofluorine compounds of biological interest.

In addition, the instrument will be used for course instruction in graduate and undergraduate courses in chemistry and biochemistry.

Application received by Commissioner of Customs: November 17, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–27776 Filed 12–10–86; 8:45 am]

BILLING CODE 3510-DS-M

[C–201–406]

Fabricated Automotive Glass From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 14, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on fabricated automotive glass from Mexico. The review covers the period October 24, 1984 through December 31, 1985 and 22 programs.

We gave interested parties an opportunity to comment on the preliminary results. After considering all of the comments received, the Department has determined the total bounty or grant during the period of review to be 2.45 percent *ad valorem* for 1984 and 0.17 percent *ad valorem* for 1985, the latter a rate the Department considers to be *de minimis*.

EFFECTIVE DATE: December 11, 1986.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 1906) a final determination and countervailing duty order on fabricated automotive glass from Mexico. On January 2, 1986, two Mexican exporters, Cristales Inastillables de Mexico, S.A. ("Crinamex"), and Vitro Flex, S.A., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on February 10, 1986 (51 FR 5751) and the preliminary results on July 14, 1986 (51 FR 25380). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican fabricated automotive glass, including tempered and laminated automotive glass. Such merchandise is currently classifiable under items 544.3100 and 544.4120 of the Tariff Schedules of the United States Annotated.

The review covers the period October 24, 1984 through December 31, 1985 and 22 programs: (1) FOMEX; (2) extra-CEDI; (3) Reembolso; (4) CEPROFI; (5) FICORCA II; (6) CEDI; (7) DIMEX; (8) FOGAIN; (9) FONEI; (10) import duty reductions and exemptions; (11) NDP preferential discounts; (12) Article 94 of the Banking Law; (13) export services offered by IMCE; (14) preferential state investment incentives; (15) state tax incentives; (16) FOMIN; (17) FIDEIN; (18) accelerated and immediate depreciation allowances; (19) Bancomext loans; (20) NAFINSA loans; (21) delay of payments on loans; and (22) delay of payments of fuel charges to PEMEX.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, PPG Industries, Inc., we held a public hearing on September 5, 1986.

Comment 1: Crinamex argues that the Department overstated the benefit from

a FOMEX pre-export loan that the company obtained on September 12, 1984, by basing the benefit on the entire amount of the loan rather than on the portion of the loan attributable to exports to the United States.

Department's position: We disagree. We verified the amount of the loan attributable to exports to the United States and used that amount, which was greater than the figure given in the questionnaire response, to calculate the benefit.

Comment 2: Crinamex and Vitro Flex contend that the Department erroneously attributed to 1984 the benefit from FOMEX pre-export loans obtained in 1984 but repaid in 1985. Since the "cash-flow" effect is realized when the interest is paid, the benefit should be attributed to 1985 exports.

Department's position: We agree and have corrected our calculations. (*See,* Department's position on Comment 4).

Comment 3: Crinamex and Vitro Flex argue that the Department overstated the benefit from FOMEX export loans obtained in 1984 by using an incorrect value for exports to the United States during that period.

Department's position: We agree and have corrected our calculations. (*See,* Department's position on Comment 4).

Comment 4: PPG argues that the Department understated the benefit from FOMEX loans by not using effective interest rates as benchmarks. In its preliminary determination, the Department stated that it had found that compensating balances appeared to be a normal requirement for both commercial loans and non-commercial loans, but that it did not have sufficient information to measure effective interest rates. PPG argues that there is sufficient information on the record to measure effective interest rates and that the Department is required by law and its own policy to use effective interest rates if possible.

Department's position: We agree. We now believe that we have sufficient information to measure benefits using effective interest rates. The Banco de Mexico ("the Bank") publishes in its *Indicadores Economicos* ("I.E.") both nominal and effective interest rates. Using data received from a sample of Mexican banks, the Bank bases the nominal I.E. rates on the Costo Porcentual Promedio ("CCP"), the average cost of funds to those banks, plus a spread that reflects a risk premium.

The effective I.E. interest rates are based on data received from a sample of companies representing a cross-section of the economy. These effective rates include finance charges, *e.g.*, commissions, fees for opening a line of credit, fees for credit renewal, prepayment of interest, compensating balances, etc., and may also include compounding of interest, since many of the loans included in the Bank's sample have short (2–3 month) terms. Both the nominal and effective I.E. interest rates are weighted averages of the rates reported to the Bank by the banks and companies in the respective samples.

To determine the effective interest rate benchmark for 1984 peso loans, we used the I.E. effective rates published each month and calculated an average annual effective rate. In 1985, the Bank stopped publishing the I.E. rates. Therefore, we calculated the average spread between the CPP rate and the I.E. effective interest rates for the period 1982 through 1984, the only period for which we have I.E. rates. Our effective interest rate benchmark for 1985 was the sum of this average spread and the average CPP rates for 1985. For the FOMEX pre-export loans, we found no evidence of finance charges of any kind. Since interest on these loans is paid at the end of the term, we consider the nominal preferential rate to be the same as the effective preferential interest rate.

To determine the effective interest rate benchmark for 1985 dollar loans, we used the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin. These weighted-average effective interest rates are based on data, for fixed rate loans under one million dollars, received from a survey of gross loan extensions made by various banks during one week of each quarter. The effective rates include the various terms of the loans in addition to the interest rate. On FOMEX export (dollar) loans, the interest is prepaid. Since we have no evidence of any charges on these loans other than interest, we calculated the effective interest rate by using the nominal rate and taking into account the cost of prepayment of interest. For 1984 dollar loans, there was no comparable data on effective interest rates in the Federal Reserve Bulletin. As a result, we lack sufficient information to measure an effective interest rate benchmark and are using a nominal interest rate benchmark and comparing it to a nominal preferential interest rate.

By using effective interest rates to the extent possible and making the adjustments noted in Comments 2 and 3, we now find the benefit from FOMEX loans to be 2.45 percent *ad valorem* for 1984 and 0.17 percent *ad valorem* for 1985.

Comment 5: PPG argues that the Department was in error in its determination concerning the existence of the extra-CEDI program (CEDI's provided to export consortia). PPG contends that the extra-CEDI program still exists and that during the period of review, the Mexican government continued to grant extra-CEDI's to such export consortia. Further, PPG claims that the Mexican automotive glass industry benefits from both CEDI's and extra-CEDI's by means of a pass-through from Vitro, S.A., the parent company of Crinamex and Vitro Flex, and from Fomento de Comercio Exterior ("FCE"), an export consortium.

Department's position: Regardless of the existence of a program called "extra-CEDI" or the continued availability of CEDI's to export consortia, we verified that Vitro, S.A., as a holding company and the parent company of the two exporting companies, did not receive CEDI's during the period of review. We also verified that FCE, which is a subsidiary of Vitro, S.A., and which is involved strictly with promotional activities, had no direct connection with exports of automotive glass to the United States.

Comment 6: PPG argues that the Department failed to address the countervailability of benefits received through the FICORCA I program despite the submission of significant supplemental information showing that benefits under FICORCA I are not "generally available." PPG states that: (1) The Mexican government pre-selected beneficiaries; (2) four major prerequisites to participation in FICORCA I serve to limit the availability of the program; and (3) the *de facto* general availability test is not met in this case, where, out of 1,200 companies that participate in FICORCA I, 23 companies account for 63 percent of total coverage. In addition, PPG contends that the *de jure* and *de facto* general availability test requirements have been modified, superseding the Department's earlier determination that this program is not countervailable. The new requirements should be taken into account along with the above information to determine that FICORCA I is not generally available.

Department's position: We did not include the FICORCA I program in this review because we found it not countervailable in the final determination on float glass from Mexico (49 FR 23097, June 4, 1984). We have reviewed the new information presented by PPG and continue to uphold our determination that the FICORCA I program is not provided to a specific enterprise or industry, or group of enterprises or industries, and that the program is not countervailable. (*See,*

preliminary results of countervailing duty administrative review on unprocessed float glass from Mexico (51 FR 37319, October 21, 1986).)

Comment 7: PPG argues that the Department's verification during the current review was inadequate because it failed to address whether Vitro, S.A., the parent company of both Crinamex and Vitro Flex, received countervailable benefits. These benefits may have directly or indirectly benefited the manufacture, production or export of automotive glass.

Department's position: We disagree. We verified Vitro, S.A.'s federal income tax statements for both 1984 and 1985 and found that it did not receive benefits under any of the various federal tax incentive programs (*e.g.*, CEDI, CEPROFI). We further verified that Crinamex and Vitro Flex received no cash transfers from Vitro, S.A., or FCE and that all cash transfers from Crinamex and Vitro Flex to Vitro, S.A., or FCE were for various services provided.

Comment 8: PPG contends that the Department failed to use the proper time periods for measuring countervailable benefits. The Mexican automotive glass producers have allegedly discontinued receiving benefits as of February 7, 1985. The Department should therefore revise the time periods analyzed as follows: November 1, 1984 through February 7, 1985 (the date of renunciation of benefits), and February 7, 1985 to December 31, 1985. PPG argues that this method would correct the current distorted measure of the level of subsidization. PPG cites *Ceramic Tile from Mexico* (49 FR 9919 (1984)), and *Offshore Platform Jackets and Piles from Korea* (51 FR 11799 (1986)), among other cases, where the Department has used time periods that were not based on a calendar or fiscal year.

Department's position: We disagree. We have traditionally separated the period of review according to calendar year, or fiscal year where necessary, in order to facilitate the collection of information. We believe that this standard provides consistency and predictability to both the petitioners and respondents, whereas PPG's choice of periods is arbitrary.

In certain cases, we have made exceptions to this rule due to unusual circumstances but have clearly stated in each case that such action does not represent a change in Department policy. In *Offshore Platform Jackets and Piles from Korea*, we lacked a period representative of the total subsidy bestowed on all exports of the merchandise. We could only tie specific benefits from specific subsidy programs to each platform exported over a two-year period. In *Ceramic Tile from Mexico*, we started the review period on February 23, 1982 because that was the date of the preliminary determination, and we lack authority to assess duties prior to that date.

As another example, in *Sugar Content of Certain Articles from Australia* (50 FR 27330 (1985)), we calculated two separate subsidy rates within the calendar year review period in response to a program-wide change in an export sugar rebate program. We found it necessary to set two separate rates because the rebate category covering the merchandise under review changed in the middle of the review period.

At the outset of this review, we clearly identified the time period for the review in our questionnaire. Furthermore, the calendar year coincides with the fiscal year of the two companies involved. Adjusting the period of review as the petitioners suggest, with no compelling reason, would set a precedent by which either party could arbitrarily manipulate the time period set for a review in order best to serve its own interests. One could spread a given benefit over a long enough period of time to obtain a *de minimis* rate. Likewise, one could take a given benefit and sufficiently limit the time period to obtain an excessive rate. Such a precedent would severely undermine the Department's policy, particularly the *de minimis* standard.

Comment 9: Crinamex and Vitro Flex contend that, with the implementation of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" ("the Understanding") on April 23, 1985, the United States no longer has the authority to impose countervailing duties on duty-free articles from Mexico (including fabricated automotive glass) covered by existing orders absent an affirmative injury determination by the International Trade Commission ("ITC"). The Understanding creates an international obligation for the United States to grant the injury test prior to the imposition of countervailing duties on any Mexican products that are duty-free. The Department should refer the case to the ITC for an injury determination or revoke the countervailing duty order. In two instances involving duty-free products covered by section 303 countervailing duty orders, *Certain Fasteners from India* (47 FR 44129, October 6, 1982) and *Carbon Steel Wire Rod from Trinidad and Tobago* (50 FR 19561, May 9, 1985), the Department has refused or preliminarily refused to impose duties. The circumstances in those cases are very similar to those of fabricated automotive glass from Mexico and should serve as precedents.

Contrary to the Department's stated belief that the Understanding creates an international obligation requiring the United States to grant an injury test only prospectively, the Understanding does require the injury test for pre-existing orders. The Department's distinction between "investigations in progress" (as used in Article 5 of the Understanding) and existing orders renders Article 5 of the Understanding superfluous in light of section 102(a) of the Trade Agreements Act of 1979, since section 102(a) specifically provides for the application of an injury test for cases that have not yet resulted in the issuance of countervailing duty orders.

Finally, in the final results of administrative review on certain iron-metal construction castings from Mexico (51 FR 9698, March 20, 1986) ("the castings final"), the Department distinguished between the "international obligation" stemming from the Understanding with Mexico and that existing with India and Trinidad and Tobago. The Department stated that India and Trinidad and Tobago were already signatories to the GATT when the product covered by an order became duty-free.

According to the Department, the reverse is true in this case, where duty-free status already existed at the time of the order but no "international obligation" of the United States existed. However, Crinamex and Vitro Flex point out that since the castings final was published, Mexico has become a member of the GATT, effective August 24, 1986. This now creates an "international obligation" of the United States to grant Mexico the injury test in section 303 cases on duty-free goods.

However, PPG states that Mexico's accession to the GATT does not provide retroactive application of the injury test for outstanding orders on duty-free merchandise. Mexico's accession to the GATT did not occur prior to issuance of an order in this case or during the current review period. PPG contends that accession to the GATT does not provide retroactive benefits. There is no language in Article VI of the GATT or in the U.S. countervailing duty law that supports a retroactive application of the injury test for outstanding orders on duty-free mechandise. Nor is there supportive language for revocation of outstanding countervailing duty orders for countries that were not signatories to the GATT at the time of issuance of the countervailing duty order. Further, revocation in this instance would be

contrary to the intent of Congress and would grant Mexico greater rights than countries that have long since been signatories to the GATT.

Department's position: As explained in the castings final, we believe that we lack the authority to revoke this countervailing duty order on the basis of the Understanding. We confirmed with the principal U.S. negotiators that the intent of Article 5 was to exclude from the application of the Understanding, and hence the application of "country under the Agreement" status, orders existing before April 23, 1985.

We are currently considering the issue of whether Mexico's accession to the GATT impinges on our authority to impose countervailing duties on duty-free products from Mexico. Since Mexico's accession became effective on August 24, 1986, our decision will not affect entries covered by this review, which runs through December 31, 1985.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be 2.45 percent *ad valorem* for 1984, and 0.17 percent *ad valorem* for 1985. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department will instruct the Customs Service to assess countervailing duties of 2.45 percent of the f.o.b. invoice price on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 24, 1984, and exported on or before December 31, 1984. The Department will also instruct the Customs Serice not to assess countervailing duties for shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with seciton 751(a)(1 of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

December 4, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27775 Filed 12-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. OEE-3-86]

Bollinger GmbH et al.; Order Renewing Temporary Denial of Export Privileges

In the matter of Bollinger GmbH, Roseggergasse 34, 1160 Vienna, Austria; Leopold Hrobsky, Donaufelderstrasse 38, Stg. 4, Apt. 4, 1210 Vienna, Austria; Dietmar Ulrichshofer, with addresses at Kirchenstrasse 1, 3061 Ollersbach, Austria; and c/o Bollinger GmbH, Roseggergasse 34, 1160 Vienna, Austria, and Vrablicz and Company, Steinergasse 11, 1170 Vienna, Austria; Respondents.

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. sections 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), has asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Dietmar Ulrichshofer; Bollinger GmbH, which is owned by Dietmar Ulrichshofer; Leopold Hrobsky; and, Vrablicz and Company (hereinafter collectively referred to as respondents). Ulrichshofer, who is subject to an outstanding indictment in the U.S. District Court for the Central District of California for conspiracy to violate U.S. export controls and is a fugitive from U.S. justice, resides in Ollersbach, Austria; all of the other respondents reside in Vienna, Austria. The initial order was issued on August 12, 1986 (51 FR 29509, August 18, 1986) and renewed on October 11, 1986 (51 FR 37210, October 20, 1986).

The Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have conspired and acted in concert to violate the Act and the Regulations. The Department has reason to believe that the purpose of the conspiracy is to obtain U.S.-origin goods from third countries for ultimate destination in proscribed countries, without obtaining the required authorization from the Department for such shipments. The Department has reason to believe that respondents have participated in the unauthorized reexport of U.S.-origin commodities, including computer equipment and peripherals, from Austria to proscribed destinations, without authorization from the Department. Indeed, the Department has provided a statement by the U.S. Customs Attache in Austria that his aspect of the investigation has revealed that respondent Vrablicz, on August 5, 1986, reexported such commodities to Czechoslovakia, which commodities were "owned" by respondent Bollinger.[1] The Department further shows that a statement given by the Customs Attache indicates that respondents currently have in their possession and control in Vienna, Austria, additional U.S.-origin equipment which requires authorization from the Department to permit its reexport from Austria. The Department has shown that there is a presumption of denial for any request seeking authorization to reexport this U.S.-origin equipment to proscribed destinations and states that, in any event, no such authorization has been requested. Nevertheless, the Department has reason to believe that respondents may attempt to reexport these U.S.-origin goods to proscribed destinations.

The Department states that the investigation gives it reason to believe that the violations under investigation were deliberate and covert. The Department has shown that respondents Ulrichshofer and Hrobsky directed sales of commodities covered by the investigation to the Soviet Bloc. The Department has also shown that Ulrichshofer is involved with other parties in reexporting U.S.-origin commodities from Austria to proscribed destinations without authorization from the Department. Further, since the respondents currently have possession and control of U.S.-origin goods subject to the Act and the Regulations, the Department states that violations are likely to occur again. The Department submits that renewal of the temporary denial order naming respondents is necessary for the purpose of giving 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 likelihood that respondents will continue to engage in

[1] In a letter to the Deputy Assistant Secretary for Export Enforcement, dated August 28, 1986, counsel for Vrablicz acknowledged that it has carried out shipping services for Bollinger on several occasions, but denied liability, under Austrian law, for any violation of the Export Administration Act or the Regulations.

activities which are in violation of the Act and the Regulations.[2]

Therefore, based on the showing made by the Department, I find that renewal of the order temporarily denying export privileges to respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations 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. None of the respondents filed an opposition to the Department's November 20, 1986 request for the renewal of the temporary denial order.

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 by returned forthwith to the Office of Export Licensing for cancellation.

II. The repondents, 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 therefrom 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, transshipment, 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 or, 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 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 is effective December 10, 1986 upon expiration of the October 11, 1986 Order and shall remain in effect for 60 days.

VII. 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 date. 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 shall be served upon each respondent and published in the **Federal Register.**

Dated: December 5, 1986.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 86-27856 Filed 12-10-86; 8:45 am]

BILLING CODE 7020-02-M

[2] In yet another letter to the Deputy Assistant Secretary for Export Enforcement, dated September 29, 1986, respondent Vrablicz, through counsel, denied liability, under Austrian law, and stated that there is "close cooperation and assistance" (presumably between Vrablicz and U.S. authorities) in the clarification of the transactions which gave rise to this Order. It is fitting to note here that whether respondent Vrablicz is culpable under foreign (Austrian) law, is not controlling--even if relevant--on the resolution of the question under consideration, that is, whether renewal of temporary denial order against Vrablicz and certain other respondents "is necessary in the public interest to prevent an imminent violation" of the Act and the Regulations. While cooperation with appropriate U.S. authorities on the part of a respondent of a temporary denial order could have bearing on the issue of "imminent violation", it is not dispositive of the Department's request for renewal of the order. In this regard, the sworn statement of U.S. Customs Attache Urbanski, on August 21, 1986, which was provided by the Department in support of its request for renewal, casts doubt on Vrablicz's claim of cooperation. In any event, if the Department (Office of Export Enforcement) should show that *it* is satisfied by any effort of cooperation on the part of Vrablicz *and* that a temporary denial of export privileges is no longer necessary against Vrablicz, this Order could be accordingly modified.

[C-412-020]

Stainless Steel Plate From the United Kingdom; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On September 25, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on stainless steel plate from the United Kingdom. The review covers the period February 10, 1983 through March 31, 1984 and four programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all of the comments received, we have determined the net subsidy for the period of review to be 30.11 percent *ad valorem.*

EFFECTIVE DATE: December 11, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Marselian or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 25, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 34112) the preliminary results of its administrative review of the countervailing duty order on stainless steel plate from the United Kingdom (48 FR 28690, June 23, 1983). The Department has completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). We revoked this order effective March 1, 1986 (51 FR 29144, August 14, 1986).

Scope of Review

Imports covered by the review are shipments of U.K. stainless steel plate. Such merchandise is currently classifiable under items 607.7605 and 607.9005 of the Tariff Schedules of the United States Annotated.

The review covers the period February 10, 1983 through March 31, 1984 and four programs: (1) Public dividend capital and new capital; (2) National Loan Fund loans and loan conversions; (3) regional development grants; and (4) Iron and Steel Industry Training Board grants.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the petitioners, Allegheny Ludlum Steel Corporation, Armco, Inc., Jessop Steel Company, LTV Specialty Steels, Inc., Cyclops Corporation, Washington Steel Corporation, and the United Steelworkers of America, and the respondents, British Steel Corporation and British Steel Corporation, Inc. ("BSC").

Comment 1: BSC claims that, by focusing exclusively on considerations that would motivate the investment decisions of an outside investor, the Department incorrectly determined that BSC was not equityworthy during the review period. Unlike an outside investor, the British government, as the sole investor, had to consider taking steps to minimize BSC's losses and to encourage the company's return to profitability.

Department's Position: Section 771(5) of the Tariff Act defines as a subsidy "(t)he provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations," when provided to a specific enterprise or industry or group of enterprises or industries. To determine whether equity infusions constitute subsidies, we apply the standards set forth in the Subsidies Appendix to the notice of final affirmative countervailing duty determination and order on certain cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984) ("the Subsidies Appendix").

We first attempt to compare the price paid by the government for a share in the company with the market price of that share. Where there is no market price for the share, as in this case where the government is the sole owner of the company, the Department places itself in the position of a private investor assessing the prospects of the company at the time of the investment.

When deciding whether to invest, a private investor will assess the current financial position of the firm and consider its past performance. He will look upon any past investments, including his own, as sunk costs, irrelevant to his analysis of whether to make additional investments. His decisions are made at the margin; they concern maximizing the return on incremental outlays. His decision concerns future cash flows which are anticipated to occur, or not occur, based on actions taken today. If the company shows the ability to generate a reasonable rate of return on equity within a reasonable period of time, a private investor might make the investment.

BSC's argument focuses on what steps the British government, as the sole investor, should reasonably have taken. The fact that the British government's equity infusions during the review period may have been "rational" from its viewpoint has no bearing on how a private outside investor would, at that time, have assessed the prospects for a reasonable rate of return within a reasonable period of time.

The tests that BSC proposes as a measure of equityworthiness may be useful tools for corporate management in deciding how long to operate a loss-incurring company, or in evaluating proposed projects, but they are not relevant to the "reasonable investor" test.

Comment 2: BSC contends that the Department's review of the company's financial data fails to take into account the improvement in the company's financial picture in the review period. Various financial indicators had improved sufficiently during the review period so as to belie a finding that BSC was an unreasonable commercial investment. In particular, the current ratio, the return on equity, the inventory turnover rate, and labor productivity all showed healthy improvements during the review period. What's more, these positive financial trends continued to be strong in the years after the review period. According to BSC, the ability of major integrated steel producers in the United States to attract equity investment and obtain credit during the review period—a time during which the U.S. producers recorded financial results similar to, or worse than, those of BSC—undermines the Department's finding that investment in BSC during the review period was inconsistent with commercial considerations.

Department's Position: We review various financial ratios and market studies in order to make an equityworthy judgment. An outside investor would look at information available at the time he is making a decision to invest. The financial data for the review period and the years following would not yet have been available at the time that the investor had to decide whether or not to invest. We cannot make an analysis that is predicated on hindsight.

BSC makes an inappropriate comparison of its position during the review period with that of several U.S. integrated steel producers. A cross-border comparison of this nature neglects the economic and financial factors that motivate investors. More importantly however, unlike BSC, the U.S. producers did not have a history of continuing losses. In determining whether a company is equityworthy, we examine the company's recent financial history. None of the U.S. producers cited by BSC had any losses during the years immediately preceding 1982. In 1981, all six U.S. producers cited by BSC showed healthy profits, whereas BSC had large losses.

Comment 3: BSC claims that the trade journals and market studies that the Department considered are too general and cannot by themselves support the conclusion that the company was not equityworthy. The studies used by the Department projected the beginning of an upturn in 1984. Therefore, the Department cannot support the conclusion that no reasonable investor would invest in an industry with potentially favorable long-term returns, and in a dramatically improving company, such as BSC.

Department's Position: We do not base an equityworthy decision on any one item of information or any one financial ratio. We look at a composite of available information. Even if the

market studies are too general, they are important to an investor in depicting future trends and in assessing alternative investments.

The studies that BSC cites do project a relative upturn in 1984 for the European Economic Community ("the EC") as a whole. However, the upturn noted for 1984 is relative to the doldrums of 1982 and 1983. While the OECD study projected a small recovery in the EC's steel consumption levels in 1984, it also predicted the worst capacity utilization rate in the world and a continuing downward pressure on prices caused by overcapacity. The Data Resources, Inc., study noted that the EC Commission had projected a flat world market for the first part of 1984.

A reasonable investor would consider all this information before making an investment decision. BSC places undue emphasis on financial data available in the latter part of the review period or beyond, and on relatively minor optimistic trends reported in certain trade journals.

Comment 4: BSC contends that the Department committed an error by treating all government equity infusions as countervailable subsidies without considering the uses to which the equity funds were put. Funds used for the company's restructuring efforts and redundancy and closure costs are not countervailable.

Department's Position: Restructuring, redundancy and plant closure funds relieve a firm of significant financial burdens, make it more efficient, and enhance its competitiveness. Such funds unquestionably provided indirect, if not direct, benefits to BSC's manufacture, production or export of steel and are consequently countervailable. The argument that these funds were spent in pursuit of commercially sound goals is irrelevant to the question of whether their receipt constituted a countervailable subsidy.

Comment 5: BSC contends that equity funds used to acquire capital assets taken out of use before the expiration of their useful life cannot be countervailable beyond the year of the assets' retirement. Therefore, the 15-year allocation period for funds associated with a retired asset is inappropriate.

Department's Position: BSC confuses the benefit conferred by the use of the asset with the benefit conferred by the subsidy used to acquire the asset. Although a company does not continue to benefit from the use of an asset after its retirement, the benefit from the subsidy does not cease. After retirement of its assets, BSC did not repay to the government funds used to acquire those assets and had no obligation to repay them. Therefore, BSC continued to benefit from the subsidy.

Comment 6: BSC claims that the Department's continued use of the 15-year valuation methodology in the preliminary results, despite the rejection of this methodology by the Court of International Trade ("the CIT"), is a "flagrant assault on the Court's order." It is incorrect to allocate benefits from equity infusions over the average useful life of physical assets in the steel industry. Instead, the Department should rely on generally accepted accounting principles and the uses to which the funds are put.

Department's Position: The CIT's decision, in *British Steel Corp. v. United States*, 632 F. Supp. 59, Slip Op. 86–37 (March 31, 1986) ("British Steel II"), is not final. It is, therefore, only binding in the pending court action and any remand of that action.

However, mindful of the opinion in *British Steel II*, we have considered various periods over which benefits from nonrecurring subsidies, such as an equity infusion or a grant, should be allocated. We have concluded that there are no economic, financial, or accounting rules that mandate the choice of an allocation period. This is because the long-term commercial and competitive benefit of an equity infusion or grant cannot be measured *with precision*.

Regardless of the particular uses to which the British government's equity infusions into BSC were put, it is clear that these funds provide long-term benefits, bolstering all phases and aspects of the company's production and prolonging its viability for an indefinite period. If the funds are used to purchase a piece of capital equipment, for example, benefits arise as long as that equipment produces output. Also, the profit earned on the sale of that output can be reinvested, extending the benefits beyond the original equipment. Furthermore, when the original equipment is worn out, it can be sold as scrap and the proceeds reinvested. Viewed in this way, the initial funds will benefit the company as long as the company exists, perhaps for infinity.

Despite this, we cannot allocate the benefit from the date of receipt to infinity. An allocation period of infinity would result in no measurable benefit in any one year. Consequently, it is necessary to truncate this infinite stream of benefits at some point, thereby defining an allocation period.

The major allocation methods that we have considered include: a single fixed allocation period for all cases, the average life of long-term debt for the company receiving the subsidy, and the average useful life of assets in the industry.

The first allocation method—a single fixed allocation period for all cases (such as 10 years)—would be readily administrable and would provide consistency and predictability. It accomplishes the goal of truncating the benefit stream. However, we have rejected the random choice of a number because it is arbitrary and capricious. Also, because a fixed allocation period does not take into account differences in industries, it does not measure the impact of a subsidy on the long-term activity of a company.

The second allocation method, the average life of long-term debt, is based on the premise that long-term debt is the most likely alternative source of funds absent the subsidy. However, as we noted in the Subsidies Appendix, "[i]t does not help to hypothesize how the company would have raised the funds absent the [subsidy]. Firms raise money primarily through sales, secondarily through debt, equity, and non-operating income." By assuming that the alternative source of funds is long-term debt, we would be arbitrarily eliminating the other sources of funds. Although it is relatively easy to attach a maturity date to debt instruments, there is no absolute rule that a rational firm would increase its debt before attempting to promote sales, issue new stock, or raise its non-operating income (such as through the sale of fixed assets). In fact, in the absence of the subsidy, there is no reason to assume that the firm would have done anything at all to "replace" the benefits from the subsidy; it is just as likely that the firm would have done without the benefit and continued business as usual.

Long-term loans are normally associated with specific projects or specific capital assets. Because the cost of capital on long-term debt is often measured against returns from very discrete portions of a firm's overall activity, the average life of that debt is the antithesis of the benefit stream that we are trying to capture. We have repeatedly noted that equity infusions cannot be tied to specific operations of a company (*see, e.g.*, our positions on Comments 4 and 5). Regardless of the uses of increased equity, a company receives a host of benefits in the form of relief from other financial burdens that affect the whole company. There is no connection between the life of a benefit from an equity infusion, which affects all aspects of a firm's activity, and the average life of long-term debt, which is

associated with only specific assets or specific projects.

Furthermore, there are a number of practical difficulties associated with the average life of long-term debt as an allocation measure. Firms do not raise long-term capital routinely or consistently. It is very likely that a firm would not have taken out any long-term loans in the year than an equity infusion occurred. In that case, we would have to decide how far into the past to go—whether it be five years, ten, or even twenty. We could also examine the period after the year of the infusion, but again we would have the problem of determining how far into the future would be appropriate. We might have to determine how many loans to include in our average—whether, for example, there should be a minimum number. We might need to determine whether there is a representative sample of loans from a cross-section of the firm's activities. If we found no long-term debt at all (a likely prospect in many hyper-inflationary economies), we might have to ascertain a national average long-term debt life, a statistic that would not be available in many countries (we are unable to locate such information even for the United States).

Assuming that we solved all of these problems, the average life of long-term debt will still vary greatly among companies and countries, so that its use as an allocation period would lead to wildly inconsistent results. There would be no way of knowing the average life of long-term debt before conducting a thorough investigation. The Department must be able to advise foreign governments and companies how far back in time they must go when reporting potentially countervailable practices. Parties considering filing a countervaling duty petition alleging past grants, or equity infusions on terms inconsistent with commercial considerations, would also be disadvantaged in that they could not know whether the allocation period would be long enough to capture any benefit from those practices in the period of investigation.

Given that this approach bears no particular relation to the commercial and competitive benefits of the subsidy, and considering all of these problems, it is difficult to justify the choice of the average life of long-term debt as the most appropriate allocation method.

The third allocation method, the average useful life of assets in the industry, avoids the shortcomings of the other approaches, while providing consistency, administrability, and predictability. This method provides for consistent treatment among different companies and countries, while at the same time allowing for differences in industries. With regard to administrability, it makes the collection and analysis of information easier for the Department. It also lets petitioners and respondents know the period over which countervailable grants and equity infusions will be considered to confer benefits.

The average useful life of physical assets is an estimate of the duration of the benefit a firm will obtain from an asset. The U.S. Internal Revenue Service ("IRS") tables approximate the most appropriate period over which to measure the benefit from all physical assets used in the industry. It is, therefore, superior to the average life of long-term debt, which would be biased towards specific assets and specific projects. Equity infusions and grants benefit a firms's overall activity.

The average useful life of assets as a measure of the benefit stream is arbitrary only to the extent that there does not seem to be any precise measure of the duration of the benefit stream from an equity infusion. However, our decision to use it as an allocation method is not arbitrary. We believe that the average life of physical assets is a reasonable measure of the duration of the benefit to a firm's overall activity. Finally, we believe that the use of the IRS tables is appropriate because the useful life of physical assets within the same industry does not vary greatly from country to country. Moreover, the IRS tables provide a single standard to which all interested parties can refer.

Comment 7: BSC claims that the Department's conclusion that the company was uncreditworthy during the review period is erroneous because it had certain strong financial ratios at that time. The Department is self-contradictory in finding the net worth to long-term debt ratio to be "poor" in its creditworthiness discussion, but "adequate" in its equityworthiness discussion.

Department's Positions: As with our equityworthy decisions, we look at a composite of ratios when making creditworthy decisions. The composite of ratios differs for the two types of decisions. Where a ratio may be adequate in an equityworthy decision, it may be inadequate in a creditworthy decision. To decide whether BSC was creditworthy during the review period, we analyzed short-term liquidity and long-term solvency ratios. The ratio that titled our decision toward uncreditworthiness was the times interest earned ratio. This ratio measures the security of the return offered to bondholders and creditors. Often the return to a company's creditors in considered secure if the company consistently earns its interest charges two or more times each year. BSC did not meet this criterion during the review period. The company had consistent negative times interest earned ratios since 1970/80, despite the large loan forgiveness by the British government in 1981. Therefore, the security of the return to creditors was in doubt.

Comment 8: BSC objects to the Department's valuation of the loan forgiveness by the British government in 1981. The methodology is flawed for two reasons. First, the Department used the 15-year valuation methodology which, according to the CIT, is contrary to law. According to generally accepted accounting principles, the extinguishment of indebtedness is realized exclusively in the year of receipt. Second, if the benefit is to be amortized, the Department's use of the 1981 corporate bond rate as the discount rate is erroneous. The proper value of the benefit is the actual rate of interest BSC was liable for on the existing loans, not the interest rate prevailing in the year of forgiveness. For this reason, the Department should recalculate the benefits from the 1981 loan forgiveness in accordance with the actual repayment schedules of the loans forgiven.

Department's Position: BSC ignores the fact that the 1981 debt forgiveness was actually a debt conversion. The conversion of debt to equity is analogous to an equity infusion. By using BSC's method, we would be ignoring part of the overall benefit: concomitant with the forgiveness of debt, the company acquired new equity investment. By treating the debt conversion as only an extinguishment of indebtedness and expensing it in the year of receipt, we would be ignoring the totality of economic effects and consequences of the debt conversion. Debt conversion affects a company's prospects in ways that extend beyond simply relieving it of making certain loan repayments. For example, after the loan is forgiven, the company's debt level drops and its debt/equity ratio improves. The company can now more easily contract debt; it is suddenly a more attractive investment. In effect, a new company has been created.

Since the benefit is to be amortized to capture the totality of the commercial and competitive benefit to BSC, the appropriate discount rate must come from 1981, the year in which the equity infusion occurred. In accordance with our equity methodology as outlined in the Subsidies Appendix, we treated this equity infusion in exactly the same

manner as we treated PDC and NC infusions. Since the loans were converted in 1981, it is appropriate and reasonable to use the 1981 corporate bond rate as the cost of obtaining new capital in that same period. Our methodology recognizes that the financial conditions prevailing at the time the loan is converted are more important than those in effect when the loan was granted, and that the benefit stream resulting from the loan conversion should resemble that resulting from an equity infusion rather than being determined by the number of years left in the loan repayment schedule or the actual rate of interest BSC was liable for on the converted loans.

Our approach will not necessarily lead to higher countervailable benefits than those associated with BSC's suggested approach. Our equity methodology only produces a countervailable benefit in years where we find a rate of return shortfall. *See,* the Subsidies Appendix.

Final Results of Review

After considering all of the comments received, we determine the net subsidy during the period of review to be 30.11 percent *ad valorem.*

The Department will instruct the Customs Service to assess countervailing duties of 30.11 percent of the f.o.b. invoice price on any shipments of U.K. stainless steel plate entered, or withdrawn from warehouse, for consumption on or after February 10, 1983, and exported on or before March 31, 1984.

Further, because we have revoked this order (51 FR 29144, August 14, 1986) effective March 1, 1986, we will not instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: December 4, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27862 Filed 12-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. OEE-4-86]

George Lartides et al.; Order Temporarily Denying Export Privileges

In the matter of George Lartides, individually and doing business as Stamatiou & Lartides Ltd., with addresses at Ellis 3 Strovolos, Nicosia, Cyprus, and, c/o Stamatiou & Lartides Ltd., P.O. Box 1604, 22 Ionos Street, Nicosia, Cyprus, and, MIS Services Ltd., P.O. Box 5130, 27 Akamas Street, Nicosia, Cyprus; Respondents.

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), has asked the Deputy Assistant Secretary for Export Enforcement to issue an order temporarily denying all United States export privileges to respondents George Lartides,[1] individually and doing business as Stamatiou & Lartides Ltd. (S&L), and MIS Services Ltd. (hereinafter collectively referred to as respondents). All respondents reside or are located in Nicosia, Cyprus.

The Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have (1) engaged in the unauthorized reexport of U.S.-origin commodities, including computer equipment, from Cyprus to proscribed destinations, including the Soviet Union, and (2) indirectly caused the filing of false and misleading information with the Department for the purpose of effecting reexports from Western Europe to Cyprus and through Cyprus to proscribed destinations.

The Department further states that it has reason to believe that the respondents are continuing in their efforts to obtain U.S.-origin goods for diversion from Cyprus to proscribed destinations by misrepresenting the ultimate destination of the goods to be purchased. If the respondents are successful in their continuing efforts to acquire U.S.-origin goods, the Department states that there is reason to believe respondents would again attempt to reexport them to proscribed destinations without obtaining the required authorization from the Department.

The Department states that its investigation gives it reason to believe that the violations under investigations were deliberate, covert and likely to occur again. The Department submits that a temporarily denial order naming respondents is necessary in order 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 likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations. Furthermore, the Department has represented that Data Services Ltd., Globetime Commercial Services Ltd., Officeworld Business Systems Ltd. and Computer Manufacturers Ltd. are parties related to at least one of the respondents in the conduct of trade or related services and should also be temporarily denied export privileges to prevent evasion of this order. All related parties are located in Nicosia, Cyprus.

Based upon the showing made by the Department, I find that an order temporarily denying all United States export privileges to respondents and to parties related to them is necessary in the public interest to prevent an imminent violation of the Act and the Regulations.

Accordingly, it is hereby Ordered:

I. All outstanding individual validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of particiating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

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

[1] "George" Lartides is also known as "Georgios" Lartides.

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 resonsibility, or other connection in the conduct of trade or related services. Those parties now known to be related to at least one of the respondents, and which are accordingly subject to the provisions of this order, are:

Data Services, Ltd., P.O. Box 1604, 22 Ionos Street, Nicosia, Cyprus
Globetime Commercial Services Ltd., MITSI Building 3, Flat 608, 6th Floor, Nicosia, Cyprus
Officeworld Business Systems Ltd., P.O. Box 1604, 22 Ionos Street, Nicosia, Cyprus
and
Computer Manufacturers Ltd., c/o Stamatiou & Lartides, Ltd., P.O. Box 1604, 22 Ionos Street, Nicosia, Cyprus

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 therefrom 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, transshipment, 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 and any related party may appeal the issue of his relationship 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 is effective immediately and shall remain in effect for 60 days.

VII. 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 date. 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 and of Parts 387 and 388 of the Regulations shall be served upon each respondent and each above-named related party and this order shall be published in the **Federal Register.**

Dated: December 5, 1986.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 86-27855 Filed 12-10-86; 8:45 am]

BILLING CODE 7020-02-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Haton Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-673-5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register.** The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1987 have been received from the Governments shown below.

Dated: December 8, 1986.

Richard B. Roe,

Director, Office of Fisheries Management.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code fishery	Regional fishery management councils
ABS Atlantic Billfishes and Sharks	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA Bering Sea and Aleutian Islands Groundfish	North Pacific.
GOA Gulf of Alaska	North Pacific.
NWA Northwest Atlantic Ocean	New England, Mid-Atlantic.

Code-fishery	Regional fishery management councils
SNA Snails (Bering Sea).	North Pacific.
WOC Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.

Activity code	Fishing operations
*	Vessel(s) in support of U.S. vessels Joint Venture).
**	Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities.

Joint Venture

Japan

The Government of Japan has submitted a permit application amendment for 1987 joint venture operations in the Alaskan fisheries. The total species amounts requested, after including the increases stated in the amendment, are listed in the following tables:

SPECIES

[In metric tons]

Country	Pollock	Pacific cod	Atka mackerel	Yellowfin sole	Other flatfish
Bering sea and Aleutian Islands Fisheries					
Japan	722836	36468	4240	38783	19702
Gulf of Alaska					
Japan	96200	2897	0	0	1500

[FR Doc. 86-27897 Filed 12-9-86; 12:07 pm]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton Textile Products Produced or Manufactured in India

December 5, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 5, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs Port or call (202) 566-8791. For information on categories on which consultations have been requested call (202) 377-3740.

Background

A CITA directive of February 14, 1986, as amended, which established import limits for specified categories of cotton, wool and man-made fiber textile products, including Categories 335, 336, 337 and 341, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, was published in the **Federal Register** on February 20, 1986 (51 FR 6159).

At the request of the Government of India, swing is being applied to the restraint limit previously established for cotton textile products in Category 341, increasing it from 2,315,524 dozen to 2,442,968 dozen, for the current agreement year. The limits for Categories 335, 336 and 337 are being reduced from 152,731 dozen to 150,541 dozen (Category 335), 288,981 dozen to 263,981 dozen (Category 336) and 77,037 dozen to 47,853 dozen (Category 337) to account for the amount of swing applied to Category 341, as provided by the agreement between the Governments of the United States and India of December 21, 1982, as amended.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits of these categories.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on February 14, 1986, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which established restraint limits for certain specified categories of textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on December 5, 1986, the directive of February 14, 1986 is hereby amended to include the following adjusted restraint limits under the terms of the Bilateral cotton, wool and Man-Made Fiber Agreement of December 21, 1982, as amended:[1]

Category	Adjusted limits [1]
335	150,541 dozen.
336	263,981 dozen.
337	47,853 dozen.
341	2,442,968 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-28820 Filed 12-8-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements of adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Adjusting the Import Limits for Certain Cotton Textile Products Produced or Manufactured in India

December 5, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 5, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive of December 23, 1985, as amended, establishing import limits for specific categories of cotton, wool and man-made fiber textile products, including categories 330–359, 431–459, 431–459, and 630–659, as a group, and 335, 336, 337, 338/339/340, 342, and 347/348, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, and published in the **Federal Register** on December 27, 1985 (50 FR 52985).

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended, between the Governments of the United States and India the restraint limits for the foregoing categories are being adjusted for the current agreement year to restore unused carryforward.

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), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 23, 1985, from the Chairman of the Committee for the Implementation or Textile Agreements, which established restraint limits for certain specified categories of textile products, produced or manufactured in India.

Effective on December 5, 1986, the directive of December 23, 1985 is hereby further amended to increase the previously established restraint limits for cotton, wool and man-made fiber textile products in the following categories, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended, between the Governments of the United States and India:[1]

Category	Adjusted twelve-month limit [2]
330–359, 431–459, and 630–659, and 630–659, as a group.	118, 159,049 square yards equivalent.
335	152,731 dozen.
336	288,981 dozen.
337	72,853 dozen.
338/339/340	1,117,836 dozen.
342	362,935 dozen.
347/348	245,009 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–27819 Filed 12–8–86; 12:31 p.m.]

BILLING CODE 3510-DR-M

Increasing the Import Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

December 5, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 5, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, please call (202) 377–3715. For information of categories on which consultations have been requested call (202) 377–3740.

Background

The Bilateral Cotton Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan provides consultation levels for certain categories, such as Category 369pt. (all T.S.U.S.A. numbers in the Category except 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840), which may be adjusted upon agreement between the two governments.

The Governments of the United States and Pakistan have agreed to further amend their bilateral agreement to increase this designated consultation level from 6,934,609 pounds to 7,034,609 pounds for the current agreement year which began on January 1, 1986 and extends through December 31, 1986 for goods exported during that period. The letter to the Commissioner of Customs which follows this notice implements this agreed increase.

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 15174), 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 Schedule of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 26, 1985, which directed you to prohibit entry of certain cotton textile

[1] The bilateral agreement provides, in part, that: (1) certain group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on December 5, 1986, the directive of December 26, 1985 is hereby amended to increase the restraint limit previously established for cotton textile products in Category 369pt.[1] to 7,034,609 pounds.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-27818 Filed 12-8-86; 12:30 pm]

BILLING CODE 3510-DR-M

Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

December 5, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 5, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota reopenings, please call (202) 377-3715.

Background

On December 2, 1985 a directive dated November 27, 1985 was published in the **Federal Register** (50 FR 49438), which announced import restraint limits for cotton, wool and man-made fiber textile products in certain categories, including Categories 334/335, 338/339, 340, 341, 347/348, 438, 442, 445, 446 and 641, produced or manufactured in Thailand and exported during the thirteen-month period which began on December 31, 1985 and extends through December 31, 1986. As a result of consultation held on November 3, 1986 between the Governments of the United States and Thailand, it was determined that certain imports currently charged to the 1986 limits, will not be charged to those limits.

Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs, to deduct the designated amounts from the import charges made to the current year limits.

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), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

December 5, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27, 1983, as amended and extended, between the Governments of the United States and Thailand, I request that, effective on December 5, 1986 you deduct the following amounts from charges made to the restraint limits established in the directive of November 27, 1985 for cotton and man-made fiber textile products in the indicated categories, produced or manufactured in Thailand and exported during the agreement period which began on December 1, 1985 and extends through December 31, 1986:

Category	Amount to be deducted
334/335	3,733 dozen.
338/339	26,010 dozen.
340	24,913 dozen.
341	19,522 dozen.
347/348	4,144 dozen.
641	6,281 dozen.

The foregoing charges in equivalent square yards, i.e., 1,387,264 square yards equivalent, should remain charged to the limit established for cotton and man-made fiber textile products in Categories 300-359 and 630-659.

Also effective on December 5, 1986, you are requested to deduct the following amounts from charges made to the restraint limits established for wool textile products in the indicated categories, produced or manufactured in Thailand and exported during the thirteen-month period which began on December 1, 1985 and extends through December 31, 1986:

Category	Amount to be deducted
438	520 dozen.
442	168 dozen.
445	44 dozen.
446	1,040 dozen.

This leter will be published in the **Federal Register.**

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-27817 Filed 12-8-86; 12:29 pm]

BILLING CODE 3510-DR-M

[1] In Category 369, all T.S.U.S.A. numbers except 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840).

[2] The level has not been adjusted to reflect any imports exported after December 31, 1985.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Security Subgroup on Technological and Operational Surprise; Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting of the Defense Science Board Task Force on Security Subgroup on Technological and Operational Surprise for December 16, 1986 as published in the **Federal Register** (Vol. 51, No. 142, Thursday, July 24, 1986, FR Doc. 86-16685.) has been cancelled.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 5, 1986.

[FR Doc. 86-27816 Filed 12-10-86; 8:45 am]

BILLING CODE 3810-01-M

Armed Forces Epidemiological Board; Closed Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of committee: Armed Forces Epidemiological Board (AFEB).

Date of meeting: January 6, 1987.

Time: 0800-1630 hours.

Place: Walter Reed Army Institute of Research, Washington, DC.

Agenda: Review of Potential for Health Risks of the Bradley Fighting Vehicle.

2. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Should

additional information be desired, please contact the AFEB Executive Secretary at (202) 695-9115/6.

Dated: November 20, 1986.

Robert A. Wells,

COL, USA, MSC, Executive Secretary.

[FR Doc. 86-27785 Filed 12-10-86; 8:45 am]

BILLING CODE 3710-08-M

Privacy Act of 1974; Amended Record System

AGENCY: Office of the Secretary of Defense (OSD), DOD.

ACTION: Notice of an amended record system subject to the Privacy Act.

SUMMARY: The Office of the Secretary of Defense proposes to amend the system notice for a system of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice January 12, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Director, Department of Defense Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, Telephone: (202) 325-0188.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) system of records notices subject to the Privacy Act of 1974 have been published in **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22286) May 29, 1985
FR Doc. 85-27008 (50 FR 47087) November 14, 1985
FR Doc. 86-10687 (51 FR 17509) May 13, 1986
FR Doc. 86-7574 (51 FR 11803) April 7, 1986
FR Doc. 86-7575 (51 FR 11807) April 7, 1986
FR Doc. 86-14668 (51 FR 23573) June 30, 1986

These proposed amendments are not within the purview of the provisions 5 U.S.C. 552a(o) of the Act which requires the submission of new or altered system reports.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 8, 1986.

AMENDMENTS

DMRA&L 22.0

System name:

DoD Dependent Children's School Program Files (51 FR 11803), April 7, 1986.

Changes:

Categories of records in the system:

Delete paragraph U entry; substitute therefor: "Automated data files are composed of records containing any of the above information in addition to (varies by regional system): Student registration data—student identification number, name, sex, grade level, bus number, date of enrollment, date of birth, course numbers and names, teachers, credit, grades received, and dates of absences, and sponsor' name, social security number, status, rank, date of rotation, organization, location of unit, local address, emergency address, permanent address, and telephone numbers."

Purpose(s):

Delete paragraph A.2 entry; substitute therefor: "Records may also be released to other officials of the Department of Defense requiring information for operation of the Department (including defense investigative agencies and recruiting officials)."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Insert between second and third paragraphs "Records concerning sponsors' names, rank, and branch of service may be released to former students for the purpose of organizing reunion activities."

DMRA&L 22.0

SYSTEM NAME:

DoD Dependent Children's School Program Files.

SYSTEM LOCATION:

Active Students—DoD operated overseas dependents schools, regional offices, and the Office of Dependents Schools (ODS), Alexandria, Virginia.

Former High School Students—Permanent records (high school transscripts) are retained at the school for 4 years subsequent to graduation, transfer, or termination, then forwarded to the regional office for 1 year where they are compiled and forwarded to the Washington National Records Center (WNRC) except Panama. Records for the Panama region are retired to the East Point, Georgia, Federal Archives Records Center (FARC).

Former Panama Canal College Students—Permanent records (college transcripts) are retained at the college for 10 years, then retired to East Point FARC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in the DoD operated overseas dependent schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. *Enrollment files.* Documents relating to the admission, registration, and departure of dependent school students. Included are pupil enrollment applications, course preference, admission cards, drop cards, and similar or related documents.

B. *Daily attendance register files.* Documents reflecting the daily attendance of pupils at dependent schools. Included are forms, printouts, bound registers and similar or related documents.

C. *Elementary school academic records.* Documents reflecting the standardized achievement, mental ability, yearly grade average, attendance of each student and the teachers' comments. Included are forms, notes, and similar or related documents.

D. *Elementary school report card files.* Documents reflecting grades, personality traits, and promotion or failure Included are report cards and similar or related documents.

E. *Elementary school teacher class register files.* Documents reflecting daily, weekly, semester, or annual scholastic grades and averages, absence and tardiness data.

F. *Elementary school student files.* Documents pertaining to individual elementary school students. Included in each folder are reading and health records; individual education plans; intelligence quotient; achievement, aptitude, and similar test results; notes related to pupil's progress and characteristics; and similar matters used by counselors and successive teachers.

G. *Secondary school absentee files.* Documents reflecting absence of students. Included are homeroom teachers' registers, secondary school daily attendance records of absentees reported by teachers, tardy slips for admission of students to classroom, transfer slips notifying teachers of new class or homeroom assignment, notices of change by school principal to teacher upon change of classroom, student applications for permission to be absent, student pass slips, and similar or related documents.

H. *Secondary school academic record files.* Documents reflecting student grades and credits earned Included are forms, notes, and similar or related documents.

I. *Secondary school report card files.* Documents reflecting scholastic grades, personality traits, and promotion or failure. Included are report cards and related documents.

J. *Secondary school teacher class register files.* Documents reflecting daily, weekly, semester, or annual scholastic marks and averages, absence and tardiness, and withdrawal data.

Included are class registers and similar or related documents.

K. *Secondary school class reporting files.* Documents reflecting teacher reports to principals and used as source documents for preparing secondary school academic record cards. Included are forms, correspondence, and similar or related documents.

L. *Credit transfer certificate files.* Documents reflecting secondary school scholastic credits earned. Included are certificates and similar or related documents.

M. *Secondary school student files.* Documents pertaining to individual secondary school students. Included in each folder are student health records; individual education plans; absence reports and correspondence with parents pertaining to absence; records of achievement and aptitude tests; notes concerning participation in extracurricular activities, hobbies, and other special interests or activities of the student; and, miscellaneous memorandums used by student counselors.

N. *College absence, withdrawal, and add files.* Student applications for permission to be absent from final exams. Student drop and add class records and administrative withdrawal letter.

O. *College academic record files.* Documents reflecting student grades and credits earned. Included are forms, notes, and similar or related documents.

P. *College report card files.* Documents reflecting scholastic grades and promotion of failure. Included are report cards and related documents.

Q. *College teacher class register files.* Documents reflecting daily, weekly, semester, or annual scholastic marks and averages, absence and withdrawal data. Included are class registers and similar or related documents.

R. *College class reporting files.* Documents reflecting teacher reports to Registrar and used as source documents for preparing college transcripts. Included are forms, correspondence, and similar or related documents

S. *Credit transfer certificate files.* Documents reflecting college scholastic credits earned. Included are certificates and similar or related documents.

T. *College student files.* Documents pertaining to individual college students. Included in each folder are absence reports, records of achievement, and aptitude tests.

U. *Automated support files.* Automated data files are composed of records containing any of the above information in addition to (varies by regional system): student registration data-student identification number, student name, sex, grade level, bus number, date of enrollment, date of birth, course numbers and names, teachers, credit, grades received, dates of absences, and sponsor's name, status, rank, date of rotation, organization, location of unit, local address, emergency address, permanent address, and phone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Recurring provisions of the DoD Appropriations Act and Department of Defense Directive 1342.6, "Department of Defense Dependent's Schools," dated October 17, 1978, with change 1.

PURPOSE(S):

A. Dependent children's school program files (general):

1. Records of students attending DoD operated overseas dependent schools are used by school officials, including teachers, to:

a. Determine the eligibility of children to attend these schools;

b. Schedule children for transportation;

c. Record daily and/or class attendance of students and date(s) of withdrawal;

d. Determine tuition paying students and record status of payments;

e. Determine students located in areas not serviced by dependents schools so that alternative arrangements for education can be made and payment made, as required;

f. Monitor special education services required by and received by the student; and,

g. Used to develop and maintain reading and health records, including school related medical needs.

2. Records may also be released to other officials of the Department of Defense requiring information for operation of the Department (including defense investigative agencies and recruiting officials) on a case-by-case basis in accordance with established policies and procedures.

B. Dependent children's school program files (elementary):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for elementary students by school personnel cited above.

2. Used in the following manner to record:

a. Teacher or standardized test data;

b. Attendance, absences, and/or tardiness of each student;

c. Recommendations for promotion or retention including teacher comments;

d. Daily, weekly, semester, or annual grades; and,

e. Notes related to the individual pupil's progress and learning characteristics useful to professional school personnel in counseling the student and in the determination of his/her proper placement.

C. Dependent children's school program files (secondary):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an education program for secondary students.

2. Documents are used by school personnel cited above in the following manner to:

a. Record teacher and/or standardized test data;

b. Record attendance, absences, and/or tardiness of each student;

c. Form the basis for a decision on a student request for permission to be absent from a class or classes;

d. Determine proper class or grade placement or graduation;

e. Determine scholastic grades and/or grade point average;

f. Form the basis for school recommendations for student financial aid for postsecondary education;

g. Form the basis for preparing the secondary school transcript;

h. Determine secondary school academic credits earned; and,

i. Note special interest or hobbies of the student.

3. Used by DoD recruiting officials to determine eligibility for military service.

D. Dependent children's school program files (college):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for college students.

2. Documents are used by school personnel cited above in the following manner to:

a. Record teacher and/or standardized test data;

b. Record attendance and absences of each student;

c. Form the basis for a decision on a student request for permission to be absent from a class or classes;

d. Determine proper class or grade placement or graduation;

e. Determine scholastic grades and/or grade point average;

f. Form the basis for school recommendations for student financial aid for college education;

g. Form the basis for preparing the college transcript; and,

h. Determine college academic credits earned.

3. Used by DoD recruiting officials to determine eligibility for military service.

E. Automated support. Automated support is used by school and regional officials (where applicable) to:

1. Provide academic data to each student upon request, provide report cards, etc., at the end of each grading period, provide transcripts upon request, and provide hard copy for manual files.

2. Provide academic data within the region and to ODS.

3. Provide data within the Department of Defense on a need-to know basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Records concerning sponsors' names, rank, and branch of service may be released to former students for the purpose of organizing reunion activities

Academic data may be provided to other educational institutions and employers or prospective employers in accordance with current policies and procedures.

Academic achievements and data may be provided to the public, via distribution of information within the school and through various media sources, for positive reinforcement purposes. This information will not be distributed for commercial uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to U.S.C. 552a(b)(12), may be made from this system to Consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3))

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are paper records in file folders.

RETRIEVABILITY:

A. Elementary school academic records and secondary school and college academic records (transcripts) are filed alphabetically by school, school year, and last name of student.

B. Elementary, secondary, and college teacher class register files are filed by school, school year, and last name of teacher.

C. Remaining dependent school student files are filed by school, school year, and last name of student.

D. The automated files are indexed by a variety of data, depending upon the region and school involved (some have regionally assigned student identification numbers, others are by last name of student). Also, any combination of data in the file can be used to select individual records. Only authorized personnel have required information to access the system or process jobs.

SAFEGUARDS:

Paper records are maintained in files accessible only to authorized personnel.

Authorized records:

A. *Description of the automated process.* Current hard copy records of all information are kept in locked file cabinets in limited access school offices. Computer-produced student records and reports become an integral part of the manual system and are retained in limited access school offices and/or locked cabinets. Computer disks, tapes, etc., are maintained in limited access areas within the various computer centers, regional offices, and/or schools. Approved special requests for data can be supported by ad hoc inquiry. Any combination of data can be used to select individual records for special porcessing.

B. *Physical safeguards.* Computer facilities and remote terminals are located in schools and regional offices throughout the school system. Particular regional systems vary; however, the same basic safeguards are employed (in various combinations) in all the systems. Computer hardware disk cards and other materials are secured in locked facilities after normal duty hours or are maintained in secure military computer centers. During school hours, storage media is stored in areas where access can be monitored. On-line access is protected by combinations of the following various factors: (1) Users must have file and/or disk names; (2) users must have possession or approval to gain possession of appropriate disk(s); and, (3) users must have specifically designed codes and/or keys to permit read/write operations.

C. *Storage media.* Hard copy files are stored in the school offices of each participating school and regional offices. Computer files are stored on magnetic tape and disks, as outlined above.

D. *Risk analysis.* All personal information which is collected and/or maintained for this system is stored in locations adequately secure for such information. Administrative safeguards have been instituted to prevent access to information in the automated systems.

Retention and disposal:

A. Enrollment files. Maintained at the respective school for 1 year after graduation, withdrawal, transfer, or death of the student, then destroyed.

B. *Daily attendance register files.* Destroyed after reviewing attendance registers for the next school year.

C. *Elementary school academic records files.* When a student transfers to another school, this file is forwarded by mail to officials of the receiving school on request in accordance with current regulations, or destroyed at the school 5 years after graduation, death, or withdrawal of the student.

D. *Elementary school report card files.* Released to parents or students at the end of the school year or on transfer of the student.

E. *Elementary school teacher class register files.* Destroyed at the school concerned after 5 years.

F. *Elementary school student files.* 1. When a student transfers to another school, the reading and health records are released to the parent or student (if over 18 years of age) for hand-carrying to the receiving school.

2. Remaining documents pertaining to the students are forwarded by mail to the officials of the receiving school or the parent/guardian on request in accordance with current regulations; if not requested, documents are destroyed at the school concerned 1 year after graduation, death, or withdrawal of the student.

G. *Secondary school absentee files.* Destroyed at the school after 1 year.

H. *Secondary school academic record files (high school transcript).*

1. Permanent file.

2. When a student transfers to another DoD dependents school, this film (transcript) is forwarded by mail to officials of the receiving school on request.

3. When a student transfers to a non-DoD school, a copy of the transcript is forwarded to the receiving school on request in accordance with current regulations.

4. Files not forwarded to another DoD school are retained at the school concerned for 4 years, the regional office for 1 year and then retired to the WNRC (or East Point FARC if in the Panama region) for an additional 60 years.

I. *Secondary school report card files.* Released to parents of students or student (if over 18 years of age) at the end of the school year or on transfer of student.

J. *Secondary school teacher class register files.* Retained at the school concerned for 5 years and then destroyed.

K. *Secondary school class reporting files.* Destroyed at the school after 1 year.

L. *Credit transfer certificate files.* Destroyed at the school after 1 year.

M. *Secondary school student files.*

1. Retained at the school concerned for 2 years after graduation, death, or withdrawal of the student.

2. When a student transfers to another school:

a. A copy of the record may be released to the parents or student (if over 18 years of age) for hand-carrying to the receiving school.

b. An official copy of the record will be forwarded to the receiving school in accordance with current regulations upon request. (The original record is retained at the school.)

N. *College absentee files.* Destroyed at the school after 1 year.

O. *College academic record files (college transcripts).* 1. Permanent file.

2. When a student transfers to another college or university, this file (transcript) is forwarded by mail to officials of the receiving school upon receipt of an authorized request.

3. Original files (transcripts) are retained at the college for 10 years then retired to East Point FARC.

P. *College report card files.* Released to student at the end of the semester or school year, or on transfer of student.

Q. *College teacher class register files.* Retained at the school for 5 years and then destroyed.

R. *College class reporting files.* Destroyed at the school after 1 year.

S. *Credit transfer certificate files.* Destroyed at the school after 1 year.

T. *College school student files.*

1. Retained at the school for 2 years.

2. When a student transfers to another school:

a. A copy of the record may be released to the parents or student (if 18 years of age) for hand-carrying to the receiving school.

b. An official copy of the record will be forwarded to the receiving school upon request pending receipt of authorized request. (The original record is retained at the school.)

U. *Automated files.* Automated files are normally retained for 1 year. However, this may vary as all information is documented in the manual files and the information in automated form may be destroyed earlier or later than 1 year for various internal purposes.

SYSTEM MANAGER AND ADDRESS:

Director, Department of Defense Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, telephone: (202) 325-0188.

NOTIFICATION PROCEDURE:

Information may be obtained from officials of the school concerned or from the System Manager.

RECORD ACCESS PROCEDURES:

A. Written requests for information on the records system and for instructions concerning personal visits may be forwarded to the principal of the school within 4 years after graduation, transfer, withdrawal, or death of student.

B. The fifth year, the principal should be contacted for elementary records or the System Manager for secondary records.

C. Subsequently, all requests for secondary records may be forwarded to the Department of the Army, HQ DA (DAAG-AMR), Washington, DC 20310, except for information from schools in Panama. These requests should be sent to: Director, DoDDS-Panama, APO Miami 34002.

D. All requests for college records should be sent to the college for the first 10 years, then to the Director, DoDDS-Panama, address above.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b, and OSD Administrative Instruction 81.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals concerned and their parents/guardians, teachers, and school administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 86-27868 Filed 12-10-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board; Advisory Committee Meetings

SUMMARY: The Defense Science Board will meet in closed session on February 11-12, May 27-28, and October 14-15, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Defense Science Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C App. II, (1982)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

December 8, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-27866 Filed 12-10-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Pacific Command Air Defense; Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Pacific Command Air Defense will meet in closed session on January 8-9, 1987 in CINCPAC Headquarters, Honolulu, Hawaii.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

December 8, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-27867 Filed 12-10-86; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Amended Records System

AGENCY: Office of the Secretary of Defense (OSD), DOD.

ACTION: Notice of an amended record system subject to the Privacy Act.

SUMMARY: The Office of the Secretary of Defense proposes to amend the system notice for a system of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice January 12, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Chief, Teacher Recruitment Section, Office of Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, Telephone: (202) 325–0690.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22286) May 29, 1985
FR Doc. 85–27008 (50 FR 47087) November 14, 1985
FR Doc. 85–10687 (51 FR 17509) May 13, 1986
FR Doc. 86–7574 (51 FR 11803) April 7, 1986
FR Doc. 86–7575 (51 FR 11807) April 7, 1986
FR Doc. 86–14668 (51 FR 23573) June 30, 1986

These proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires the submission of new or altered system reports.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 5, 1986.

Amendments

DMRA&L 02.0

SYSTEM NAME:

Educator Application Files (50 FR 22286) May 29, 1985

CHANGES:

SYSTEM LOCATION:

Delete lines 13–15 under entry; substitute therefor: "Washington Headquarters Services/Budget and Finance (WHS/B&F) located in the Pentagon in Arlington, Virginia."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Delete second and third words under entry; substitute therefor: "WHS/B&F."

SAFEGUARDS:

Delete third and fourth words of line thirteen, paragraph b; substitute therefor: "WHS/B&F." Delete lines seventeen through twenty five; substitute therefor: "To preclude access by unauthorized personnel. All visitors are escorted and accounted for at all times. WHS/B&F is provided with a back-up power supply so that the system will remain on-line during shortages. Backup tapes are run daily, weekly and monthly and stored in a separate location within the Pentagon." Delete third and fourth words of line five, paragraph c; substitute therefor: "WHS/B&F." Delete third and fourth words of line nine; substitute therefor: "WHS/B&F." Delete third and fourth words of line five, paragraph d; substitute therefor: "WHS/B&F." Delete third and fourth words of line three, paragraph e; substitute therefor: "WHS/B&F."

RETENTION AND DISPOSAL:

Delete sixth and seventh words of line nineteen; substitute therefor: "WHS/B&F." Delete lines twenty one and twenty two commencing with second word and ending with fourth words; substitute therefor: "Archive tapes after release by user are degaussed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete third word; substitute therefor: "Fitzgerald."

DMRA&L 02.0

SYSTEM NAME:

Educator Application Files.

SYSTEM LOCATION:

Manual and automated records are maintained at the Teacher Recruitment Section, Personnel Division, Department of Defense Dependents Schools (DoDDS), Hoffman Building I, 2461 Eisenhower Avenue, Alexandria, Virginia 22331 and manual records at the Five DoDDs regional personnel offices. A terminal is located in the Hoffman Building complex. Automated records are maintained at the main computer site which is operatcd by the Washington Headquarters Services/Budget and Finance (WHS/B&F) located in the Pentagon in Arlington, Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective teachers applying for position within the DoDDS system and current DoDDS teachers and educators applying for either interregional transfers or positions in the DoDDS Educator Career Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Prospective Teachers: Files contain all papers and forms relating to the individual's application for employment to include Personal Qualification Statement (SF 171), Supplemental Application of Employment with DoDDS (DS Form 5010), Professional Evaluation, DoDDS (DS Form 5011), DoDDS Application Index (DS Form 5012), interviewer's worksheets, official college transcripts, copy of teaching certificates, copy of birth certificate, and correspondence to or concerning the applicant.

Interregional Transfer Applicants: Files contain all papers and forms relating to the individual's applications. A coded worksheet developed by the regional staff is provided to the central personnel office for processing (remainder of material retained at the region) Also included are miscellaneous worksheets and correspondence relating to the application.

Educator Career Progam Applicants: Files contain all paper and forms relating to the individual's application to include: DoDDS Educator Career Program Application (DS Form 5080), DoDDS Assessment of Potential (DS Form 5081), DoD Education Career Program Rating Sheet (DS Form 5082) and miscellaneous worksheets and correspondence relating to the application.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. Sections 902, 903 and 931.

PURPOSE(S):

Teacher Recruitment Section and Regional Offices: To determine qualifications and make selections of candidates for vacant positions within the DoDDS system (including new teachers, interregional transfers, and Educator Career Program positions), to review types of experience, educational background, evaluation of previous employers, professional credentials, to interviewers' ratings.

Department of the Army, Air Force, and Navy Staff agencies and Commands: To complete processing of hired individuals, to obtain Office of Personnel Management National Agency Check, medical examination, passports; to arrange transportation and shipment/storage of household goods; and to provide gaining Civilian Personnel Offices necessary documantation for placing individual on rolls.

Any individual's records in a system of records might be transferred to any Component of the Department of Defense having a need to know in the performance of official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, USES AND PURPOSES OF SUCH USES:

The WHS/B&F which operates the automated system.

See Office of the Secretary of Defense (OSD) Blanket Routines Uses at the

head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders are stored at the DoDDS personnel office or regional offices; some files are supported by automated files which are maintained on disks and/or tapes at the central computer site.

RETRIEVABILITY:

The manual files are filed alphabetically by name. The automated records are indexed by name or system assigned number (assigned chronologically upon input). Also, any combination of data in the automated file can be used to select individual records. Only authorized individuals (i.e., personnel staffing specialists) are provided user identification numbers and passwords to access the system via terminal.

SAFEGUARDS:

Paper records are maintained in files which are accessible only to authorized personnel.

a. *Description of automated process.* Current hardcopy records of information and disks are maintained in the DoDDS personnel office where access can be controlled. The office is locked after normal duty hours and building is secured by a private security force. Hardcopy records of interregional transfer applicants and a portion of the Career Educator applicants are maintained in the regional offices in locked cabinets and/or locked offices where access can be controlled and which are locked after normal duty hours. Approved special requests for data can be supported by ad hoc inquiry. Any combination of data can be used to select individual records for special processing.

b. *Physical safeguards.* A high-speed remote batch terminal, used for this system, is located in the DoDDS personnel office. The office is secured after normal duty hours to preclude unauthorized access. Access to the personnel terminal and all hardcopy records are controlled by office personnel. Access to automated data files by terminal is controlled by the use of a user ID and password system. The central computer site is owned and operated by the WHS/B&F which has a complex security system. The site is guarded 24 hours a day, year-round, and employes a system of electronic locks, to preclude access by unauthorized personnel. Are Visitors are escorted and accounted for at all times. WHS/B&F is provided with a back-up power supply so that the system will remain on-line during power shortages. Backup tapes are run daily, weekly and monthly and stored in a separate location within the Pentagon. A second copy of monthly tapes is stored in an off-site vault with 24-hour security.

c. *Remote terminal access.* Access to the terminal is controlled by the use of user identification numbers and passwords. The passwords are initially assigned by WHS/B&F; however, the user is immediately instructed to change it to something only known to him/her Only through a complex internal checking system, can authorized WHS/B&F personnel access the password in the event it is lost or forgotten by the user. The password can be changed as frequently as desired and is now changed every 6 months or upon the departure of emp1oyee which has knowledge of it.

d. *Storage Media.* Hardcopy files are stored in the personnel office of in regional offices. Disks used in the personnel office are also stored there. Data retained WHS/B&F is on disks and magnetic tape.

e. *Risk analysis.* The main computer site is adequately secure for storage of personal information. WHS/B&F is bound to uphold all provisions of the Privacy Act in accordance with GSA contract procedures. The terminal is protected so that unauthorized access to information can be prevented.

RETENTION AND DISPOSAL:

Prospective Teachers: Records are retained for recruitment period (no more than 2 years). For nonselected applicants, portions are returned to applicant for future use and portions are destroyed unless the applicant has indicated a desire to reapply in which case portions of the file are retained until the next recruitment period. Records of selected applicants are forwarded to the Departments of the Army, Air Force, and Navy as appropriate for processing.

Interregional Transfer Applicants: File is retained for 1 year and destroyed.

Career Educator Program Applicants: Applicants are retained for 2 years (unless updated by applicant) and destroyed.

Automated Records: Back-up tapes at WHS/B&F are erased every 6 months via complete overwriting. Archive tapes after release by the user are erased by complete overwriting. When released by user, all bytes used for data which are on disk are automatically reset to 0 before anyone may use the storage space. Disks used on the terminal in the personnel office are erased when no longer needed and reused (i.e., never leave the office and are never used by another system).

SYSTEM MANAGER(S) AND ADDRESS:

Ms. Marilee Fitzgerald, Chief, Teacher Recruitment Section, Office of Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, Telephone (202) 325–0690.

NOTIFICATION PROCEDURES:

Information may be obtained from: Chief, Teacher Recruitment, DoD Dependents Schools, Room 120, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, Telephone: (202) 325–0690.

RECORD ACCESS PROCEDURES:

Requests from individuals for their own files should be sent to the address indicated in "Notification Procedure" section, above. Written requests for information should contain the full name and address of the individual and a notarized signature.

CONTESTING RECORD PROCEDURES:

The agency rules for access to records and for contesting contents and appealing initial determination by the individual concerned are contained in 32 CFR Part 286b, and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals concerned, current and past employers, and educational institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(5). (See 32 CFR Part 286b (OSD Admin. Inst No. 81)).

[FR Doc. 86–27813 Filed 12–10–86; 8:45 am]
BILLING CODE 3810-01-M

Privacy Act of 1974; Amended Records System

AGENCY: Office of the Secretary of Defense (OSD), DOD.

ACTION: Notice of an amended record system subject to the Privacy Act.

SUMMARY: The Office of the Secretary of Defense proposes to amend the system notice for a system of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Director, Directorate for Industrial Security Clearance Review (DISCR) P.O. Box 3656, 4015 Wilson Blvd., Suite 300, Arlington, Va. 22203–1995.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) system of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22286) May 29, 1985
FR Doc. 85–27008 (50 FR 47087) November 14, 1985
FR Doc. 86–10687 (51 FR 17509) May 13, 1986
FR Doc. 86–7574 (51 FR 11803) April 7, 1986
FR Doc. 86–7575 (51 FR 11807) April 7, 1986
FR Doc. 86–14668 (51 FR 23573) June 30, 1986

These proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires the submission of new or altered system reports.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 5, 1986.

Amendments

DGC 05

SYSTEM NAME:

Administrative Files on Active Psychiatric Consultants to Department of Defense (DoD) (50 FR 22290), May 29, 1985.

CHANGES:

SYSTEM LOCATION:

Add to end of entry: "P.O. Box 3656, 4015 Wilson Boulevard, Arlington, Virginia 22203–1995."

PURPOSE(S):

Delete entry; substitute therefor: "The purpose of this system is to maintain a research of active psychiatric consultants available to conduct psychiatric examinations of individual applicants for industrial personnel security clearance in convenient geographical areas. Psychiatric consultants have active professional service agreements with the Department of Defense (DoD) and are used by DISCR, in processing requests for industrial personnel security clearance of individuals."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry; substitute therefor: "Director, Directorate for Industrial Security Clearance Review, P.O. Box 3656, 4015 Wilson Boulevard, Suite 300, Arlington, Virginia 22203–1995."

RECORD ACCESS PROCEDURES:

Delete first paragraph; substitute therefor: "Requests from individuals should be addressed to the Directorate for Freedom of Information and Security Review, OASD(PA), Room 2C757, Pentagon, Washington, DC 20301–1400."

DGC 05

SYSTEM NAME:

Administrative Files on Active Psychiatric Consultants to Department of Defense (DoD)

SYSTEM LOCATION:

Directorate for Industrial Security Clearance Review (DISCR), Defense Legal Services Agency (DLSA), DoD, P.O. Box 3656, 4015 W11son Boulevard, Arlington, Virginia 22203–1995.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Psychiatric consultants who have entered into agreement with the Departmcnt of Defense to conduct psychiatric examination of individuals applying for industrial security clearance for access to classified information required in the pcrformance of their work for classified Government contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records filed alphabetically by last name of psychiatrist, consisting of correspondence concerning agreement to conduct psychiatric examinations requested by the Government; and initiation and confirmation of security clearance is issued to psychiatrists.

Current list of active DoD psychiatric consultants.

Alphabetical card index file for identification and address of active psychiatric consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DoD Directive 5220.6, "Industrial Personnel Security Clearance Program," December 20, 1976; Executive Order 10865, February 20, 1960; and Deputy Secretary of Defense Memorandum dated October 20, 1965, Subject: Employment of Psychiatric Consultants for Industrial Security Program.

Purposes(s)

The purpose of this system is to maintain a record of active psychiatric consultants available to conduct psychiatric examinations of individual applicants for industrial personnel security clearance in convenient geographical areas. Psychiatric consultants have active professional service agreements with the Department of Defense (DoD) and are used by DISCR, in processing requests for industrial personnel security clearance of individuals

Routine uses of record maintained in the system, including categories of users and purpose of such uses:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, vertical file cards.

Retrievability:

Alphabetically by surname.

Safeguards:

Records are stored in security combination locked file cabinets accessible only to DISCR authorized personnel.

Retention and disposal:

Destroy six months after agreement between consultant and DoD has been terminated.

System manager(s) and address:

Director, Directorate for Industrial Security Clearance Review, P.O. Box 3656, 4015 Wilson Boulevard, Suite 300, Arlington, VA. 22203–1995.

Notification procedure:

Information may be obtained from the System Manager, DISCR, at above address, Telephone: 202–696–4598.

Record access procedures:

Requests from individuals should be addressed to the Directorate for Freedom of Information and Security Review, OASD (PA), Room 2C757, Pentagon, Washington, DC 20301–1400.

Written requests should include the individual's full name, date and place of birth, and notarized signature.

The records requested may be made available to individuals for review at the above address.

Contesting record procedures:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

Record source categories:

Copy of Letter of Consent [for Security clearance), DISCO Form 560, and correspondence with individual psychiatrists.

Systems exempted from certain provisions of the act:

None.

[FR Doc. 86-27814 Filed 12-10-86; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Amended Records System

AGENCY: Office of the Secretary of Defense (OSD), DOD.

ACTION: Notice of an amended record system subject to the Privacy Act.

SUMMARY: The Office of the Secretary of Defense proposes to amend the system notice for a system of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice January 12, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Director, Directorate for Industrial Security Clearance Review (DISCR) P.O. Box 3656, 4015 Wilson Blvd., Suite 300, Arlington Va. 22203-1995.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22286) May 29, 1985
FR Doc. 85-27008 (50 FR 47087) November 14, 1985
FR Doc. 85-10687 (51 FR 17509) May 13, 1986
FR Doc. 86-7574 (51 FR 11803) April 7, 1986
FR Doc. 86-7575 (51 FR 11807) April 7, 1986
FR Doc. 86-14668 (51 FR 23573) June 30, 1986

These proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires the submission of new or altered system reports.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 5, 1986.

Amendments

DGC 04

System name: Industrial Personnel Security Clearance Case Files (50 FR 22289) May 29, 1985.

Changes:

System location: Delete entry; substitute therefor: Directorate for Industrial Security Clearance Review (DISCR), Defense Legal Service Agency (DLSA) Department of Defense (DoD), 4015 Wilson Boulevard, Suite 300, P.O. Box 3656, Arlington, Va. 22203-1995. Decentralized inactive segments at the Washington National Records Center, and at the U.S. Army Investigative Records Depository, Fort Meade, Maryland 20755. Automated records are maintained on a system V5-02, Defense Index of Investigations, at Defense Investigative Service, Personnel Investigations Center, Baltimore, Md."

System manager(s) and address: Delete entry; substitute therefor: "Director, Directorate for Industrial Security Clearance Review (DISCR), P.O. Box 3656, 4015 Wilson Boulevard, Suite 300, Arlington, Va. 22203-1995.

Record access procedures: Delete first and second paragraphs of entry; substitute therefor: "Individuals can obtain assistance in gaining access to records from the system manager."

Written requests from individuals must be notarized and should be sent to Directorate for Freedom of Information and Security Review, OASD(PA) Room 2C757, Pentagon, Washington, DC 20301-1400 and should include the individuals full name, and any former names, date and place of birth, and Social Security Account Number (SSAN)."

DGC 04

SYSTEM NAME:

Industrial Personnel Security Clearance Case Files.

SYSTEM LOCATION:

Directorate for Industrial Security Clearance Review (DISCR), Defense Legal Service Agency (DLSA) Department of Defense (DoD), 4015 Wilson Blvd., Suite 300, P.O. Box 3656, Arlington, VA 22203-1995. Decentralized inactive segments at the Washington National Records Center, and at the U.S. Army Investigative Records Depository, Fort Meade, Maryland 20755. Automated records are maintained on a system V5-02, Defense Central Index of Investigations, at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government contractor employees, and former employees whose industrial security clearance cases were referred to DISCR for adjudication under Executive Order 10865 as implemented by DoD Directive 5220.6 by the Defense Industrial Security Clearance Office (DISCO) or by the Director Defense Investigative Service (DIS).

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes, automated case status records for current cases and inactive case and an alphabetical card index file for records of cases prior to 1984 used for recording actions taken and for identification and location of case files within the system; individual case files which include requests for investigation and clearances, general correspondence relating to case, personnel security questionnaires, investigative reports prepared by various investigative agencies, medical and psychiatric records and evaluations, DISCO referral recommendation, correspondence between the individual and DISCR elements, DISCO, medical facilities, DoD Psychiatric Consultants, investigative agencies, other DoD and Federal agencies, Screening Board, Examiners and the Appeal Board, attorneys, elements of the office of the Secretary of Defense and Defense Investigative Service, written interrogatories and Statement of Reasons (SOR) to individuals, with replies, recommendations, summaries, records of adjudicative actions, transcript of hearings and exhibits. Supplementing the system's case files are redacted copies of DISCR administrative and adjudicative decisions from July 1961 to date. Names and identifying information of applicant's, witnesses, source of information, etc., are deleted from these redacted record's to protect the privacy of persons involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended by Executive Order 10909, dated January 17, 1961, DoD Directive 5220.6, "Industrial Personnel Security Clearance Program" dated December 20, 1976, DoD Regulation 5200-2R "DoD Personnel Security Program".

PURPOSE(S):

These records are collected and maintained to determine whether the granting or retention of security clearance to industrial contractor personnel is clearly consistent with the national interest, to record clearance adjudicative actions and determinations; to record processing steps taken and processing time; to prepare statistical listings and summaries; to document due process actions taken; to assist authorized DoD Consulting Psychiatrist to compile evaluations and reports; to respond to inquires from Presidential Staff offices when the inquiry is made at the request of the individual; to monitor and control adjudicative actions and processes. Automated case status system and card files are used to record statistics, provide location and status and internal

identification of cases, to prepare listings and statistical reports and summaries, and to monitor work flow and actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice in determining claims for reimbursement in preparation of hearings, appeals and Federal Court review. Also see DoD blanket routine uses at the beginning of DoD listing of system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, and on vertical file cards; automated records in electronic storage are maintained on magnetic tapes and discs at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

RETRIEVABILITY:

Filed alphabetically by name or by case number. Access to computer data may be made by Name and SSAN and a combination of name and other personnel identifying data.

SAFEGUARDS:

Files folders and cards are stored in safes or locked file containers locked in a limited access area, and are accessible only to DISCR authorized personnel. All records are stored, processed, transmitted and protected as the equivalent of classified information. Records are accessed by the custodian of the record system and by persons responsible for servicing the system, who are properly screened and cleared for need-to-know.

Computer hardware is located in locked areas controlled and guarded, with access limited to authorized personnel. Computer access is via dedicated data circuits which prevent access from standard dial-up telephones and is individually password controlled. Individual passwords are changed quarterly or are changed upon departure of personnel.

The automated system is operated by Defense Investigative Service, Personnel Investigations Center, Information Systems Division. Only DISCR personnel with an official need-to-know are given individual passwords and user identification information needed to access the computer system and amend, add, alter, change or delete DISCR records. Other authorized contributors and users of the Defense Central Index of Investigations are authorized read-only access to DISCR case status records in that system.

RETENTION AND DISPOSAL:

Completed case files are retained in office files for two years after annual cut-offs, then are retired to the Washington National Records Center, for an additional 20 years.

Inactive, completed case files prior to 1982 are maintained at the U.S. Army Investigative Records Repository, Fort Meade, MD 20755.

Automated electronic case status records and alphabetical card index files are retained as locator for both active and inactive records. Computer data and alphabetical card files are purged when the inactive case file is no longer retained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Directorate for Industrial Security Clearance Review (DISCR), P.O. Box 3656, 4015 Wilson Blvd., Suite 300, Arlington, Va. 22203–1995.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURE:

Individuals can obtain assistance in gaining access to records from the System Manager.

Written requests from individuals must be notarized and should be sent to Directorate for Freedom of Information and Security Review, OASD (PA), Room 2C757, Pentagon, Washington, D.C. 20301–1400 and should include the individual's full name, any former names, date and place of birth, and Social Security Account Number (SSAN).

Request for copies of redacted, final determination should be sent to the System Manager, and should include the OSD Case Number of the records requested.

CONTESTING RECORDS PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information is received from investigative reports from federal investigative agencies; personnel security records and correspondence; medical and personnel records, reports and evaluations; correspondence from contractors, employers, organizations of assignment and Federal agencies DoD organizations, agencies and offices; from individual, their attorneys or authorized representatives.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this record system may be exempt under 5 U.S.C 522a(k)(5). For additional information, contact the System Manager.

[FR Doc. 86–27815 Filed 12–10–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 1, 1986.

The USAF Scientific Advisory Board Foreign Technology Division Advisory Group will meet at the Foreign Technology Division, Wright-Patterson Air Force Base, Ohio on January 15, 1987 from 8:00 a.m. to 5:00 p.m. and on January 16, 1987 from 8:00 a.m. to 1:00 p.m.

The purpose of the meeting is to review, discuss and evaluate the issue of strategic relocatable targets.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–27846 Filed 12–10–86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS); Orchard Army National Guard Training Site, ID

November 20, 1986.

AGENCY: National Guard Bureau, DOD/Idaho Military Division, Idaho National Guard, Department of the Army, DOD.

ACTION: Notice of intent to prepare an environmental impact statement: proposed mission expansion/multiple construction at Orchard Army National Guard Training Site, Idaho.

SUMMARY: 1. Proposed Action—Orchard Army National Guard Training Site is a Bureau of Land Management (BLM) owned, state operated, federally funded installation. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Guard Bureau

and the Idaho Military Division intend, acting as co-lead agencies, to prepare an Environmental Impact Statement on the proposed master plan construction and mission expansion at Orchard Training Area, Idaho. The proposal will include renovation and rehabilitation of existing facilities, range improvements, construction of facilities, development of ranges and associated maneuver areas, and a potential for increased training site utilization. The Environmental Impact Statement will address environmental considerations of the various alternatives for the construction/mission expansion at Orchard Training Area. The document will display direct and indirect environmental impacts, both beneficial and detrimental. Environmental impacts addressed will include those affecting air quality, noise, physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and social and economic resources.

2. Alternatives—various alternatives are being developed for consideration regarding the master plan/mission expansion at Orchard Training Area. The Environmental Impact Statement will include an evaluation of the environmental and socioeconomic impacts on the military reservation and neighboring communities. The following constitutes a tentative list of those alternatives to be considered in the draft EIS:

(1) No Action (Status Quo).
(2) Modification of Actions.
(3) Conduct Actions at another Location.

3. Scoping Process—The National Guard Bureau will utilize the scoping process, as outlined by the Council on Environmental Quality Regulations (40 CFR 1500–1508) implementing NEPA, to determine potentially significant issues related to the proposed master plan/mission expansion at Orchard Training Area. To initiate the formal scoping process, interested individuals, governmental agencies, and private organizations are invited to submit information and comments on this proposed action for consideration by the National Guard Bureau and possible incorporation into the EIS. Particularly solicited is information that would assist the National Guard Bureau and Idaho Military Division in analyzing the potential environmental consequences of the proposed action. This includes information on other environmental studies planned or completed in the area surrounding Orchard Training Area; environmental issues which the Environmental Impact Statement should consider; and major impacts associated with the proposed action and recommended mitigation measures. Concerned individuals and agencies can express their views either by writing or participating in a public scoping meeting to be held at a convenient location near Orchard Training Area. Adequate notice will be published in local area newspapers at a later date to inform interested parties of the exact place and time of the scoping meeting. The notice will also be mailed to select groups, individuals, agencies, and those responding to this Notice of Intent desiring to be informed of the details of the upcoming public scoping meeting. The purpose of the public scoping meeting is (1) to provide a description of the proposed action; (2) to identify potential impacts and issues that should be included in the EIS; (3) to identify other review coordination or permit requirements associated with the proposal; and (4) to discuss the role of the EIS in the development of the proposed action. Questions and comments regarding the scope of the environmental analysis should be directed to: LTC Richard Brown, The Adjutant General's Office, Idaho Military Division, P.O. Box 45, Boise, Idaho 83707–4507.

To ensure that comments regarding this proposal are considered in a timely manner, all correspondence should be received at the address above no later than 15 days following the public scoping meeting in order to be considered in the draft EIS.

4. Draft Environmental Impact Statement Preparation—The draft EIS is expected to be available to the public during June 1987. When the draft EIS is completed, a public notice of its availability for review will be announced in order that interested parties may comment on the document. If warranted, notice providing a schedule for a public hearing to solicit public response to the document will also be announced. Persons desiring to be placed on a mailing list to receive additional information regarding the scoping process and copies of the draft EIS and final EIS may contact LTC Richard Brown at the address above or by telephoning (208) 385–5286.

Lewis D. Walker,

Deputy for Environment, Safety, and Occupational Health OASA(I&L).

[FR Doc. 86–27784 Filed 12–10–86; 8:45 am]

BILLING CODE 3710–08–M

Public Information Collection Requirement Submitted to OMB For Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Record of Arrivals and Departures of Vessels at Marine Terminals, ENG Form 3926 The Corps of Engineers utilizes Vessel Operation Report, ENG Form 3925 in conjunction with ENG Form 3926 as its basic source of input to conduct its Waterborne Commerce Statistics program. The annual publication, "Waterborne Commerce of the United States—Parts 1–5" are the result of said statistics program.

Terminal operators, Response: 7,200, Burden hours: 3,600.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Office, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM–ADI–M, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 8, 1986.

[FR Doc. 86–27869 Filed 12–10–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.178]

Amended Notice Inviting Applications for New Awards Under the Leadership in Educational Administration Development (LEAD) Program for Fiscal Year 1987

On September 18, 1986, the Secretary published in the **Federal Register** at 51 FR 33218 a Notice of Proposed Rulemaking (NPRM) for the LEAD Program. In addition, the Office of Educational Research and Improvement (OERI) published an application notice on October 6, 1986 (51 FR 35550), inviting applications for grants to establish or operate a technical assistance center in each of the 50 States.

Since these documents were published, Congress enacted legislation authorizing grant assistance for support of a technical assistance center in the District of Columbia (see "Making Continuing Appropriations for Fiscal Year 1987", Pub. L. 99–500). The Secretary therefore advises eligible parties of the opportunity to apply for grant assistance for es:ablishment or operation of a technical assistance center in the District of Columbia. In view of the requirements for proposal development, and in the interests of sound program administration and equitable treatment of prospective applicants, the deadline for submission of grant applications for a center in the District of Columbia is December 29, 1986. Aside from this amended deadline, all other infornation provided in the application notice published on October 6 remains in effect.

FOR FURTHER INFORMATION CONTACT: Hunter Moorman, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 500–K, Capitol Place, Washington, D.C. 20208, (202) 357–6173.

(20 U.S.C. 4206).

Dated: December 8, 1986.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvenent.

[FR Doc. 86–27852 Filed 12–10–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Petroleum Council Committee on U.S. Oil and Gas Outlook; Meeting

Notice is hereby given that the Committee on U.S. Oil and Gas Outlook will meet in January 1987. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on U.S. Oil and Gas Outlook will be studying factors affecting the overall outlook for oil and gas in the U.S. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Committee on U.S. Oil and Gas Outlook will hold its third meeting on Tuesday, January 20, 1987, starting at 10:00 a.m., in the 29th Floor Conference Room of Tenneco Inc., Tenneco Building, 1010 Milam Street, Houston, Texas.

The tentative agenda for the Committee on U.S. Oil and Gas Outlook meeting follows:

1. Review and approve a proposed draft report of the NPC Committee on U.S. Oil & Gas Outlook.

2. Review the schedule for completion of the Committee's assignment.

3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Committee on U.S. Oil and Gas Outlook is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee on U.S. Oil and Gas Outlook will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Advanced Fuels, Technology, Extraction and Environmental Controls, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on December 4, 1986.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 86–27831 Filed 12–10–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Additional Information in Connection With a Subsequent Arrangement

Additional information is hereby given in connection with a "subsequent arrangement". Notice of the "subsequent arrangement" was given pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), on December 24, 1985 by publication in the **Federal Register** (Vol. 50 pp 52552, 52553).

The additional information follows: The subsequent arrangement involves the shipment, to U.S. Department of Energy facilities at the Savannah River Plant in South Carolina, from a research reactor in Taiwan, or irradiated fuel fods containing approximately 25,500 kilograms of natural uranium for reprocessing and storage of recovered nuclear materials. The fuel rods will be off loaded at a U.S. port and transported over land to the DOE facilities.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it was determined that this subsequent arrangement will not be inimical to the common defense and security when the previous notice was published on December 24, 1985. This notice does not affect that determination.

For the Department of Energy.

Dated: December 9, 1986.

David B. Waller,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–27970 Filed 12–10–86; 9:29 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the

Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Affected public; (7) An estimate of the number of respondents annually; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection and, briefly, the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. Last notice published Tuesday, November 25, 1986, (51 FR 42612).

ADDRESS: Address comments to Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.)

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–2308.

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise Mr. Broussalian of your intent as early as possible.

Authority: (Sec. 13(b), 5(b), 5(a), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 772(b), 764(b), 764(a), and 790a).

Issued in Washington, DC, December 5, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE COLLECTIONS UNDER REVIEW BY OMB

Collection No.	Collection title	Type of request	Reponse frequency	Response obligation	Affected public	Number of respondents	Respondent burden hrs annually	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
EIA:								
EIA–1, 3, 4, 5, 6, 7A, 7A(Supp), 20, and 97.	Coal program package.	Revision (One-year renewal with minor revisions).	On occasion, weekly, quarterly, annually.	Mandatory	Businesses or other for profit.	10,413	27,730	The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in varius EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, coal-consuming electric utilities, and boiler manufacturers.
FERC:								
FERC–590	Wellhead pricing: pricing audit.	Existing collection is use without an OMB control number.	On occasion	do	do	50	900	FERC–590, Wellhead Pricing: Pricing Audit, is a field audit of jurisdictional natural gas companies with sales or purchases of natural gas in any of eight general pricing categories of NGPA.

[FR Doc. 86–27832 Filed 12–10–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. R187–1–000]

Exxon Corp.; Petition for Declaratory Order

December 8, 1986.

On October 30, 1986, Exxon Corporation (Exxon) filed a petition pursuant to Rules 207 of the Commission's rules of practice and procedure, [1] to obtain a declaratory order that Exxon may defer collection of a part of the payments due for current sales of natural gas and may lawfully recover the deferred amount in subsequent sales, when the market clearing price exceeds the contract price.

Exxon states that it is selling natural gas under the aforesaid Rate schedule to Pacific Offshore Pipeline Company (POPCO) and the parties have agreed to an amendment under which POPCO may defer payment of certain amounts due for current deliveries of gas. The deferred amount represents the difference between the contract price and the market clearing price. The amendment permits Exxon to collect installments of the deferred amount in later periods when the market clearing price exceeds the contract price, as more fully described in the amendment, filed as Exhibit "A" to the petition. The amendment is intended to reduce current expenditures by POPCO and its sole customer, Southern California Gas Company, for purchased gas.

Any person desiring to be heard or to make any protest with reference to the petition should, on or before December 29, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 214 or 211 respectively. [2] All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing there in must file a motion to intervene in accordance with Rule 214.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–27807 Filed 12–10–86; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.207 (1986).

[Docket Nos. ER87–127–000 et al.]

Louisiana Power & Light Company et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

[2] 18 CFR 385.214 or 385.211 (1986).

1. Louisiana Power & Light Company

[Docket No. ER87-127-000]

December 4, 1986.

Take notice that on November 26, 1986, Louisiana Power & Light Company (LP&L) tendered for filing an Electric System Interconnection Agreement dated November 11, 1986, with the Town of Vidalia (Town), Louisiana which provides service schedules for Emergency Service, Reserve Capacity, Supplemental Power, Surplus Power, Economy Power, and Transmission Service. LP&L further states that the proposed agreement and schedules A, B, C, D, E, F, and F-1, are similar as accepted in FERC Docket No. ER80-284 with the Town of Jonesville (Rate Schedule FERC No. 65); FERC Docket No. ER80-314 with the City of Houma (Rate Schedule FERC No. 66); and in FERC Docket No. ER85-683 with the City of Winnfield (Rate Schedule FERC No. 77).

LP&L requests waiver of the notice requirements so that the Agreement can become effective January 1, 1987, the date requested by the Town.

LP&L states that a copy of this filing was mailed to the City and the Louisiana Public Service Commission.

Comment date: December 18, 1986, in accordance with Standard Paragraph E at the end of this document.

2. Montaup Electric Company

[Docket No. ER87-124-000]

December 4, 1986.

Take notice that on November 26, 1986 Montaup Electric Company ("Montaup" or "the Company") tendered for filing a contract between Montaup Electric Company and the Middleborough Gas and Electric Department for the sale of capacity and energy from Canal Unit No. 2 (FERC Rate Schedule No. 65). The amendment extends this unit sale for a two-year period beginning November 1, 1986. Middleborough's entitlement percentage will remain 0.3425% (2 MW). The capacity charge will increase from $.44 per kw-month to $4.78 per kw-month. The revised rate was supported by Montaup and accepted by the Commission in Docket No. ER85-736-000, Supplement No. 2 to Rate Schedule FERC No. 6, Town of Braintree.

Montaup requests waiver of the 60-day notice requirement. Negotiations exceeded the anticipated length due to uncertainty concerning the final entitlement percentage and term of the Agreement. The Agreement is mutually beneficial to both Montaup and Middleborough. Failure to grant waiver of the 60-day notice requirement would increase Middleborough's energy cost and lower Montaup's demand revenue. If the waiver is granted, there would be no effect upon purchasers under other rate schedules.

Copies of the filing have been mailed to Middleborough Gas and Electric Department.

Comment date: December 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Montaup Electric Company

[Docket No. ER87-125-000]

December 4, 1986.

Take notice that on November 26, 1986 Montaup Electric Company ("Montaup" or "the Company") tendered for filing a contract between Montaup Electric Company and the Newport Electric Corporation for the sale of capacity and energy from Canal Unit No. 2 (FERC Rate Schedule No. 71). The amendment extends the unit sale for a two-year period beginning November 1, 1986. Newport's entitlement percentage will remain 0.8562% (5 MW). The capacity charge will increase from $4.48 per kw-month to per kw-month. The revised rate was supported by Montaup and accepted by the Commission in Docket No. ER85-736-000. Supplement No. 2 to Rate Schedule FERC No. 60, Town of Braintree.

Montaup requests waiver of the 60-day notice requirement. Negotiations exceeded the anticipated length due to uncertainty concerning the final entitlement percentage and term of the Agreement. This agreement is mutually beneficial to both Montaup and Newport. Failure to grant waiver of the 60-day notice requirement would increase Newport's energy cost and lower Montaup's demand revenue. If the waiver is granted, there would be no effect upon purchasers under other rate schedules.

Copies of the filing have been mailed to Newport Electric Corporation and the Rhode Island Public Utilities Commission.

Comment date: December 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER87-126-000]

December 4, 1986.

Take Notice that on November 26, 1986 Montaup Electric Company ("Montaup" or "the Company") tendered for filing "Exhibit A" specifying electric power to be transmitted under a contract between Montaup Electric Company and Braintree, Massachusetts, dated March 4, 1985, effective November 1, 1984. The Exhibit A is for transmission of a purchase by Braintree of 20 MW from Taunton's Cleary No. 9 from November 1, 1986 through April 30, 1987.

Montaup requests waiver of the 60-day notice requirement in order to permit the transmission to begin on November 1, 1986. Notification from the user companies arrived too late for the Company to comply with the requirement.

Copies of the filing have been mailed to Braintree.

Comment date: December 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Company

[Docket No. ER87-123-000]

December 4, 1986.

Take notice that on November 26, 1986 Montaup Electric Company ("Montaup" or "the Company") tendered for filing a contract between Montaup Electric Company and the Town of Middleborough, Massachusetts. The agreement is Supplement No. 3 of Montaup's Rate Schedule FERC No. 75. The amended Exhibit A provides the charge for radial transmission service to the Town of Middleborough for calendar year 1986 and is based on year-end 1985 investment and capitalization. As shown in Exhibit A, that charge is decreased by $1,488 below the charges in effect for 1985, which were based on year-end 1984 investment and capitalization.

Copies of the filing have been mailed to the Town of Middleborough, Massachusetts and the Massachusetts Department of Public Utilities.

Comment date: December 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Central Louisiana Electric Company, Inc.

[Docket No. ES87-15-000]

December 5, 1986.

Take notice that on November 28, 1986, Central Louisiana Electric Company, Inc. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act (Act), seeking an order to issue up to $80,000,000 of short-term indebtedness on or before December 31, 1988, with a final maturity date no later than December 31, 1989.

Comment date: December 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. The Kansas Power and Light Company

[Docket No. ES87-14-000]

December 5, 1986.

Take notice that on November 28, 1986, The Kansas Power and Light Company (Applicant), filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue up to $170,000,000 in aggregate principal amount of short-term unsecured Promissory Notes in the form of bank loans and commercial paper, on or before December 31, 1988, with a final maturity date no later than December 31, 1989.

Comment date: December 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Power & Light Company, an assumed business name of PacifiCorp.

[Docket No. ER87-130-000]

December 5, 1986.

Take notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on November 28, 1986, tendered for filing, in accordance with § 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Oregon and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Oregon (Bonneville's Docket No. 5-A1-8601). The Revised Appendix 1 calculates the ASC for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective March 24, 1986, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commissioner of Oregon, and Bonneville's Direct Service Industrial Customers.

Comment date: December 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27806 Filed 12-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-105-000 et al.]

Northern Natural Gas Company et al.; Natural Gas Certificate Filings

December 5, 1986.

Take notice that the followings filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP87-105-000]

Take notice that on November 28, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska, 68102, filed in Docket No. CP87-105-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to High Plains Natural Gas Company (High Plains), as well as construct and operate any appurtenant facilities, under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to add an interruptible delivery point to High Plains in order to accommodate the sale of gas by High Plains to Follett Feeders, a cattle feed lot in Lipscomb County, Texas. It is stated that Northern would also install the necessary tap and metering facilities at an estimated cost of $5,500. It is also stated that the ability to receive gas at the additional delivery point would provide operational flexibility to High Plains in providing service to its various distribution companies.

It is indicated that the volumes to be delivered to High Plains at the proposed delivery point in the fifth year of service would be 37 Mcf of gas on a peak day, with an annual delivery of 11,371 Mcf. It is stated that such volumes are within the currently authorized firm entitlements to High Plains as authorized by order issued July 29, 1983, in Docket No. CP82-500-001. Thus, Northern indicates that there would be no impact on its peak day and annual deliveries.

Comment date: January 20, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP87-90-000]

Take notice that on November 21, 1986, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP87-90-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to abandon by conveyance metering facilities serving 15 farm tap customers in Kentucky and Indiana under the certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it would abandon the meters, which are located in the Alford Storage Field (Alford) in Pike County, Indiana; the Dixie Storage Field (Dixie) in Henderson County, Indiana; and the Hanson Storage Field (Hanson) in Hopkins County, Kentucky; by conveying them to the local distribution companies, Ohio Valley Gas, Inc. (Ohio Valley), or Western Kentucky Gas Company (WKG), which would continue to serve the customers, as indicated below:

Customer name	Distribution company	Texas gas storage field
Robert Adams	Ohio Valley	Alford.
Roger Graig	do	Do.
Leland Gladish	do	Do.
M. Arnett	WKG	Dixie.
D. Boling	do	Do.
F. Cates	do	Do.
I. Orsburn	do	Do.
J. Powell	do	Do.
R. Powell	do	Do.
E. Sutton	do	Do.
G. Walthers	do	Do.
D. Walters	do	Do.
Butch Clayton	do	Hanson.
Lamar Property	do	Do.
Harvey Oglsbly	do	Do.

It is stated that there would be no interruption in service to the 15 customers. It is further stated that Ohio Valley and WKG are existing resale customers of Texas Gas.

Comment date: January 20, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corporation PennEast Gas Service Company

[Docket No. CP87-92-000]

Take notice that on November 24, 1986, Texas Eastern Transmission Corporation (Texas Eastern) and PennEast Gas Service Company

(PennEast), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87-92-000 a joint application pursuant to section 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization (1) for construction and operation by Texas Eastern of certain pipeline facilities in Ohio, West Virginia, Pennsylvania, New Jersey, and New York, (2) for the joint construction and operation of certain other pipeline facilities in Pennsylvania by Texas Eastern and PennEast, (3) for Texas Eastern and PennEast, as applicable, to render the sales and transportation services herein set forth, and (4) granting Texas Eastern such other authorization as may be necessary to replace the existing facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that PennEast is a general partnership organized by Consolidated Gas Transmission Corporation (Consolidated) and Texas Eastern Gateway, Inc., an affiliate of Texas Eastern. Further, it is stated that PennEast is not currently engaged in any jurisdictional gas transmission operations.

Texas Eastern proposes a capacity restoration program designed to restore to current certificated levels the deliverability capacity of its pipeline facilities from Compressor Station 17 near Circleville, Ohio, to Compressor Station 25 near Phoenixville, Pennsylvania, which represents a portion of Texas Eastern's pipeline commonly known as the Big Inch (Texas Eastern's 24-inch Line No. 1) and Little Big Inch (Texas Eastern's 20-inch Line No. 2) acquired from the War Assets Administration in 1947.

Texas Eastern states that due to the urgency of construction during World War II, the portions of Line No. 1 (416 miles) and Line No. 2 (315 miles) which run through Ohio, West Virginia, and Pennsylvania, were only spot coated for corrosion control, that this coating procedure left the lines more susceptible to corrosion, that the original cathodic protection applied to these lines proved to be ineffective, and as a result Texas Eastern installed a more effective cathodic protection system in 1955 in order to maintain the integrity of the lines. Texas Eastern further states that the spot coated sections of Line No. 1 and Line No. 2 have been inspected with in-line tools over the entire length within the last seven years to determine the extent of corrosion on these lines, that seventy percent of the spot coated pipe has been hydrostatically tested since 1947, and as a result of these and other procedures, approximately 65 miles of spot coated pipeline have been replaced over the years.

Texas Eastern alleges that given the inspections that have been conducted, the encroachment of human population, and more than 40 years of operation and associated deterioration, it recently determined that the condition of Line No. 1 and Line No. 2 required the reduction of operating pressure of the system from near its Compressor Station 17 near Circleville, Ohio, to its Compressor Station 25 near Phoenixville, Pennsylvania, for safety considerations, and that a direct and immediate consequence of this safety action by Texas Eastern is the loss of 157,745 dekatherms (dt) equivalent in certificated daily design capacity which capacity is necessary to enable Texas Eastern to satisfy its certificate obligations to its firm customers in Ohio, West Virginia, Pennsylvania, New Jersey, and New York. Texas Eastern further alleges that curtailment of gas deliveries to these customers as a result of this safety action may have a serious impact on some of the high priority residential and small commercial customers indirectly served by Texas Eastern since these customers have little or no alternative fuel capacity.

Texas Eastern states that in order to minimize the period of time in which it is incapable of satisfying its firm certificate obligations, it has developed its capacity restoration program pursuant to which it proposes to construct (either by itself or in conjunction with PennEast) major pipeline facilities in 1987 and 1988. Further, Texas Eastern states that the 1987 construction contemplates an in-service date of November, 1987, and the 1988 construction contemplates an in-service date of November, 1988.

Texas Eastern proposes to construct and operate the following facilities during 1987:

(1) 5.00 miles of 36-inch pipeline in Ohio,

(2) 12.53 miles of 36-inch pipeline in Pennsylvania,

(3) 7.25 miles of 36-inch pipeline at the discharge of Texas Eastern's Bechtelville Station in Pennsylvania,

(4) 5.50 miles of 42-inch pipeline on the discharge of Texas Eastern's Station 26 in Pennsylvania,

(5) Up to 4000 hp of compression facilities to be installed on Texas Eastern's Leidy Line in Centre County, Pennsylvania,

(6) Aerodynamic assembly changeouts at Texas Eastern's Compressor Station 24 in Pennsylvania, and

(7) Reconnection of the M&R Stations 372, 005, 013, 015, 054, 007, 012, 020, 008, 1275, 010, and 056 to Texas Eastern's 30-inch pipeline system in West Virginia and Pennsylvania.

During 1988, Texas Eastern proposes to construct and operate the following facilities:

(1) 22.50 miles of 36-inch pipeline between Texas Eastern's Station 18 and Station 19 in Ohio,

(2) 4.00 miles of 36-inch pipeline between Texas Eastern's Station 19 and the Berne Station in Ohio,

(3) 9.68 miles of 36-inch pipeline between Texas Eastern's Berne Station in Ohio, and Holbrook Station in Pennsylvania through West Virginia,

(4) 5.61 miles of 20-inch pipeline to reconnect Texas Eastern's Station 19 to M&R 004 in Ohio,

(5) 1.41 miles of 8-inch pipeline to reconnect Texas Eastern's M&R 1275 to M&R 009 in Pennsylvania,

(6) 15.20 miles of 24-inch pipeline in New Jersey,

(7) Up to 11,000 hp of additional compression facilities at Texas Eastern's Station 19 in Ohio,

(8) Relocation of 6,000 hp of compression facilities from Texas Eastern's Station 20 in Ohio to Berne Station in Pennsylvania,

(9) Up to 11,000 hp of additional compression facilities at Texas Eastern's Holbrook Station in Pennsylvania,

(10) Up to 4,000 hp of compression facilities at Texas Eastern's M&R 009/037,

(11) Up to 22,000 hp of additional compression facilities at Texas Eastern's Station 21-A in Pennsylvania,

(12) Up to 11,000 hp of additional compression facilities at Texas Eastern's Station 23 in Pennsylvania,

(13) Station modifications and regulator installations, and

(14) Compressor modifications to three M&R stations 058, 1075, and 1078, and a new meter station to be constructed at a point on the Algonquin Gas Transmission Company's (Algonquin) system at or near Bridgewater, New Jersey.

Texas Eastern states that it would receive gas into the Bridgewater station pursuant to an exchange agreement between Texas Eastern and Algonquin. It is indicated that an application for authorization of this exchange would be filed shortly.

Texas Eastern further states that

pursuant to a gas compression and metering service agreement between Texas Eastern and PennEast, PennEast has agreed to reimburse certain costs incurred by Texas Eastern for certain facilities as detailed in the application. PennEast alleges it has included these costs in its rate base for the purpose of calculating PennEast rates.

Texas Eastern and PennEast propose to construct jointly and cause Texas Eastern to operate 217.55 miles of 36-inch pipeline from Texas Eastern's Compressor Station 21–A to 25 in Pennsylvania during 1987 and, during 1988, 9.50 miles of 36-inch pipeline at the discharge of Texas Eastern's Compressor Station 25 in Pennsylvania.

It is indicated that, pursuant to the construction, joint ownership, operation and maintenance agreement (joint ownership agreement), the construction cost of the jointly owned facilities would be shared by Texas Eastern and PennEast in accordance with the methodology shown in the application. Texas Eastern and PennEast request the Commission to issue the necessary pregranted authorizations required to permit Texas Eastern to reduce its ownership interest and PennEast to increase its ownership interest to the percentages shown in the application. The total capital costs of constructing all facilities proposed are $334,524,000 in 1987, and $188,686,000 in 1988, for a total of $523,210,000.

Texas Eastern proposes to finance the facilities with general corporate funds sourced from operations and capital issuances and PennEast proposes to finance the facilities with 75 percent long-term debt and 25 percent equity which would be contributed by Texas Eastern and Consolidated.

As part of and as a result of the construction of the facilities, Texas Eastern proposes in 1987 to abandon and remove 159.56 miles of Line No. 2 from Station 21–A to Station 24–A, and 44.99 miles of Line No. 1 from Station 24–A to Station 25, and place in idle service 169.91 miles of Line No. 1 from Station 21–A to Station 24–A. Texas Eastern also proposes in 1988 to abandon and remove 9.50 miles of Line No. 2 on the discharge of Station 25 and place in idle service 198.07 miles of Line No. 1 from near Station 17 to Station 21–A, and 144.84 miles of Line No. 2 from Station 18 to Station 21–A.

It is indicated that the proposed facilities are designed to provide the following delivery capacity on a daily basis to Texas Eastern and PennEast.

[dt equivalent]

	1987	1988
Texas Eastern	799,527	899,527
PennEast	100,000	245,000
Total	899,527	1,144,527

Texas Eastern proposes to utilize its capacity as follows:

(a) 554,282 dt equivalent per day commencing in November, 1987, for the purpose of preserving certificated design capacity;

(b) 102,130 dt equivalent per day commencing in November, 1987, for the purpose of alleviating a peak-day capacity deficiency which was created by the abandonment of Texas Eastern's Staten Island LNG facility by Commission order under Docket No. CP85–859–000;

(c) 23,115 dt equivalent per day commencing in November, 1987, for the purpose of firming up an interruptible transportation and delivery service of natural gas by Texas Eastern for Consolidated Edison Company of New York, Inc., pursuant to Texas Eastern's SS–II service. This proposal is currently also docketed in Docket No. CP87–28–000 and is designated Rate Schedule SS–II Phase V.

(d) 120,000 dt equivalent per day commencing in November, 1987, for the purpose of providing a transportation service for Consolidated for delivery to Baltimore Gas and Electric Company and Washington Gas Light Company. Texas Eastern states that this application is currently pending in Docket No. CP85–806–000, that an order has been issued approving, with conditions, the application, and that the parties have filed for rehearing, thus the matter is not currently final.

(e) 100,000 dt equivalent per day commencing in November, 1987, for the purpose of providing a new storage service, pursuant to a letter of intent signed by Texas Eastern and Consolidated regarding the development and operation of a new storage service.

Texas Eastern requests authorization to receive, measure, compress and deliver gas on behalf of PennEast. Texas Eastern proposes to charge PennEast only the incremental operation and maintenance expenses incurred by Texas Eastern.

PennEast proposes to utilize its capacity of 100,000 dt equivalent of natural gas per day commencing in November, 1987, and 245,000 dt equivalent of natural gas per day commencing in November, 1988, for the purpose of providing firm sales service on a firm long-term basis to the Brooklyn Union Gas Company, Elizabethtown Gas Company, Long Island Lighting Company, New Jersey Natural Gas Company, and Public Service Electric and Gas Company, collectively referred to as Buyers, and to transport natural gas in interstate commerce for the Buyers, as first proposed in Docket No. CP87–4–000. PennEast also requests, as in Docket No. CP87–4–000, a blanket certificate of public convenience and necessity pursuant to 18 CFR 284.221, authorizing open access, nondiscriminatory self-implementing transportation of natural gas.

Texas Eastern and PennEast state that the proposed services now pending before the Commission for Texas Eastern in Docket Nos. CP87–28–000 and CP85–806–000 and for PennEast in Docket No. CP87–4–000, and related exhibits for these services are to be incorporated by reference for purposes of this application.

Comment date: December 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Williston Basin Interstate Pipeline Company

[Docket No. CP87–83–000]

Take notice that on November 18, 1986, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP87–83–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to abandon two sales taps and appurtenant facilities under its blanket authorization issued in Docket No. CP82–487–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon two sales taps and appurtenant facilities located on its natural gas transmission system in Ward and Golden Valley Counties, North Dakota. It is stated that the customer, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (Montana-Dakota) no longer requires service through an extension of Montana-Dakota's own distribution facilities or because such customers have discontinued taking gas service. Williston Basin further states that since the sales taps would be abandoned on its existing transmission right of way, there would be no significant adverse impact on the environment.

Comment date: January 20, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27805 Filed 12-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC87-6-000]

UtiliCorp United Inc., a Missouri Corporation and UtiliCorp United Inc., a Delaware Corporation; Application

December 8, 1986.

Take notice that on November 26, 1986, UtiliCorp United Inc., a Missouri corporation, and UtiliCorp United Inc., a Delaware corporation, pursuant to section 203 of the Federal Power Act, filed an application for authorization for UtiliCorp Missouri to be merged with and into UtiliCorp Delaware, all as more fully set forth in the Application which is on file with the Commission and open to public inspection.

It is stated that UtiliCorp Delaware is a wholly-owned subsidiary of UtiliCorp Missouri. UtiliCorp Missouri provides electric and gas service in Missouri through its Missouri Public Service division. It also provides natural gas service in the states of Minnesota, Iowa, Kansas, Nebraska and Colorado, as well as to three industrial customers in Michigan and to several hundred rural customers in South Dakota through its People's Natural Gas division. UtiliCorp Missouri also provides natural gas service in Lawrence, Kansas and the surrounding area through its Kansas Public Service division.

It is stated that the prinicipal purpose of the proposed merger is to have the affairs of the company governed by the corporation law of Delaware, which offers more certainty than Missouri corporation law with respect to the conduct of the company's legal affairs. Delaware has followed a policy of encouraging incorporation in that state for many years and, in furtherance of that policy, has adopted comprehensive and flexible corporate laws which are periodically updated and revised to meet changing business needs. Because Delaware is the state of incorporation for many corporations, the Delaware judiciary has acquired significant expertise in dealing with corporate issues and a substantial number of decisions have been rendered construing Delaware law and establishing public policies with respect to Delaware domiciliary corporations and Delaware corporate law has been and is likely to continue to be interpreted and explained more thoroughly than is the case with Missouri corporate law. As a consequence, a significant measure of certainty to legal aspects of the conduct of the company's business will tend to be assured.

Applicants state that upon the effective date of the merger each outstanding share of UtiliCorp Missouri Common Stock and Preference Stock will automatically be converted into one share of UtiliCorp Delaware Common Stock and comparable series of UtiliCorp Delaware Preference Stock, respectively. Each outstanding certificate representing shares of UtiliCorp Missouri Common Stock and Preference Stock will continue to represent the same number of shares of Common Stock and Preference Stock of UtiliCorp Delaware, respectively.

Any person desiring to be heard or to protest this 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 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27808 Filed 12-10-86; 8:45 am]

BILLING CODE 6717-01-M

Establishment of Performance Review Board; Names of Board Members

Section 4314(c), United States Code (as amended by the Civil Service Reform Act of 1978), requires that the Federal Energy Regulatory Commission establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s) to review, evaluate, and make a final recommendation on performance appraisals assigned to members of the Senior Executive Service in the Commission. The Performance Review Board also makes written recommendations to the Chairman, Federal Energy Regulatory Commission regarding Senior Executive Service performance bonuses, awards, and performance-related actions.

Section 4314(c) of title 5, United States Code requires that note of appointment

of Performance Review Board members be published in the **Federal Register.** This amends the Commission's notice of August 7, 1986, in the **Federal Register** (51 FR 28423), to add names to the register of executives eligible to serve on a Performance Review Board:

Add

Richard O'Neil.

Issued in Washington, DC on December 8, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27864 Filed 12-10-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59232A FRL-3125-9]

Approval of Test Marketing Exemption for a Certain Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-87-2. The test marketing conditions are described below:

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: John G. Davidson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-613, 401 M St., SW., Washington, DC 20460 (202-382-3373).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-87-2. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The followng additional restrictions apply to TME-87-2. A bill of lading and material Safety Data Sheet (MSDS) accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until 5 years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customers and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-87-2

Date of Receipt: October 15, 1986.

Notice of Receipt: October 27, 1986 (51 FR 37968).

Applicant: Confidential.

Chemical: (G) Tallow neodecanoamide.

Use: (G) Commercial laundry wash product additive.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Manufacturer: dermal and inhalation, a total of 4 workers for one 8 hour period.

Test Marketing Period: 12 months.

Commencing on: November 26, 1986.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 26, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-27840 Filed 12-10-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59218C; FRL-3126-2]

Approval of Petition for Modification of Test Marketing Exemption for a Certain Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of a petition for modification of a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-39. The modification conditions are described below.

EFFECTIVE DATE: November 24, 1986.

FOR FURTHER INFORMATION CONTACT: R. James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613C, 401 M St. SW., Washington, DC. 20460 (202-382-3374).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

On May 12, 1986, TME 86-39 became effective. The notice of approval of this TME was published on May 20, 1986 (51 FR 18498). On November 4, 1986, the Company petitioned EPA to modify the TME by extending its time period. No increase in production volume was requested. EPA hereby approves the petition for modification of TME-86-39. EPA has determined that test marketing of the new chemical substance subject to this TME, under the conditions described in the original notice of approval as modified by this notice of approval of petition for modification of

test marketing exemption, will not present any unreasonable risk of injury to health or the environment. All conditions and restrictions described in the original notice of approval and in this notice of approval must be met.

TME–86–39

Notice of Approval of Test Market Exemption May 20, 1986 (51 FR 18498).

Risk Assessment: No significant health or environmental concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Modification: This modification extends the length of the test marketing period.

Test Marketing Period: 8 months.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 24, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86–27841 Filed 12–10–86; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3126–6]

Availability of the Report to Congress on Waste Minimization

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of the report to Congress on waste minimization.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a report to Congress on the minimization of hazardous waste that was mandated by section 8002(r) of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984. This report was submitted to Congress on October 30, 1986. The report addresses the desirability and feasibility of: (1) Establishing standards of performance or of taking other additional actions under RCRA to require generators of hazardous waste to reduce the volume or quantity and toxicity of the hazardous waste they generate; and (2) establishing, with respect to hazardous waste, required management practices or other requirements to ensure such wastes are managed in ways that minimize present and future threats to human health and the environment.

In addition, the EPA is announcing the availability of the technical support document which was developed in preparation for the report to Congress. This document entitled "Waste Minimization—Issues and Options" is a three volume set which profiles waste minimization activities throughout the country. ADDRESS: These documents are available for public viewing in the RCRA Docket, Room S–212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, from 9:30 a.m. to 3:30 p.m., Monday thru Friday, except legal holidays; telephone (202) 475–9327. The docket ID number is F–86–WMRA–FFFFF. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page. The documents are also available for viewing at the EPA library located in Room 2904; telephone (202) 382–5921, and at the EPA Regional libraries. Contact your EPA Regional office for more details on public viewing hours.

Copies of the executive summary of the report to Congress are available, while supplies last, from the EPA RCRA/Superfund Hotline at (800) 424–9346 ((202) 382–3000 in Washington, DC).

These documents are available for purchase from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161, at (703) 487–4600. Each document may be purchased separately. "Report to Congress—The Minimization of Hazardous Waste Volume I" (EPA/530–SW–86–033, NTIS No.: PB–87–114–336, $16.95 hardcopy, $5.95 microfiche), "Report to Congress—The Minimization of Hazardous Waste Volume II" (EPA/530–SW–86–034, NTIS No.: PB–87–114–344, $22.95 hardcopy, $5.95 microfiche), "Waste Minimization—Issues and Options Volume I" (EPA/530–SW–86–041, NTIS No.: PB–87–114–351, $34.95 hardcopy, $5.95 microfiche), "Waste Minimization—Issues and Options Volume II" (EPA/530–SW–86–042, NTIS No.: PB–87–114–369, $52.95 hardcopy, $13.50 microfiche), "Waste Minimization—Issues and Options Volume III" (EPA/530–SW–86–043, NTIS No.: PB–87–114–377, $22.95 hardcopy, $5.95 microfiche). The documents can also be purchased as a five volume set (NTIS No.: PB–87–114–328, $128.50 hardcopy). Requestors should cite the title and the NTIS order number.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, at (800) 424–9346 (toll free), or (202) 382–3000. For technical information, contact Elaine Eby, Office of Solid Waste (WH–565A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7930.

SUPPLEMENTARY INFORMATION:

Description of the Available Waste Minimization Documents

Report to Congress—The Minimization of Hazardous Waste

The document entitled "Report to Congress—The Minimization of Hazardous Waste Volume I," contains the results of a study which was conducted in response to the requirements of Section 8002(r) of the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA). Under this section, the Administrator of the EPA is required to submit a report to Congress on the desirability and feasibility of: (1) Establishing standards of performance or of taking other additional actions under RCRA to require generators of hazardous waste to reduce the volume or quantity and toxicity of the hazardous waste they generate; and (2) establishing, with respect to hazardous waste, required management or other requirements to ensure such wastes are managed in ways that minimize present future risks to human health and the environment. This report contains the discussion and evaluation of options which were considered to minimize the generation of hazardous waste: current incentives and disincentives which exist in the area of waste minimization; and information and data pertaining to waste generation and minimization practices.

The document entitled "Report to Congress—The Minimization of Hazardous Waste Volume II" contains a detailed analysis of the desirability and feasibility of numerous options to minimize the generation of hazardous waste. The evaluation of each of the specific options is presented using a standard set of desirability and feasibility criteria developed for the report. This volume is considered to be an appendix to the report entitled, "Report to Congress—The Minimization of Hazardous Waste Volume I", and can be regarded as supplementary information.

Waste Minimization—Issues and Options

The report entitled, "Waste Minimization—Issues and Options Volume I", was developed with three primary objectives in mind: (1) To identify waste minimization practices in

the United States by major industrial process, major waste stream, and by source reduction and recycling technique; (2) to identify factors that promote and inhibit the adoption of waste minimization practices by industry; and (3) to identify strategies by which waste minimization can be promoted through voluntary and regulatory means. The report also serves as a waste minimization resource document for Federal and State programs, industries, and the general public.

The report entitled "Waste Minimization—Issues and Options Volume II" is a supplement to the main report entitled, "Waste Minimization—Issues and Options Volume I". This supplemental document contains exploratory source reduction studies for 22 various industrial processes and practices known to generate (or influence) the generation of hazardous waste. The processes and practices studied include: acrylonitrile manufacture; agricultural chemicals formulation; electroplating; epichlorohydrin manufacture; inorganic pigments manufacture; metal surface treatment; organic dyes and pigment manufacture; paint manufacture; petroleum refining; phenolic resins manufacture; printed circuit boards; printing operations; synthetic fiber manufacture; synthetic rubber manufacture; 1,1,1-trichloroethane production; trichloroethylene/perchloroethylene production; vinyl chloride monomer production; wood preserving; good operating practices; metal parts cleaning; paint application; and process equipment cleaning.

The report entitled, "Waste Minimization—Issues and Options Volume III" is also a supplement to the main report and contains the following information: recycling technologies and practices; a description of the Northeast Industrial Waste Exchange's on-line computer system; steps in conducting a project profitability analysis; EPA's definition of solid waste; EPA correspondence on waste minimization activities; compilation of industrial waste minimization case studies; EPA's Environmental Auditing Policy Statement; descriptions of State programs in waste minimization; and proposed regulations on hazardous waste management by two counties in California.

Dated: December 3, 1986.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 86-27839 Filed 12-10-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51587B; FRL-3126-1]

Termination of Review Period for Certain Chemical Substance Subject to Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is revoking, effective November 22, 1986, following the signing of a Consent Order for the new chemical substance subject to premanufacture notice (PMN) P85-1388, the remaining portion of a 90-day extension of the review period for PMN P-85-1388, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: R. James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-613, 401 M Street, SW., Washington, DC 20460, (202) 382-3374.

SUPPLEMENTARY INFORMATION: The original 90-day review period for PMN P-85-1388 was scheduled to expire on March 15, 1986. EPA published a section 5(c) extension notice for the PMN, in the **Federal Register** of March 26, 1986 (51 FR 10444), to provide the Agency with sufficient time to issue an order under section 5(e). The Order would have prohibited the Company from manufacturing the PMN substance in, or importing it into, the United States pending the submisssion and evaluation of test data addressing the potential risk of injury to human health.

The review period, including the extension under section 5(c), is scheduled to expire December 19, 1986. After the Order was proposed, the company suspended the notice review period and submitted more data and information. In light of this new data and information, EPA and the Company agreed to enter into a Consent Order.

Therefore, EPA is revoking the remaining portion of the extended review, effective immediately.

Dated: November 13, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-27842 Filed 12-10-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Board of Visitors for the National Fire Academy of the Training and Fire Programs Directorate; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy (NFA).

Dates of Meeting: January 5-6, 1987.

Place: Federal Emergency Management Agency, Federal Center Plaza, 500 C Street, SW., Room 401, Washington, DC 20472

Time: January 5—8:30 a.m. to 5:00 p.m., January 6—8:30 a.m. to Agenda Completion.

Proposed Agenda: Old Business; New Business; Preparation of BOV Annual Report; Review Master Curriculum Plan.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1123) on or before December 29, 1986.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD, 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: December 2, 1986.

James P. McNeill,

Associate Director, Training and Fire Programs.

[FR Doc. 86-27844 Filed 12-10-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000150-086.

Title: Trans-Pacific Freight Conference of Japan.
Parties:
American President Lines, Ltd.
Barber Blue Sea Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.
Agreement No.: 202-003103-088.
Title: Japan-Atlantic and Gulf Freight Conference.
Parties:
Barber Blue Sea Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.
Agreement No.: 202-008190-019.
Title: Japan-Puerto Rico and Virgin Island Freight Conference.
Parties:
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.
Agreement No.: 203-010664-004.
Title: Pan-Atlantic Carrier Trade Agreement.
Parties:
Hapag-Lloyd AG
Intercontinental Transport (ICT) BV
Atlantic Container Line GIE
Dart-ML Limited
Nedlloyd Lijnen, B.V.
Trans Freight Lines
Lykes Bros. Steamship Company, Inc.
Johnson Scanstar

Synopsis: The proposed amendment would delete United States Lines, Inc. as a party to the agreement.
Agreement No.: 202-010689-019.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would require that any party which causes new tariff pages to be published as a result of its independent action or individually instituted rate pursuant to rate initiative procedures shall bear the cost incurred by the agreement in publishing such pages.
Agreement No.: 204-010986-002.
Title: U.S./Peru Equal Access Agreement.
Parties:
Compania Peruana de Vapores
Lykes Bros. Steamship Co., Inc.
Naviera Neptuno, S.A.
Crowley Caribbean Transport, Inc.
Empresa Naviera Santa, S.A.

Synopsis: The proposed amendment would delete Coordinated Caribbean Transport, Inc. and add Crowley Caribbean Transport, Inc. as a party to the agreement.
Agreement No.: 224-011041.
Title: Oakland Terminal Agreement.
Parties:
City of Oakland (Port)
Pacific Australia Direct Line (PAD)

Synopsis: The proposed amendment would give PAD non-exclusive use of certain premises at the Port's 7th Street Public Container Terminal, Berth J, for the berthing, loading and discharging of its vessels and related operations in PAD's roll-on/roll-off West Coast-Australia/South Pacific service.

By Order of the Federal Maritime Commission.

Dated: December 8, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-27854 Filed 12-10-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft FY 1987 Program Guidelines/Application Solicitation.

SUMMARY: The Federal Mediation and Conciliation Service is publishing the draft Fiscal Year 1987 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public and receive public comments. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

DATE: Comments are due on or before January 9, 1987.

ADDRESS: Send comments to: Peter L. Regner, Director, Labor-Management Grant Programs, FMCS, 2100 K Street, N.W., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653-5320.

Labor-Management Cooperation Program Application Solicitation—FY 1987

A. Introduction

The following is the draft solicitation for the Fiscal Year 1987 cycle of the Labor-Management Cooperation Program. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in Fiscal Year 1981. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industrywide labor and management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow as well as a

separately published FMCS Financial and Administrative Grants Manual make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communications between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance to the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement. Employees covered by so-called "meet and confer" agreements are not eligible under this program. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY87, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal grant programs (e.g., job training).

Required Program Elements

1. Problem Statement—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problems using as much relevant data as possible and discuss the full range of impacts these problems could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problems. This section basically discusses *WHY* the effort is needed.

2. Results or Benefits Expected—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. Approach—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of the past efforts and accomplishments and how they would integrate with the proposed future expanded effort.

4. Major Milestones—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for WHEN they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant. The chart should identify months as "month 1, 2," etc., rather than by name of month as the grant start date will not be determined until all applications are reviewed. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. Evaluation—Applicants must provide for an external evaluation or internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which will briefly discuss what basic

questions or issues the assessment would examine and what baseline data the committee staff would already have/or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. Letters of Commitment—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and are willing to personally attend scheduled committee meetings. A blanket letter signed by a committee chairperson on behalf of all members is not acceptable.

7. Other Requirements—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's fiscal feasibility vs. its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration and quality of the application; and,

(8) The cost value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, financial support from state grant programs, site locations, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, private non-profit labor-management committees (or a labor or management entity on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or sore committees to be created through the grant. Federal government agencies are not eligible.

Third party private non-profit entities which can document that a major purpose of function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee funding are not eligible to apply for funding to continue or expand their prior efforts. Applicants who are presently receiving state grant funds for their labor-management efforts will be eligible to apply for FMCS funding, but will be considered at a lower priority level.

D. Allocations

FMCS has received an FY87 appropriation of $1 million for this program. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (in-plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be awarded according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY87 appropriation to contract for program support purposes (other than administrative). In addition, up to $70,000 will be reserved to continue support for the Fourth National Labor-Management Conference.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence at least 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio.

The total project period will thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the initial cash match ratio. The total project period will thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing inplant applicants; up to $50,000 over 18 months for new in-plant committee applicants;

—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;

—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

In FY87, applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants of existing committees must provide at least 25 percent of the total allowable project costs. All matching funds must be in cash rather than in-kind goods or services. Matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs. In addition, grant funds must not be used to supplant private or local/state government funds currently employed for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts only. Also, under no circumstances will business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* staff time as an expense or match contribution.

For a sore complete discussion of cost allowablility, applicants are encouraged to consult the FY87 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by *both* a labor and management representative and be postmarked no later than May 2, 1987. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application, containing numbered pages, plus three copies should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427. Applications submitted without sufficient copies may be returned.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Board(s). The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process of those applications recommended by the Board(s).

All FY87 grant applicants will be notified of results, and all grant awards will be made, prior to September 30, 1987. Applications submitted after the deadline dates or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427, or by calling 202/653–5320.

Kay Murray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 86–27792 Filed 12–10–86; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Associated Banc-Corp. et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *Associated Banc-Corp.*, Green Bay, Wisconsin; to engage *de novo* through its subsidiary Associated Mortgage, Inc., Green Bay, Wisconsin, in mortgage banking pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the States of Minnesota, Iowa, Indiana, Ohio, Michigan, Missouri, Kentucky and Wisconsin.

2. *Lane Financial, Inc.*, Northbrook, Illinois; to engage *de novo* through its subsidiary, Lane Life Insurance Company, Northbrook, Illinois, in acting as a reinsurer of credit life insurance and credit disability insurance that is directly related to extensions of credit by the banking subsidiaries of Lane Financial, Inc. pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Clearwater Home State Bancshares, Inc.*, Clearwater, Kansas; to engage *de novo* through its subsidiary, Home Financial Corporation, Wichita, Kansas, in the sale of credit-related life, accident and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; the sale of insurance directly related to extensions of credit by the finance company subsidiary

pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y; providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y; and providing consumer financial counselling services pursuant to § 225.25(b)(20) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-27810 Filed 12-10-86; 8:45 am]

BILLING CODE 6210-01-M

Associated Banc-Corp. et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) 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)).

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 to the Reserve Bank indicated for that application or to the officies 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.

Comments regarding this application must be received not later than December 28, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Associated Banc-Corp,* Green Bay, Wisconsin; to acquire 100 percent of the voting shares of Chicago Commerce Bancorporation, Chicago, Illinois, and thereby indirectly acquire Chicago Bank of Commerce, Chicago, Illinois.

Board of Governors of the Federal Reserve System, December 5, 1986.

James McAfee,

Assoicate Secretary of the Board.

[FR Doc. 86-27811 Filed 12-10-86; 8:45 am]

BILLING CODE 6210-01-M

Benson Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under section 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue conflicts of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for 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 be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1986.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Benson Financial Corporation,* San Antonio, Texas; to merge with Benson Investment Company, San Antonio, Texas, and thereby acquire Kelly Field National Bank, Leon Valley, Texas, and Exchange National Bank, San Antonio, Texas; to merge with Groos Financial Corporation, San Antonio, Texas, and thereby acquire Groos Bank, N.A., San Antonio, Texas; and to acquire 79.8 percent of the voting shares of San Pedro Bancshares, Inc., San Antonio, Texas, and thereby indirectly acquire San Pedro State Bank, San Antonio, Texas.

In connection with these applications, Applicant also proposes to acquire Bancshares Life Insurance Company, San Antonio, Texas, and thereby engage in acting as reinsurer for credit life insurance and credit accident and health insurance that is directly related to an extension of credit by the bank holding company related to an extension of credit by the bank holding company system pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, December 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-27812 Filed 12-10-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-060-87-4333-02]

Commercial Permit Applications; Upper Missouri National Wild and Scenic River

AGENCY: Bureau of Land Management, Interior.

ACTION: Open Season for Commercial Permit Applications on the Upper National Wild and Scenic river.

SUMMARY: This notice establishes an "open season" for applying for Special Recreation Use Permits on the Upper Missouri National Wild and Scenic River in Montana required of all commercial float boating operations. Other requirements of commercial outfitting and guiding operations remains as outlined in the **Federal Register**, Vol. 49, No. 29, Friday, February 10, 1984, entitled "Special Recreation Permit Policy".

ADDRESS AND DATES: Applications must be sent to the Lewistown District, Bureau of Land Management, Airport Road, Lewistown, Montana 59457 between February 8 and March 21, 1987.

FOR FURTHER INFORMATION CONTACT: River Manager, Airport Road, Lewistown, Montana 59457.

Dated: December 3, 1986.

Wayne Zinne,

District Manager.

[FR Doc. 86-27783 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-DN-M

[WY-060-07-4212-14]

Realty Action; Direct Sale of Public Lands in Campbell County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct Sale of Land Parcels (W-81561A, W-81561B, and W-81561C) in Campbell County, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale. BLM is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law. This disposal action is consistent with Buffalo Resources Area's Resource Management Plan. These lands were never classified pursuant to the Classification and Multiple Use Act.

Detailed bidding instructions and other sale details are available on request at BLM, Buffalo Resource Area Office, 300 Spruce Street, Buffalo, Wyoming 82834, (phone (307) 684-5586). Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

PARCELS

Serial No.	Legal description	Acreage	Appraised value
W-81561A	T. 58 N., R. 69 W., 6th P.M.: Section 20: Lot 8	39.98	$1,800.00
W-81561B	T. 58 N., R. 69 W., 6th P.M.: Section 22: Lot 7	2.3	$500.00
	Section 27: Lot 7	5.72	
W-81561C	T. 57 N., R. 69 W., 6th P.M.: Section 2: Lot 6	39.7	$2,200.00

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending diposition of this action.

The sale to be held on Wednesday, February 25, 1987, will be conducted by direct sale to the adjoining landowner. If any parcels fail to sell, the land will be reoffered for sale under a competitive bidding process. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding. A more detailed description of the competitive bidding process is available from the Buffalo Resource Area Office.

A bid will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the purchaser will be required to pay a $50.00 nonreturnable filing fee (in addition to their bid) for all unreserve mineral interests.

The patent for all parcels will include reservations for ditches and canals, coal, oil and gas to the United States. All parcels will be subject to valid existing rights to include existing oil and gas leases. A detailed description of these reservations is available from the Buffalo Resource Area Office.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: December 5, 1986.

James W. Monroe,

Casper District Manager.

[FR Doc. 86-27802 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-22-M

[WY-060-07-4212-14]

Realty Action; Modified Competitive Sale of Public Lands in Johnson, Campbell, and Crook Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified Competitive Sale of Land Parcels (W-81597, W-81598, W-81564, W-81565, and W-81566) in Johnson, Campbell, and Crook Counties, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale. BLM is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law. This disposal action is consistent with the Buffalo Resource Area's Resource Management Plan. These land were never classified pursuant to the Classification and Multiple Use Act.

Detailed bidding instructions and other sale details are available on request at the BLM, Buffalo Resource Area Office, 300 Spruce Street, Buffalo, Wyoming 82834, (phone (307) 684-5586). Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

PARCELS

Serial No.	Legal description	Acreage	Appraised value
W-81597	T. 58 N., R. 68 W., 6th P.M.: Section 19: Lots 5, 6, 7	36.66	$2,600.00
	T.58 N., R. 69 W., 6th P.M.: Section 24: Lot 7	14.65	
W-81598	T. 57 N., R. 69 W., 6th P.M.: Section 1: NE¼SE¼	40.00	$2,200.00
W-81564	T. 46 N., R. 80 W., 6th P.M.: Section 35: NW¼NW¼	40.00	$2,200.00
W-81565	T.52 N., R. 80 W., 6th P.M.: Section 24: Lot 4	22.23	$1,100.00
W-81566	T.52 N., R. 77 W., 6th P.M.: Section 20: NE¼NW¼	40.00	$2,200.00

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The sale, to be held on February 25, 1987, will be conducted by modified competitive bidding, and each parcel will be offered by a sealed bid process

to adjoining landowners. The apparent high bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted or terminated. If any parcels fail to sell, the land will be reoffered for sale under a competitive bidding process. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) changes(s), it/they will be published and the land will remain open for competitive bidding. A more detailed description of the competitive bidding process is available from the Buffalo Resource Area Office.

A bid will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the purchaser will be required to pay a $50.00 nonreturnable filing fee (in addition to their bid) for all unreserved mineral interests.

The patent for all parcels will include reservations for ditches and canals, coal, oil and gas to the United States. All parcels will be subject to valid existing rights to include existing oil and gas leases. A detailed description of these reservations is available from the above address.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: December 4, 1986.

James W. Monroe,

Casper District Manager.

[FR Doc. 86-27801 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-22-M

[OR-050-4410-10:GP7-039; OR-40852]

Realty Action, Exchange of Public and Private Lands in Wheeler, Crook, Klamath, Deschutes, Harney and Jefferson Counties, OR

The following described lands have been proposed for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 23 S., R. 9 E.,
Sec. 2: Lot 4, SE¼NW¼, SW¼SW¼;
Sec. 11: N½NW¼;
Sec. 20: N½SW¼, SE¼SW¼;
Sec. 21: S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 22: S½SW¼;
Sec. 27: N½, N½S½, S½SW¼;
Sec. 28: E½;
Sec. 32: W½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 33: N½NE¼, SW¼NE¼, N½SE¼NE¼, E½SE¼SE¼NE¼, SE¼NW¼, N½SW¼N½NW¼NE¼SE¼;
Sec. 34: N½NW¼.
T. 21 S., R. 10 E.,
Sec. 33: W½SE¼;
Sec. 34: NE¼SE¼, S½SE¼.
T. 22 S., R. 10 E.,
Sec. 3: Lots 1 and 2;
Sec. 5: N½SE¼.
T. 23 S., R. 10 E.,
Sec. 33: NW¼NE¼, N½NW¼, SE¼NW¼.
T. 15 S., R. 12 E.,
Sec. 14: E½SW¼ east of the road;
Sec. 23: NW¼NW¼ east of the road.
T. 14 S., R. 15 E.,
Sec. 32: NE¼, E½NW¼, E½SE¼.
T. 15 S., R. 15 E.,
Sec. 8: E½.
T. 16 S., R. 15 E.,
Sec. 3: E½SW¼, SW¼SE¼;
Sec. 5: NE¼SE¼, S½SE¼;
Sec. 8: N½NE¼, SW¼NE¼;
Sec. 9: NW¼;
Sec. 10: SE¼SE¼.
T. 15 S., R. 16 E.,
Sec. 18: E½SE¼.
T. 11 S., R. 19 E.,
Sec. 5: W½SW¼;
Sec. 6: Lots 8 and 9;
Sec. 7: NE¼NE¼;
Sec. 8: NW¼NW¼;
Sec. 14: NE¼, E½NW¼, NE¼SW¼;
Sec. 17: Lots 1 and 2;
Sec. 19: Lot 5;
Sec. 20: Lots 1–4;
Sec. 21: Lots 1–4;
Sec. 22: SE¼NW¼;
Sec. 23: N½NE¼, NE¼NW¼, S½NW¼, W½SW¼;
Sec. 27: SW¼NE¼, W½NW¼, SE¼NW¼;
Sec. 28: SE¼NE¼, S½SW¼, E½SE¼;
Sec. 29: NW¼NE¼, SE¼SE¼;
Sec. 31: SW¼NE¼, NW¼SE¼;
Sec. 32: NE¼E½SE¼;
Sec. 33: N½SW¼.
T. 16 S., R. 19 E.,
Sec. 4: All.
T. 17 S., R. 19 E.,
Sec. 14: SE¼NE¼, NE¼SE¼, S½S½;
Sec. 15: NW¼NW¼, S½S½.
T. 14 S., R. 20 E.,
Sec. 1: Lot 1;
Sec. 11: SE¼NE¼, NE¼SE¼;
Sec. 12: NW¼NW¼, S½, N½;
Sec. 23: W½SW¼;
Sec. 24: NW¼NE¼, NE¼NW¼.
T. 18 S., R. 20 E.,
Sec. 15: NW¼.
T. 10 S., R. 21 E.,
Sec. 1: SW¼SW¼;
Sec. 2: SW¼NW¼, SW¼SE¼.
T. 12 S., R. 21 E.,
Sec. 22: SW¼NE¼, NW¼SW¼;
Sec. 23: NE¼NW¼.
T. 13 S., R. 21 E.,
Sec. 31: Lot 3;
Sec. 32: NE¼SE¼.
T. 14 S., R. 21 E.,
Sec. 2: Lots 1, 3 and 4;
Sec. 3: Lots 1 and 2, SE¼SE¼;
Sec. 6: Lot 4;
Sec. 10: NE¼SW¼, N½SE¼;
Sec. 12: NE¼SW¼;
Sec. 13: N½SW¼, SW¼SW¼;
Sec. 14: SE¼SE¼;
Sec. 17: S½NW¼;
Sec. 18: SE¼NE¼;
Sec. 19: Lot 1;
Sec. 20: NE¼NW¼;
Sec. 21: NE¼, E½NW¼, SW¼NW¼;
Sec. 23: NE¼NE¼;
Sec. 24: S½NE¼, N½NW¼, SW¼NW¼;
Sec. 25: S½NE¼NW¼SW¼, E½SE¼;
Sec. 26: N½SW¼, SW¼SW¼, NW¼NE¼;
Sec. 27: S½;
Sec. 28: S½NW¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 29: NW¼SE¼;
Sec. 30: Lot 2, SE¼NW¼;
Sec. 31: NE¼NE¼;
Sec. 32: SE¼SW¼;
Sec. 33: All;
Sec. 34: W½NE¼, NW¼, SW¼, SW¼SE¼.
T. 7 S., R. 22 E.,
Sec. 12: Lot 3, NW¼NE¼;
Sec. 14: NW¼SE¼;
Sec. 20: SW¼NE¼;
Sec. 23: NW¼SW¼;
Sec. 25: NE¼NE¼, S½NW¼;
Sec. 26: S½NE¼, SE¼SE¼;
Sec. 34: NE¼SW½.
T. 8 S., R. 22 E.,
Sec. 1: Lots 1, 3 and 5;
Sec. 4: SE¼NW¼;
Sec. 10: Lot 4;
Sec. 11: SE¼SW¼;
Sec. 24: Lots 3 & 4, W½NE¼, W½SE¼;
Sec. 25: Lots 1–4, W½NE¼, NW¼SE¼;
Sec. 26: Lots 1 and 2, NW¼SE¼, S½SE¼;
Sec. 34: NE¼SE¼;
Sec. 35: N½NE¼.
T. 12 S., R. 22 E.,
Sec. 10: E½SE¼;
Sec. 14: N½NW¼;
Sec. 26: NE¼SE¼;
Sec. 27: SE¼SW¼;
Sec. 31: Lot 4.
T. 6 S., R. 23 E.,
Sec. 23: NE¼SW¼.
T. 8 S., R. 23 E.,
Sec. 3: Lot 2, SE¼NW¼;
Sec. 9: S½SW¼;
Sec. 19: E½SW¼, SW¼SE¼;
Sec. 30: Lots 2 & 3, SE¼SW¼.
T. 9 S., R. 23 E.,
Sec. 25: NE¼SE¼.
T.S 10 S., R. 23 E.,
Sec. 1: Lot 2;
Sec. 25: SE¼SW¼;
Sec. 28: SE¼SW¼, W½SE¼;
Sec. 32: NE¼SE¼;
Sec. 33: N½N½, SW¼NE¼, SE¼NW¼, N½S½.
T. 11 S., R. 23 E.,
Sec. 7: Lot 4;
Sec. 17: NW¼NE¼, NE¼NW¼.
T. 12 S., R. 23 E.,

Sec. 31: N½NE¼.
T. 8 S., R. 24 E.,
Sec. 5: SE¼SW¼;
Sec. 8: NE¼NW¼, S½NW¼;
Sec. 10: NW¼SW¼;
Sec. 25: SW¼NE¼.
T. 9 S., R. 24 E.,
Sec. 29: N½SW¼;
Sec. 30: Lot 3, NE¼SW¼;
Sec. 33: W½NE¼, SE¼NW¼.
T. 10 S., R. 24 E.,
Sec. 4: Lot 4;
Sec. 5: Lots 1, 2 and 3, SW¼NE¼;
Sec. 6: SE¼SW¼;
Sec. 7: E½NW¼;
Sec. 8: SE¼NW¼, NE¼SW¼;
Sec. 10: SW¼NE¼, NW¼SE¼;
Sec. 12: SW¼NW¼;
Sec. 13: E½SE¼;
Sec. 15: N½SW¼;
Sec. 17: W½SW¼;
Sec. 19: SW¼NE¼;
Sec. 20: NW¼NW¼;
Sec. 22: NE¼SE¼, S½SE¼;
Sec. 23: SW¼SW¼;
Sec. 24: W½SE¼;
Sec. 25: E½SE¼;
Sec. 27: SE¼NE¼;
Sec. 29: S½SW¼;
Sec. 31: E½NW¼, NE¼SW¼;
Sec. 32: SE¼NW¼, SW¼SW¼;
Sec. 35: NW¼SW¼, W½SE¼.
T. 11 S., R. 24 E.,
Sec. 1: Lots 1, 2 and 4, SW¼NE¼, SW¼NW¼, NW¼SE¼;
Sec. 2: Lots 3 and 4, SE¼NW¼, SE¼SE¼;
Sec. 6: Lot 5;
Sec. 9: SE¼SW¼;
Sec. 12: S½SW¼;
Sec. 13: NE¼NE¼, N½NW¼;
Sec. 14: SW¼NE¼, SE¼NW¼, SW¼, NW¼SE¼;
Sec. 15: SE¼SE¼;
Sec. 19: SE¼SE¼;
Sec. 21: NE¼NW¼;
Sec. 24: E½NE¼, NE¼SE¼;
Sec. 30: Lots 2 and 3;
Sec. 35: NW¼SE¼;
T. 8 S., R. 25 E.,
Sec. 2: SE¼SW¼;
Sec. 3: SW¼NE¼, NE¼SW¼, N½SE¼;
Sec. 11: NE¼NW¼.
T. 9 S., R. 25 E.,
Sec. 25: S½SE¼, SW¼SE¼;
Sec. 34: S½E¼;
Sec. 35: E½NE¼, SW¼NE¼, NW¼, NW¼SW¼, N½SE¼.
T. 10 S., R. 25 E.,
Sec. 2: NW¼SE¼;
Sec. 3: Lot 3, NW¼SW¼;
Sec. 4: Lot 1, S½NE¼, NE¼SE¼, S½SE¼;
Sec. 5: N½SW¼, SE¼SW¼;
Sec. 6: SE¼SE¼;
Sec. 7: Lots 1, 2 and 3, N½NE¼, SE¼NE¼, NE¼NW¼, W½SE¼, NE¼SE¼;
Sec. 9: W½NE¼, SE¼NW¼, SW¼SW¼, E½SW¼, W½SE¼;
Sec. 17: SE¼NE¼,W½NW¼;
Sec. 18: Lots 1 through 4, NE¼NE¼NW¼, SE¼SW¼;
Sec. 19: Lot 1, SW¼NE¼, E½NW¼, NW¼SE¼;
Sec. 20: E½NE¼, E½W½, N½SE¼, SW¼SE¼;
Sec. 21: SW¼SW¼;
Sec. 24: NE¼, E½NW¼, N½SE¼, SW¼SE¼;
Sec. 25: W½E½W½;
Sec. 28: NW¼NW¼, SW¼;
Sec. 29: NW¼NE¼, NE¼NW¼;
Sec. 30: Lots 1, 3 and 4;
Sec. 31: Lot 1, SW¼NE¼, NE¼NW¼;
Sec. 32: W½NW¼.
T. 11 S., R. 25 E.,
Sec. 7: S½NE¼, SW¼SE¼;
Sec. 17: S½S½;
Sec. 18: NE¼NE¼, NE¼NW¼;
Sec. 28: NW¼NE¼, N½NW¼;
Sec. 29: E½NE¼.
T. 12 S., R. 25 E.,
Sec. 34: W½W½.
T. 13 S., R. 25 E.,
Sec. 17: N½SW¼SW¼, SE¼;
Sec. 18: W½SE¼, SE¼SE¼;
Sec. 19: Lots 1 thru 4, SW¼NE¼, E½W½, SE¼;
Sec. 20: NW¼NW¼, W½SW¼;
Sec. 21: NE¼NW¼;
Sec. 22: W½SE¼, SE¼SE¼.
T. 19 S., R. 25 E.,
Sec. 15: E½;
Sec. 28: S½SW¼,NE¼SE¼, S½SE¼;
Sec. 32: N½, SW¼.

Comprising approximately 26,400 acres of public land and located in Wheeler, Jefferson, Harney, Crook, Deschutes and Klamath counties.

In exchange for all or a portion of these lands, the United States will acquire the following described lands from Brooks Resources Investment Corporation, and Collins Ranches Incorporated:

T. 9, R. 20 E.,
Sec. 36: W½NE¼, NW¼, S½.
T. 10 S., R. 20 E.,
Sec. 1: All;
Sec. 2: All;
Sec. 3: Those parts of the SE¼NE¼ and NE¼SE¼ lying east of County Road No. 14;
Sec. 4: S½;
Sec. 9: All;
Sec. 10: All;
Sec. 11: All;
Sec. 12: NW¼NE¼, SE¼NE¼, S½;
Sec. 13: All;
Sec. 14: NE¼NW¼, NE¼, E½SE¼;
Sec. 15: All;
Sec. 16: All;
Sec. 17: N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 20: All;
Sec. 21: All;
Sec. 23: All;
Sec. 24: W½NW¼, SW¼;
Sec. 25: All;
Sec. 26: SE¼NE¼, NE¼SE¼;
Sec. 27: All;
Sec. 28: SW¼NW¼, NW¼SW¼;
Sec. 29: NW¼, N½SW¼, SE¼SW¼, SW¼SE¼, E½E½;
Sec. 32: NW¼NE¼; S½;
Sec. 33: NE¼NE¼;
Sec. 35: All;
Sec. 36: NE¼NE¼NE¼.
T. 11 S., R. 20 E.,
Sec. 2: Lots 1 thru 4, S½NW¼, SW¼NE¼, SW¼;
Sec. 3: Lots 1 thru 3, E½SW¼, S½NE¼, SE¼;
Sec. 10: All;
Sec. 11: All;
Sec. 12: All;
Sec. 13: All;
Sec. 21: W½SE¼, SE¼;
T. 9 S., R. 21 E.,
Sec. 31: Lots 3 and 4, SE¼SW¼;
Sec. 32: W½NE¼, N½NW¾ that part lying south of the river, SE¼NW¼, S½;
Sec. 33: S½SW¼.
T. 10 S., R. 21 E.,
Sec. 4: Lots 3 and 4, SW¼NW¼, NE¼SW¼, S½SW¼;
Sec. 5: Lots 1, 2, 3 and 4: SE¼NW¼, SW¼NE¼W½SW¼, W½SE¼, SE¼SE¼;
Sec. 6: Lots 1, 2, 3, 4, 5, 6 and 7: SE¼NW¼S½NE¼, E½SW¼, W½SE¼;
Sec. 7: All;
Sec. 8: N½NW¼, NW¼NE¼SW¼SE¼, E½E½;
Sec. 9: NE¼NW¼, NW¼NE¼, SW¼;
Sec. 10: S½NE¼, N½SE¼;
Sec. 11: NW¼, NW¼SW¼;
Sec. 12: E½W½, NW¼NE¼, E½NE¼, SE¼SE¼;
Sec. 14: S½NW¼, SW¼, W½E½;
Sec. 15: S½NE¼, SE¼;
Sec. 16: All;
Sec. 17: All;
Sec. 19: Lots 1 thru 4, E½W½, E½;
Sec. 21: W½, W½E½, SE¼SE¼;
Sec. 22: N½N½, SW¼NW¼, S½;
Sec. 23: W½NW¼, SE¼NW¼, E½NE¼, S½;
Sec. 26: All;
Sec. 27: N½, SW¼, SE¼;
Sec. 28: All;
Sec. 29: All;
Sec. 30: Lot 4;
Sec. 31: All that part lying north and east of Bridge Creek;
Sec. 33: All;
Sec. 35: N½, N½S½, SE¼SE¼.
T. 11 S., R. 21 E.,
Sec. 1: All;
Sec. 2: Lots 1 and 2, S½NE¼, S½;
Sec. 3: All;
Sec. 7: Lots 2, 3 and 4, SE¼NW¼, S½NE¼, E½SW¼SE¼;
Sec. 8: NE¼, S½NW¼, S½;
Sec. 10: All;
Sec. 11: All;
Sec. 12: All;
Sec. 13: N½N½, and all that part of the S½N½ and S½ lying north and west of State Highway No. 207;
Sec. 14: All;
Sec. 15: All;
Sec. 16: All;
Sec. 17: All;
Sec. 18: All;
Sec. 19: All that part of said section lying north of the Ochoco U.S. Highway No. 26 right of way;
Sec. 21: All that part of the SW¼ lying south of the Ochoco U.S. Highway No. 26 right of way; E½;
Sec. 22: All;
Sec. 23: All that part of said section lying north and west of the Oregon State Highway No. 207 right of way;
Sec. 24: All that part of said section lying north and west of the Oregon State Highway No. 207 right of way;

Sec. 26: All that part of said section lying west of the Oregon State Highway No. 207 right of way;
Sec. 27: All;
Sec. 28: All;
Sec. 29: All;
Sec. 32: All;
Sec. 33: All;
Sec. 34: All;
Sec. 35: All those portions of the W½, W½E½ and E½NE¼ lying west of the Oregon State Highway No. 207 right of way.
T. 9 S., R. 22 E.,
Sec. 32: That part of the E½NE¼ lying south of the John Day River; E½SE¼;
Sec. 33: That part of the N½NW¼ lying east and south of the John Day River; SW¼, W½SE¼, SE¼SE¼;
Sec. 34: SW¼SW¼.
T. 10 S., R. 22 E.,
Sec. 3: Lots 3 and 4; SE¼NW¼, SW¼, W½SE¼;
Sec. 4: Lots 1, 2, 3 and 4, S½N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 5: Lots 1 and 3, SE¼NW¼, S½, NE¼S½;
Sec. 7: Lots 1, 2 and 4, NE¼NW¼, E½SW¼, E½;
Sec. 8: N½, E½SW¼, N½SE¼;
Sec. 9: NE¼NW¼, N½NE¼, S½N½, N½S½, SW¼SE¼;
Sec. 10: NW¼, W½NE¼, N½SW¼, NW¼SE¼.
T. 11 S., R. 22 E.,
Sec. 6: Lots 3, 4, 5, 6 and 7, SE¼NW¼, E½SW¼, W¼SE¼, SE¼SE¼;
Sec. 7: Lots 1, 2, 3 and 4 E½, W½, W½E½, E½SE¼;
Sec. 18: That fractional part lying north of the Oregon State Highway No. 207 right of way.
T. 12 S., R. 21 E.,
Sec. 2: Lots 3 and 4, S½NW¼, N½SW¼;
Sec. 3: Lots 1, 2, 3 and 4 S½N½, NE¼, SW¼, N½SE¼;
Sec. 4: Lots 1, 2 and 3 SE¼NW¼, S½NE¼;
Sec. 5: Lots 1, 2, 3 and 4.

Comprising approximately 49,907 acres of private land and located in Wheeler County.

As proposed, the Bureau would trade scattered and isolated parcels of public land, most of which lack legal public access, for private land adjoining the John Day River having legal public access. The exchange would be completed in phases over the next three to four years and would create a block of public land approximately 60,000 acres in size.

The purpose of the exchange is to facilitate resource management opportunities, as identified in the Two Rivers Resource Management Plan. The private lands being offered have very important public values, some of which are of regional and national significance and include recreational, wildlife, watershed, fisheries, mineral and grazing values. The public interest would be highly served by making this exchange.

The value of the land to be exchanged is approximately equal, and the acreage will be adjusted to equalize the values upon completion of the final appraisal.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by Authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil and gas rights may be reserved in the final patent. All existing oil and gas leases will remain in effect until expiration.

3. All other valid existing rights, including, but no limited to any right-of-way, easement or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange, including the environmental analysis is available for review at the Prineville District Office 185 East Fourth Street, Prineville, Oregon 97754.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Prineville District Manager at the above address.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 5, 1986.

James L. Hancock,

District Manager.

[FR Doc. 86-27793 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-07-4212-11; N-18687]

Classification of Public Lands; Nevada; Correction

November 28, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects the opening order paragraphs of the classification termination published as FR Doc. 86-25889 on November 17, 1986 (51 FR 41542).

EFFECTIVE DATE: December 17, 1986.

FOR FURTHER INFORMATION CONTACT: Rod Harris, District Manager, Elko District Office, P.O. Box 831, Elko, NV 89801, (702) 738-4071.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-25889 issued on Monday, November 17, 1986, (51 FR 41542), second column, line 39, the sentence should read, "At 10:00 a.m., on December 17, 1986, the land will be open to the operation of the public land laws, subject to valid existing rights, existing classification and withdrawals, pending lawsuits, and requirements of applicable law."

Second column, line 50, add: ", subject to valid existing rights, existing classifications and withdrawals, pending lawsuits, and requirements of applicable law."

Edward F. Spang,

State Director, Nevada.

[FR Doc. 86-27799 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-HC-M

[CO-940-87-4220-10; C-39289]

Opening of Public Lands; Colorado

December 5, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This document gives notice that the two-year segregation of public lands in a pending withdrawal application has terminated and the lands are open to operation of the public land laws, including the mining laws. This notice has no effect on the application.

DATE: The segregation terminated July 31, 1986.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (303) 236-1768, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Notice is hereby given that the two-year segregation established by the Notice of Proposed Withdrawal published on August 1, 1984, FR Doc. 84-20379, as amended by FR Doc. 85-23057, published on September 26, 1985, terminated July 31, 1986, and the following described lands are open to operation of the public land laws:

Ute Principal Meridian

T. 3 S., R. 2 E.,
Sec. 11, S½S½NE¼, SE¼SE¼NW¼, E½E½SW¼, and SE¼;
Sec. 12, SW¼SW¼NW¼ and W½W½SW¼;
Sec. 13, NW¼NW¼NW¼;
Sec. 14, N½N½NE¼ and NE¼NE¼NW¼.

Sixth Principal Meridian

T. 9 S., R. 104 W.,
Sec. 7, SE¼;
Sec. 8, W½W½SW¼;
Sec. 17, NW¼NW¼NW¼;
Sec. 18, N½N½NE¼.

T. 8 S., R. 96 W.,
Sec. 19, lots 3 and 4, S½N½NE¼, S½NE¼, SE¼NE¼NW¼, E½SE¼NW¼, E½SW¼, and SE¼;
Sec. 20, S½NW¼;
Sec. 29, N½NW¼;
Sec. 30, lot 1, N½NE¼, and N½NE¼ NW¼.

The areas described aggregate approximately 1,495.49 acres in Garfield and Mesa Counties.

Richard D. Tate,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-27797 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-JB-M

[AZ 020-07-4212-12; A 22448]

Realty Action; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Amendment to Notice of Realty Action, Exchange of Public Lands Arizona.

This amends Notice of Realty Action A 22448, published November 18, 1986, by identifying the following additional 239.27 acres of public land to be exchanged.

Gila and Salt River Meridian, Arizona

T. 6 N., R. 4 E.,
Sec. 8, NE¼SE¼;
Sec. 9, Lot 1, SE¼NE¼, NE¼SE¼, S½SE¼.

Under the term and conditions, line 3 is amended to read "Subject to Lloyd William's millsite AMC 69188 and placer mining claim AMC 232168 located by J.N. Waterhouse and Robert Mayer."

Marlyn V. Jones,

District Manager.

[FR Doc. 86-27794 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-32-M

[CO-940-87-4220-10; C-44666]

Withdrawal of Lands; Colorado; Opportunity for Public Hearing; Correction

December 5, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In the **Federal Register** published on November 17, 1986, page 41541, FR Doc. 86-25891, column two, the land description should be corrected as follows:

The heading "Arapahoe National Forest" should be corrected to read "White River National Forest". "Rio Blanco County" should be corrected to read "Garfield County".

Richard D. Tate,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-27796 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-JB-M

Realty Action; Exchange of Public Lands in Jackson County, OR

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 34 S., R. 1 E.:
Sec. 10, SW¼SE¼.

The area described aggregates approximately 40(±) acres in Jackson County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from Laurence E. and Mary F. Cuffel:

Willamette Meridian

T. 34 S., R. 1 E.:
Sec. 10, NW¼SW¼.

The area described above aggregates approximately 40 (±) acres in Jackson County, Oregon.

The purpose of the land exchange (identified by serial No. OR 39712) is to facilitate resource management opportunities in the Butte Falls Resource Area. The private land being offered has very important values for wildlife in protection of critical deer winter range. The public interest will be highly served by making this exchange.

The value of the lands to be exchanged is approximately equal, and upon completion of the final appraisal of the lands, cash equalization payments will be made if the values are within twenty-five percent (25%).

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation of leasable minerals on both parcels to the current owners until termination of oil and gas lease OR 37683. The lease shall remain in effect until expiration.

3. All other valid existing rights, including but not limited to any right-of-way, easement or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange, including the environmental analysis, is available for review at the Medford District Office, 3040 Biddle Rd., Medford, OR 97501.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Medford District Manager at the above address.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 4, 1986.

David A. Jones,

District Manager.

[FR Doc. 86-27803 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-84-M

New Mexico; Filing of Plat of Survey

December 5, 1986.

The Plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on December 5, 1986.

A survey representing the dependent resurvey of a portion of the Sixth Standard Parallel North, a portion of the subdivisional lines, the subdivision of section 34 and the survey of a portion of the De-Na-Zin Wilderness Area Boundary, Township 25 North, Range 11 West, New Mexico Principal Meridian, New Mexico.

The dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, the subdivision of sections 2, 7, 8, 9, 16 and 20, and the survey of a portion of the De-Na-Zin Wilderness Area Boundary, Township 24 North, Range 11 West, New Mexico Principal Meridian, New Mexico.

The dependent resurvey of a portion of the Sixth Standard Parallel North, a portion of the south and west boundaries, a portion of the subdivisional lines and the subdivision of sections 3, 9, 12, 19 20 and 30, and the survey of a portion of the De-Na-Zin

Wilderness Area Boundary, Township 24 North, Range 12 West, New Mexico Principal Meridian, New Mexico, all executed under Group 850, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P. O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

William S. DeGroot,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 86-27798 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-FB-M

[CA-010-07-4322-10]

Public Use Restriction (Extension); California; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to extension of temporary vehicle use restrictions in the Short Canyon Area within Kern County in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: The following correction is made to a notice published in the Federal Register on Thursday, November 6, 1986, on page 40358. The information under **DATES** should read:

"This vehicle closure is effective from November 16, 1986 through December 30, 1987, unless conditions permit an early opening."

FOR FURTHER INFORMATION CONTACT: Glenn Carpenter, Caliente Resource Area Manager, Caliente Resource Area, Bureau of Land Management, 520 Butte Street, Bakersfield, California 93305; (805) 861-4236.

Dated: November 3, 1986.

Katherine G. McPeters,

Acting Caliente Resource Area Manager.

[FR Doc. 86-27790 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-40-M

[AZ-010-06-4212-13; A-22084]

Notice of Realty Action; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Exchange of public Lands for private lands in Mohave County, AZ.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian,

T. 41 N., R. 5 W., Sec. 8, NE¼SE¼

Containing 40 acres.

In exchange for these lands, the Federal Government will acquire a tract of nonfederal land in Mohave County from American Image Marketing Corporation, described as follows:

Gila and Salt River Meridian

T. 41 N., R. 5 W., Sec. 8, SE¼SE¼

Containing 40 acres.

The purpose of the exchange is to acquire the nonfederal land to provide free and open access for livestock belonging to adjoining land users and to restore harmony between neighbors. The exchange is consistent with the Bureau's planning for the lands involved. The management programs of the BLM and the public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

(1) A right-of-way thereon for ditches and canals contracted by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

(2) A reservation to the United States of all minerals together with the right to explore, prospect for, mine and remove same under all applicable laws and regulations.

(3) All valid existing rigths and reservations of record.

(4) A reservation to the United States for a right-of-way over and across a strip of land 30 feet in width through the western half of the NE¼SE¼ of Sec. 8 in T. 41 N., R. 5 W., GSRM, for the full use as a road by the United States of America, its licenses and permittees, including the right of access and use for and by the people of the United States generally, to lands owned, administered, or controlled by the United States.

Under the provisions of 43 CFR 2201.1 this Notice of Realty Action shall segregate the lands from appropriation under the mining laws and mineral leasing laws subject to valid existing rights or leases. This segregation shall terminate upon publication in the **Federal Register** of a termination notice or after two years and the exchange is not consummated, whichever occurs first.

Detailed information concerning the exchange, including the environmental analysis, is available for review at the combined Resource Areas Office, 225 North Bluff, St. George, UT 84770.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Arizona Strip District, 196 E. Tabernacle, St. George, Utah 84770.

G. William Lamb,

District Manager.

[FR Doc. 86-27788 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-32-M

[ID-050-4351-10]

Closure of Public Lands in Shoshone District, Picabo Hills Area of Blaine County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Lands Closure.

SUMMARY: Effective immediately through April 15, 1987 all public lands located in the Picabo Hills Area are closed to motorized vehicles. The area is bounded generally by U.S. Highway 20 on the north, the Picabo Road on the east and south, the Spud Patch Road on the southwest, and the Intermountain Gas Pipeline Road on the west. Signs will be posted to identify the exterior boundaries.

The legal description of the area is:

T. 1S., R. 19 E., Boise Meridian,
Secs. 32 and 34 and portions of Secs. 25, 30, 31, 33, and 35;
T. 1S., R. 20E., Boise Meridian,
Portions of Secs. 29, 30, 31, 32, and 33;
T. 2S., R.19E., Boise Meridian,
Secs. 5, 8, and 12 and portions of Secs. 1, 6, 7, 10, 11, 13, 14, 15, 17, and 18;
T. 2S., R. 20 E., Boise Meridian,
Secs. 7 and 8 and portions of Secs. 4, 5, 6, 9, 17, 18, 19, 20, and 21.

The purpose of this closure is to protect wintering deer from disturbance. The Picabo Hills Area is crucial winter habitat.

DATES: December 11, 1986 through April 15, 1987.

ADDRESSES: Shoshone District Office, Monument Resource Area, P.O. Box 2B, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Ervin Cowley, Monument Resource Area Manager, Telephone (208) 886-2206.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8364.1.

Dennis Schulze,

Acting District Manager.

[FR Doc. 86-27876 Filed 12-10-86; 8:45 am]

BILLING CODE 4310-GG-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-No. 196X)]

Chicago and North Western Transportation Company; Exemption; Abandonment; in Kansas City, KS and Kansas City, MO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903 *et seq.*, the abandonment by Chicago and North Western Transportation Company of approximately 1.2 miles of track in the cities of Kansas City, KS and Kansas City, MO, subject to standard labor protective conditions.

DATES: This exemption will be effective on January 12, 1987. Petitions to stay must be filed by December 22, 1986. Petitions for reconsideration must be filed by December 31, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-1 (Sub-No. 196X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Myles L. Tobin, One North Western Center, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to: T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-27834 Filed 12-10-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-57 (Sub-No. 18X)]

Soo Line Railroad Company; Exemption; Abandonment in Carlton, Aitkin, and Cass Counties, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Soo Line Railroad Company of 103.91 miles of track between Moose Lake and Schley in Carlton, Aitkin, and Cass Counties, MN, subject to standard labor protection conditions.

DATES: This exemption is effective on January 12, 1987. Petitions to stay must be filed by December 26, 1986, and petitions for reconsideration must be filed by January 5, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-57 (Sub-No. 18X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Larry D. Starns, 804 Soo Line Building, P.O. Box 530, 105 South Fifth Street, Minneapolis, MN 55440

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll free (800) 424-5403.

Decided: November 24, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

Noretta R. McGee,

Secretary.

[FR Doc. 86-27835 Filed 12-10-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-226 (Sub-No. 1X)]

The Toledo Terminal Railroad Company; Exemption; Abandonment in Lucas County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the Toledo Terminal Railroad Company of approximately 1.94 miles of rail line in Toledo, Lucas County, OH, subject to conditions for protection of employees.

DATES: This exemption will be effective on January 12, 1987. Petitions to stay must be filed by December 22, 1986 and petitions for reconsideration must be filed by December 31, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-226 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the rail decision write to: T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-27836 Filed 12-10-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

December 8, 1986.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form/supporting documents is available); (2) the office of the agency issuing the form; (3) the title of the form; (4) the agency form number, if applicable; (5) how often the form must be filled out; (6) who will be required or asked to report; an estimate of the number of responses; (7) an estimate of the total number of respondents; (8) an estimate of the total number of hours needed to fill out the form; (9) an indication of whether Section 3504(h) of Public Law 96-511 applies; and (10) the name and the telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be

directed to the reviewer listed at the end of such entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer *AND* the Agency Clearance Officer of your intent as early as possible.

DEPARTMENT OF JUSTICE

Agency Clearance Officer: Larry E. Miesse, 202/633–4312.

Reinstatement of a Previously Approved Collection For Which Approval Has Expired

(1) Larry E. Miesse, 202/633–4312
(2) Federal Bureau of Investigation, Department of Justice
(3) AGE, SEX AND RACE OF PERSONS ARRESTED
(4) DO 62/62a
(5) Monthly
(6) State and local governments. Used to collect statistics regarding the number of persons arrested by law enforcement agencies throughout the Uinted States.
(7) 1,371 respondents
(8) 8,226 burden hours
(9) Nor applicable under 3504(h)
(10) Robert Veeder—395–4814

Larry E. Miesse,

Department Clearance Officer.

[FR Doc. 86–27825 Filed 12–10–86; 8:45 am]

BILLING CODE 4410–02–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 2, 1986, Applied Science Laboratories, Divisions of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Dihydromorphine (9145)	I
D-iso-lysergic acid diethylamide (7307)	I
D-lysergic acid Methylpropylamide (7328)	I
3, 4 Methylenenedioxyamphetamine HCL (7402)	I
Mescaline HCL (7387)	I
Cyclohexamine (PCE) HCL (7456)	I
3, 4 Methylenedioxymethamphetamine HCL (7406).	I
1-phenylcyclohexylpyrrolidine HCL (7461)	I
Thiophene Analog of PCP (HCL salt) (7469)	I
Normorphine HCL (9360)	I
1-phenylcyclohexylamine (7460)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603).	II
Morphine (9300)	II
Dihydrocodeine (9120)	II
Phencyclidine HCL (7472)	II
Codeine-6-glucuronide (9069)	II
Norcodeine HCL (9115)	II
Ecgonine methyl ester (9185)	II
Ecgonine HCL (9189)	II
6-Monoacetylmorphine (9316)	II
Benzoylecgonine (9187)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above such application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than January 12, 1987.

Dated: December 4, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–27848 Filed 12–10–86; 8:45 am]

BILLING CODE 4410–09–M

Office of Juvenile Justice and Delinquency Prevention

Grants and Cooperative Agreements; Private Nonprofit Missing Childrens' Agencies Service Activities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of a solicitation of applications for a grant program to provide support for private nonprofit missing childrens' agencies service activities.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 406(a)(1)(2)(3)(4) of the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, invites applications by private nonprofit voluntary organizations (PVOs) currently serving missing and exploited children for the establishment or expansion of service components designed to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children; and/or to provide information to assist in the locating or return of missing children; and/or to aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children; and/or to provide treatment pertaining to the psychological consequences on both parents and children of the abduction of a child or the sexual exploitation of a missing child.

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites eligible private nonprofit voluntary organizations to request the application kit which contains detailed forms and instructions.

Up to $588,660 is available in Fiscal Year 1987 for award to qualified projects. Up to 40 awards, ranging in amount from $3,000 to $25,000, are anticipated.

DATES: All applications will be reviewed and acceptable applications processed in the order that they are received, to the extent that funds remain available, or until September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Sylvia Sutton, Program Specialist, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724–7573.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Funds to provide support to private nonprofit missing children's service agencies in the amount of $588,660 have been reserved for award to qualified PVOs in grants ranging from $3,000 to $25,000 during Fiscal Year 1987. Grants will be awarded for service programs designed to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children, to provide information to assist in the locating and return of missing children, to aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children, and/or to provide treatment pertaining to the psychological consequences on both parents and children of the abduction of a child or the sexual exploitation of a missing child.

II. Program Goals and Objectives

The goal of the program is to enhance the capacity of private missing children's agencies that utilize volunteers to provide direct support and services to individuals, families and communities impacted by the missing children problem and thus to assist them

to become more effective direct service provider organizations.

The objective of the program is to assist PVO's to establish or expand critical missing and exploited children services by providing supplemental funding to support putting into place the administrative, operational and program costs associated with the provision of such services.

III. Eligibility Criteria

Eligible applicants are private nonprofit voluntary service organizations whose primary organizational mission is directly related to the problem of missing and exploited children. In order to receive assistance, applicants will be required to give assurance that they will expend, to the greatest extent practicable for the year of award, an amount of funds (without regard to any funds received under any other Federal law) that is not less than the amount of funds for missing and exploited children's activities that they received in the preceding year from State, local, and private sources. This means that the Federal grant funds must supplement or be in addition to the applicant's operating budget level of the previous year.

IV. Dollar Amount and Duration

Up to $588,660 is available in Fiscal Year 1987 for awards to qualified projects. Up to 40 awards, ranging in amount from $3,000 to $25,000, are anticipated.

Applications will be reviewed in the order received. Once an applicant is determined to be: (1) Eligible; and (2) qualified for funding through the submission of an acceptable proposal, OJJDP will enter into negotiations with the applicant to address issues that may be present in program or budget and, if these can be satisfactorily resolved, will process the application for final review, approval and award or disapproval by the OJJDP Administrator. Applications will be funded for a single budget period, not to exceed one year, as determined by project need. No additional supplemental or continuation funding is anticipated.

When the funds available for this program are obligated, a notice will be published in the **Federal Register** and applications not yet funded will be returned to the applicant.

V. Application Requirements

Eligible PVOs are required to submit:

1. A completed application (Short Form SF 424), from the Program Application Kit.

2. The PVO must be incorporated as a nonprofit organization, be in good standing in the state of incorporation, and be recognized by the Internal Revenue Service as a 501(c)(3) tax-exempt organization. A copy of the IRS letter of tax-exemption status must be provided.

3. A brief description of sample tasks or activities to be supported which address an identified problem or need and provide services in the area of missing and exploited children, specifically those which are designed:

(a) To educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

(b) To provide information to assist in the locating and return of missing childen;

(c) To aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children; and/or

(d) To provide treatment pertaining to the psychological consequences on both parents and children of the abduction of a child or the sexual exploitation of a missing child.

4. A brief history of the organization, including the date of incorporation, the organizational goals and objectives, and examples of accomplishments that demonstrate competence in carrying out missing children activities, with emphasis upon those described under 3. above, and a brief description of how the activities proposed to be funded will contribute to the achievement of the goals and objectives.

5. A letter of endorsement for the District Attorney or an active judge of the jurisdiction.

6. A statement supporting the need for and feasibility of carrying out the proposed activity in the community served.

7. The extent to which the applicant has obtained a commitment for the contribution of money or services from other sources to assist in carrying out the proposed activities will be viewed as additional evidence supporting the need for the project activity.

8. A roster of the Board of Directors, listing their occupations and affiliations, as appropriate.

9. A statement of the principle objectives of the project and a plan of action to accomplish those objectives, including the following:

(a) A brief description of the qualifications of the individuals who will be primarily responsible for carrying out project activities; and

(b) A schedule of proposed activities and an estimated timetable to complete each activity of the project;

(c) A budget by specific elements and a brief narrative justifying the proposed expenditures.

10. A brief proposed plan for obtaining financial support to continue the funded activity following the period of Federal support.

11. A description of the extent to which volunteer assistance will be utilized in carrying out the project activity funded under the grant.

12. The most recent financial statement or audit, if available.

13. A description of how the success of the funded activities will be determined and reported.

VI. Funding Criteria

The application will be screened and rated by a panel of reviewers. Individuals who screen the applications will give consideration to the factors listed below.

1. Appropriateness of project tasks or activities in furthering the eligible services specified under V. 3. above, which are taken from section 406(a)(1)(2)(3)(4) of the Missing Children's Assistance Act. Clarity of the proposal and establishment of need are important considerations.

2. Feasibility of the proposal and clear objectives.

3. Qualifications of the individuals involved to carry out project activity.

4. Extent to which the applicant organization has demonstrated a track record of success, or has designed a project which demonstrates a clear likelihood of success, in locating missing children or locating and reuniting missing children with their legal guardian *or* providing other eligible program services to missing children or their families.

5. The extent to which the applicant has and will substantially utilize volunteer services.

6. Cost effectiveness of the budget and adequacy of plan for obtaining financial support to continue the funded activity following the period of federal support.

7. Procedures to determine and report project success.

VII. Submission of Applications

Applicants who are interested in responding to this solicitation are requested to apply to: Sylvia Sutton, Program Specialist, OJJDP/NJJDP, U.S. Dept. of Justice, 633 Indiana Ave., N W., Room 700, Washington, DC 20531, 202–724–7573

for an application kit. The kit will contain all required forms and instructions to complete an application.

VIII. Definitions

Tax Exempt Organization—A PVO which has incorporated as a nonprofit in a state will not in itself suffice as a tax exempt organization. Eligible PVOs must be recognized by the Internal Revenue Service as a 501(c)(3) organization at the time of application for a grant. PVOs which have not received this formal exemption may apply for a grant jointly through co-applicancy with a qualified 501(c)(3) organization.

Dated: December 8, 1986.

Approved:

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 86-27809 Filed 12-10-86; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H-044]

Health and Safety Standards; Occupational Exposure to 2-Methoxyethanol, 2-Ethoxyethanol and Their Acetates

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice. Response to the Environmental Protection Agency (EPA) under section 9(a) of the Toxic Substance Control Act (TSCA).

SUMMARY: This notice was prepared in response to the EPA notice of May 20, 1986 (51 FR 18488), referring 2-Methoxyethanol, 2-Ethoxyethanol, 2-Methoxyethanol Acetate, and 2-Ethoxyethanol Acetate (2-ME, 2-EE, 2-MEA, and 2-EEA, respectively) to OSHA under section 9(a) of TSCA. OSHA has determined, on the basis of the evidence available, that the risk described by EPA may be eliminated or reduced to a sufficient extent by the issuance, under the OSH Act, of a revised standard regulating worker exposure to the substances. OSHA has also preliminarily concluded that occupational exposures at the current OSHA permissible exposure limits (PELs) during the manufacture and use of 2-ME, 2-EE and their acetates may present significant risks to the health of exposed workers. Further, on the basis of preliminary data, OSHA believes that adoption of a revised occupational standard for worker exposure to 2-ME, 2-EE and their acetates is economically and technologically feasible. The Agency is therefore examining various options for a proposed regulation.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, Room N-3641, 200 Constitution Avenue NW., Washington, DC, 20210; Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

The glycol ethers 2-methoxyethanol and 2-ethoxyethanol are large-volume, industrial chemicals produced from ethylene oxide. They are used extensively as co-solvents and as intermediates for the production of their acetates, 2-methoxyethanol acetate and 2-ethoxyethanol acetate, and plasticizers. Other major industrial and trade uses of these glycol ethers and their acetates include: the formulation and application of surface coatings; the formulation and application of inks; as a fuel additive; solvent and cleaning uses; and other miscellaneous uses in adhesives, photography, electronics, plastics, and rubber. One of the major reasons for glycol ether use in the application of surface coatings as well as in paint and varnish removers is their ability to increase uniform thickness and to dissolve a wide variety of resins.

Exposure to these glycol ethers and their acetates can be hazardous. In an Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** of January 24, 1984 (49 FR 2921), EPA described adverse reproductive, developmental, and hematologic effects associated with 2-ME, 2-EE, and their acetates at concentrations to which humans may be exposed. EPA also announced its intention to start a regulatory investigation under the Toxic Substance Control Act (TSCA). 90 Stat. 2030; 15 U.S.C. 2608.(The comments and information received in response to the ANPR were submitted to EPA Docket No. OPTS-62030. All relevant materials from that docket are now part of OSHA Docket H-044. All citations herein refer to the OSHA docket.)

As a result of comments submitted in response to the ANPR and other information developed by EPA, on May 20, 1986, EPA published a **Federal Register** notice (51 FR 18488), referring the matter to OSHA in accordance with section 9(a) of TSCA. The referral was made because EPA determined that exposures to 2-ME, 2-EE, 2-MEA and 2-EEA occur primarily in the workplace, that exposures during the manufacture and use of 2-ME, 2-EE and their acetates at the current OSHA PELs may present an unreasonable risk of injury to human health, and that the risk may be prevented or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act (OSH Act). In the notice, EPA, following the procedural requirements of section 9(a) of TSCA, requested OSHA to determine whether the risks described in the EPA report may be prevented or reduced to a sufficient extent by action taken under the OSH Act. If such a determination is made, then OSHA is requested to issue an order declaring whether the manufacture and use described in the report presents the risk described by EPA. The OSHA response was requested within 180 days of publication of the EPA report in the **Federal Register** (51 FR 18488).

By this notice, OSHA is responding to the EPA referral. OSHA has analyzed the material submitted in response to the EPA ANPR and other material in the EPA docket, including documents and technological feasibility documents. As a result of this analysis, OSHA has preliminarily determined that the risks associated with worker exposures to 2-methoxyethanol, 2-ethoxyethanol and their acetates at the current OSHA PELs, as described by EPA, appear to be significant. OSHA has also preliminarily determined that a revised OSHA standard limiting occupational exposure to 2-ME, 2-EE, 2-MEA, and 2-EEA could substantially reduce the risk of adverse health effects associated with these substances and that such a revised standard is feasible.

II. OSHA's Evaluation; Findings

Health Effects Associated With Exposure to 2-ME, 2-EE, 2-MEA and 2-EEA

The adverse effects of exposure to the four glycol ethers of concern here have been observed in several animal species. These effects include testicular damage; reduced fertility; maternal toxicity; developmental abnormalities of the fetus; depression of the bone marrow and the immune system; and neurotoxicity. There are limited data on mutagenicity. Information on the potential carcinogenicity of these glycol ethers is practically nonexistent.

More specifically, in experimental animals, 2-methoxyethanol has been found to cause degeneration of the germinal epithelium of the testes, which directly affects the development of germ cells early in sperm cell formation, resulting in reduced sperm count and reduced fertility. 2-ethoxyethanol has

been found to have similar effects in experimental animals. Both 2–ME and 2–EE also have been found to cause maternal toxicity and developmental abnormalities of the fetus. 2–ME has caused embryo/fetal death and resorptions at very low concentrations. 2–ME has also caused adverse hematologic effects, including hemolysis of blood cells, as well as depression of the formation of cellular elements of the blood.

The acetates, 2–MEA and 2–EEA, are thought to have adverse effects similar to 2–ME and 2–EE because, like their parent compounds, they are metabolized to methoxyacetic acid and ethoxyacetic acid, respectively. These metabolites are thought to be at least partially responsible for the adverse effects of these compounds.

Most of the information on the adverse effects of exposure to 2–ME, 2–EE, 2–MEA, and 2–EEA comes from experimental studies. According to these findings, the potential adverse effects in human populations exposed to these glycol ethers include: reduced sperm count; reduction in fertility; damage to testicular tissue, resulting in hormonal imbalance; increases in the rate of spontaneous abortion, congenital malformations, and other problems during pregnancy; hematologic effects, including bone marrow depression and suppression of the immune system. Of the effects that have been studied in humans, reductions in sperm count, gynecological disorders, hematologic effects, and neurotoxicity have been observed in persons occupationally exposed to these glycol ethers.

Risk Assessments for 2–ME, 2–EE and Their Acetates

The EPA has prepared a risk assessment (Ex. 4–004) for 2–ME, 2–EE, 2–EEA, and 2–MEA as part of its evaluation of data to determine its regulatory direction. OSHA has based its preliminary decisions concerning the health risks associated with occupational exposure to these four glycol ethers on the EPA risk assessment and its supporting documentation, as well as on other data in the EPA and OSHA records (OSHA Docket H–044).

As part of its risk assessment, EPA has calculated margins of safety according to the methods described in its Proposed Guidelines for the Health Assessment of Suspect Developmental Toxicants (49 FR 46324; November 23, 1984). The margin of safety is defined as the No Observed Effect Level (NOEL) in the most sensitive species studied, divided by the estimated human exposure level. THE NOELs for testicular toxicity utilized by the EPA in calculating margins of safety were 30 ppm for 2–ME and 100 ppm for 2–EE. For developmental toxicity, the NOELs were 3 ppm for 2–ME and 50 ppm for 2–EE. Because the acetates are thought to rapidly hydrolyze to acetate and glycol ether in the body, the effects of 2–MEA and 2–EEA were assumed to be the same as those of 2–ME and 2–EE, respectively. Therefore, the NOEL for each acetate was assumed to be the same as that for the respective glycol ether.

Exposure data for various segments of industry where glycol ethers are produced or used were obtained and used to calculate margins of safety for worker exposures in each segment. An exposure level with a 100-fold margin of safety is considered unlikely to produce adverse effects in humans. However, for many uses of these glycol ethers, the occupational exposure levels were so high that only a small, or no margin of safety would be provided to workers. The EPA estimated that between 206,000 and 350,000 workers are exposed to these four glycol ethers at air concentrations that provide less than a 100-fold margin of safety, while approximately 46,000 workers are exposed with a margin of safety less than 10-fold. Because the EPA risk assessment (Ex. 4–004) considered only inhalation exposures, accounting for absorption through the skin of exposed workers could considerably increase the assessed risks of exposure and the population at risk.

From the testicular effects observed in experimental studies, it was possible to further estimate the risks of human exposure. EPA estimated that a six to seven percent reduction in fertility could occur among males exposed to 2–ME at levels between 1 and 5 ppm. Furthermore, EPA observed that because hematologic effects have been found at exposure levels producing developmental effects, controlling the risks of developmental toxicity will also reduce the risks of hematologic effects.

Based upon EPA data and analyses, OSHA has preliminaryily concluded that the developmental, reproductive, and hematologic health risks associated with occupational exposure to 2–ME, 2–EE, 2–MEA, and 2–EEA at the current OSHA PELs may be significant. These PELs (2–ME: 25 ppm, 2–MEA: 25 ppm, 2–EE: 200 ppm, 2–EEA: 100 ppm) are greater than the quotients of the NOELs divided by 100, which means that at the current OSHA PELs, workers are not provided a 100-fold margin of safety.

Regulatory Approach and Feasibility

For purposes of determining the technological and economic feasibility of revised standards regulating occupational exposure to glycol ethers, OSHA has examined data available from EPA and other sources. Based upon the evidence available at this time, OSHA has preliminarily concluded that appropriate reductions of exposure levels are feasible. Relatively standardized engineering designs and other workplace controls and work practices are available to control emissions and to reduce inhalation and skin contact.

The sites of potential exposures can vary by workplace. Workers involved in manufacturing have the highest potential exposures at drum filling and packaging locations. Other production processes in manufacturing are generally well controlled by enclosed processes and ventilation. Likewise, exposures during formulation are also well controlled. However, exposure can increase when formulations are processed in open vessels. In both manufacturing and formulating, the potential for dermal exposure can be high where handling glycol ethers is required in non-automated operations such as filling containers and cleaning.

Workers involved in industrial uses (e.g., the application in factories of paints to automobiles, appliances and furniture and the use of cleaners for machinery) and trade users (e.g., the use in shops of paints and cleaning solvents by woodworkers, painters and metal workers) have a high potential for exposure during their application of glycol-ether-containing products to various surfaces. The object during these uses is to evaporate the glycol ether from the coating, ink or cleaned surface, which can result in exposure. Industrial users typically control exposures through local exhaust ventilation and personal protective equipment. By contrast, trade users frequently use these products under less controlled conditions where there is little or no active removal of the vapors.

To control exposures, local exhaust ventilation is generally preferred to general dilution ventilation due to the large volume of air required for dilution of evaporated glycol ethers. Effective control requires minimizing air motion at the source (thermal currents, machinery motion, material motion, operator movements, room air current, etc.) and capturing the contaminants through an exhaust hood or booth. Ideally the operation should be completely enclosed, providing access

and working openings only as needed. The number of openings should be kept to a minimum and located away from the natural path of the contaminant. Various hood arrangements are in use in industry to draw vapors away from the worker during material handling operations (i.e. transport, mixing with other chemicals, and filling operations). Ventilating methods commonly in use include slot exhaust, paint spray booths, and canopy hood systems.

Personal protective equipment and work practices also can limit employee exposure to glycol ethers. Equipment consists of chemical splash goggles, impervious gloves, protective clothing for the body (including footwear), and respirators. The respirator used will depend upon the concentrations and operations to which the employee may be exposed. Laboratory analytical and air monitoring methods are available for measuring glycol ethers, including any measurements needed to monitor reduced permissible exposure limits that OSHA might adopt.

OSHA has reviewed the EPA draft regulatory impact analysis (Ex. 4–008). OSHA believes that it is possible through regulation to reduce hazardous exposures to glycol ethers without substantial adverse economic impacts. In industrial facilities, engineering controls and personal protective equipment may be easily introduced and in many cases are already in use to a great extent. However, in trade establishments, control measures are more difficult to employ. Thus, these establishments may switch to substitutes for the regulated glycol ethers. Substitution may decrease the demand for these products from manufacturers and formulators. However, manufacturers and formulators may not be greatly affected, as they may be able to shift their production capacity to the manufacturing and formulation of other products or to other glycol-ether-based substitutes.

Substantial Reduction of Risk by Action Taken Under the OSH Act

Exposure to 2-methoxyethanol, 2-ethoxyethanol and their acetates appears to occur primarily in the workplace. The OSH Act is the primary statute for protecting the health and safety of workers. The Act authorizes OSHA to regulate chemicals in the workplace. Through the establishment of permissible exposure limits that are lower than the current PELs and that are technologically and economically feasible, OSHA can reduce potential exposures to 2–ME, 2–EE and their acetates. Engineering controls, personal protective equipment, labelling, training, worker exposure monitoring, medical surveillance, and other industrial hygiene practices can be used to reduce exposures resulting not only from inhalation but also from dermal deposition. OSHA, therefore, preliminarily determines that the significant risks that may arise from occupational exposures to these substances at the current OSHA PELs can be reduced to a sufficient extent by promulgation of a revised health standard under section 6(b) of the OSH Act.

III. Determination and Order

On the basis of its investigation into the risk of injury to workers' health posed by occupational exposure to 2–ME and 2–EE and their acetates, EPA has concluded that excess exposure to these glycol ethers poses an "unreasonable risk" under TSCA and that further government regulation to control these exposures therefore is required. OSHA has no reason to disagree with EPA's conclusions.

Although OSHA has not conducted its own risk assessment for these glycol ethers, OSHA has carefully considered: (1) The EPA report; (2) the other relevant material in the OSHA docket, including preliminary data regarding the technological feasibility and economic impacts of a revised OSHA standard controlling excess exposures to these substances; and (3) the EPA risk assessment. On the basis of this analysis, OSHA has preliminarily determined that existing OSHA PELs for these glycol ethers appear to be inadequate to protect workers from a significant risk of material impairment to their health and that a revised OSHA standard would be feasible. OSHA therefore makes the following preliminary Determination and Order:

Occupational exposure to 2–ME and 2–EE and their acetates at current OSHA PELs poses a risk to workers' health requiring regulation by OSHA. That risk can be prevented or reduced to sufficient extent by a revised workplace standard promulgated and enforced by OSHA.

The above Determination and Order is issued pursuant to section 9(a) of TSCA and is based on all of the information available to OSHA at this time. However, the rulemaking authority found in section 6 of the OSH Act provides the procedures and requirements for promulgating occupational safety and health standards. These procedures and requirements allow for the development of a complete rulemaking record, affording full participation by interested parties. Nothing in this document shall serve to diminish any right, requirement, or procedure established by the OSH Act, including the right to a hearing and the obligation to base a standard on substantial evidence in the record considered as a whole.

This Notice was prepared under the direction of: John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 9(a) of the Toxic Substances Control Act (90 Stat. 2030; 15 U.S.C. 2608), and Secretary's Order No. 9–83 (48 FR 35736).

Signed at Washington, DC this 26th day of November, 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 86–27591 Filed 12–10–86; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company, Pilgrim Nuclear Power Station; Exemption

I

Boston Edison Company (BECO/the licensee) is the holder of Facility Operating License No. DPR–35 which authorizes the operation of the Pilgrim Nuclear Power Station (the facility) at a steady-state power level not in excess of 1998 megawatts thermal. The facility includes a boiling water reactor (BWR) and is located at the licensee's site in Plymouth County, Massachusetts.

II

By letter dated August 29, 1986, the licensee requested a schedular exemption from the 18-month test frequency requirement in 10 CFR Part 50, Appendix J, section III.A.6(b). This section states that:

"If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria in III.A.5(b), notwithstanding the periodic test schedule of III.D, a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria in III.A.5(b), . . ."

Although the most recent Type A primary containment leakage test conducted at Pilgrim Station in December 1984 met the criteria in III.A.5(b), the previous test did not. The above testing frequency therefore applies.

III

The Pilgrim Station was shut down on April 12, 1986 to make certain repairs and the outage has continued for various reasons, including a decision by the licensee to refuel the reactor prior to restarting the plant. This decision created the circumstances whereby two Type A tests will have to be performed during the current refueling outage (RFO #7) unless relief is granted. The first Type A test would need to be conducted upon completion of the present ongoing Type B and C testing of air locks and valves, which, in accordance with the 18-month frequency requirement, commenced in June 1986. The second Type A test would be required following completion of all outage work, including refueling.

IV

Type A testing is performed to assure that primary containment leakage is within acceptable limits during plant operation. Pilgrim Station will not be operating prior to the end of RFO #7 next spring, at which time a Type A test will be successfully performed. Thus, the performance of an earlier Type A test to meet the 18-month schedular requirements is unnecessary to achieve the underlying purpose of the rule.

V

Based upon the considerations described above, the staff has concluded that the licensee has presented a sound rationale for its need of schedular relief which will allow postponement of Type A testing until the end of RFO #7. This will not present undue risk to the public health and safety because Pilgrim will remain shut down until completion of the Type A testing following refueling. In addition, the licensee will fix any leaks identified by the testing prior to restart.

The Commission has determined that, pursuant to 10 CFR 50.12(a)(1), the schedular exemption requested by the licensee's letter of August 29, 1986, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as described in 10 CFR 50.12(a)(2)(ii), are present, namely, that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule. Accordingly, the Commission grants this Exemption from the schedular requirements of 10 CFR Part 50, Appendix J, section III.A.6(b) for the performance of a Type A containment leakage test until after refueling has been accomplished during refueling outage #7 and any leaks identified by this testing shall be repaired prior to restart.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (51 FR 41308, November 28, 1986).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 1st day of December 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 86-27860 Filed 12-10-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. C86-3]

Parcel Post Rate Complaint; Notice

December 5, 1986.

Pursuant to the Presiding Officer's Ruling (POR-3), Dated December 5, 1986, Hearings are scheduled to commence on January 27, 1987, Hearing Room, Postal Rate Commission, DC, in the matter of the proceeding on Parcel Post Rate Complaint, in Docket No. C86-3.

Charles L. Clapp,

Secretary.

[FR Doc. 86-27782 Filed 12-10-86; 8:45 am]

BILLING CODE 7715-01-M

RAILROAD RETIREMENT BOARD

Proclamation Regarding Railroad Unemployment Insurance Account

Pursuant to section 8(a) of the Railroad Unemployment Insurance Act, the Railroad Retirement Board has determined, and hereby proclaims, that the balance to the credit of the railroad unemployment insurance account as of the close of business September 30, 1986, was a deficit of $702,465,117.91. Based on this balance and pursuant to the table in section 8(a) of the Railroad Unemployment Insurance Act, the contribution rate to finance the railroad unemployment insurance program for calendar year 1987 shall be 8.0 percent.

In witness whereof the members of the Railroad Retirement Board have hereunto set their hands and caused its seal to be affixed.

Done at Chicago, Illinois, this 5th day of December, 1986.

R.A. Gielow,

Chairman.

J.D., Crawford,

Member.

C. Chamberlain,

Member.

By the Railroad Retirement Board.

R.G. Altmann,

Executive Director.

[FR Doc. 86-27795 Filed 12-10-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15452; (812-6096)]

Drexel Burnham Lambert Mortgage Acceptance Corp.; Notice of Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Drexel Burnham Lambert Mortgage Acceptance Corp.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order exempting it and certain trusts to be created by it from all provisions of the 1940 Act in connection with the issuance and sale of collateralized mortgage obligations and ownership interests in the trusts.

FILING DATES: April 19, 1985. Amendments were filed on June 14, 1985, and on March 6, November 18 and November 21, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 P.M. on December 26, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personnally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicant, c/o Stephen H. Shalen, Esq., Cleary, Gottlieb, Steen & Hamilton, One State Street Plaza, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033, or Brion R. Thompson, Special Counsel, (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 321–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Applicant is a Delaware corporation and a wholly-owned, limited purpose finance subsidiary of The Drexel Burnham Lambert Group Inc. organized to facilitate the financing of long-term residential mortgages on one-to-four family residences through the issuance of one or more series of bonds secured by such mortgages. Except as incidental to the activities described below and more fully set forth in the application, the Applicant will not trade or deal in securities or engage in any other activity.

2. Applicant comtemplates creating one or more separate trusts (each, a "Trust"). Each Trust will be a common law business trust created under an agreement ("Trust Agreement") between Applicant, acting as a depositor, and a bank, trust company or other fiduciary acting as owner trustee ("Owner Trustee"). The Trust Agreement comtemplate that the Owner Trustee will enter into a Management Agreement with respect to each Trust with Drexel Burnham Lambert Incorporated or another affiliate of the Applicant, or another financial institution, for the provision of certain management services in connection with the issuance of the Bonds.

3. Each Trust will issue one or more series of collateralized mortgage obligations ("Bonds") rated in at least the second highest rating category by an independent nationally recognized statistical rating agency ("Rating Agency"). The Bonds will be issued under an Indenture ("Indenture") between the Trust and an independent trustee for the Bondholders ("Bond Trustee"). Each series of Bonds will be directly secured by "fully modified pass-through" mortgage-backed certificates fully guaranteed as to principal and interest by the Government National Mortgage Corporation ("GNMA Certificates"); Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Participation Certificates"); Guaranteed Mortgage Pass-Through Certificates issued by the Federal National Mortgage Association ("FNMA Certificates"; collectively, "Mortgage Certificates") and reinvestment earnings and distributions on such Mortgage Certificates. In addition to the Mortgage Certificates directly securing the Bonds, a series will have additional collateral, which will include certain collection accounts and may include other reserve funds as specified in the related Indenture.

4. For each series of Bonds, (i) payments on the mortgage loans underlying the Mortgage Certificates securing the Bonds will be the primary source of funds for payments of principal and interest due on the Bonds; (ii) the Mortgage Certificates securing each series of Bonds will be pledged to the related Bond Trustee under the applicable Indenture and will be held by the Bond Trustee or an independent nominee; (iii) the Bond Trustee will have a first lien perfected security interest in all such Mortgage Certificates; (iv) the principal amount and the collateral value of the Mortgage Certificates securing each series of Bonds will at all times be at least equal to the principal amount of outstanding Bonds; and (v) the cash flow on the Mortgage Certificates, together with reinvestment income at the assumed reinvestment rate specified in the Indenture, will be sufficient to pay principle and interest on the Bonds when due to Bondholders.

5. The Bonds will not be redeemable at the option of the Bondholders. A series of Bonds may be subject to special redemption if, as a result of substantial prepayments of the underlying mortgages and/or the low yields available on reinvestment of the distributions on Mortgage Certificates, the amount of cash anticipated to be available on the next Bond payment date would not be sufficient to make required interest and principal payments on the Bonds.

6. Applicant also contemplates selling certificates ("Equity Certificates") representing some or all of the ownership interest in a Trust to one or more banks, savings and loan associations, pension funds, insurance companies or other institutions that customarily engage in the purchase of mortgages and mortgage-backed assets ("Eligible Institutions"). Each sale will qualify as a transaction not involving a public offering within the meaning of Section 4(2) of the Securities Act of 1933 ("1933 Act").

7. Initially, the Applicant intends to sell the Equity Certificates of each Trust to no more than twenty-five Eligible Institutions. The Trust Agreement will require that each purchaser of an Equity Certificate represent that it is purchasing the Equity Certificate for investment purposes only and that it will hold the Equity Certificate in its own name and not as nominee for undisclosed investors. Each Trust Agreement will prohibit the transfer of any Equity Certificate of a Trust if there would be more than one hundred beneficial owners of the Equity Certificates of such Trust at any time. Each owner of Equity Certificates ("Owner") will agree to be bound by the terms of the applicable Trust Agreement.

8. The Trust Agreements will provide that, (i) no Owner of an Equity Certificate may be affiliated with the Bond Trustee; (ii) no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) equity interest in the Trust will be affiliated with either any custodian which may hold the Bond collateral on behalf of the Bond Trustee or the Rating Agency rating the related series of Bonds; and (iii) the Owner Trustee will not purchase any Equity Certificates but will function as a legal stakeholder for the assets of the Trust.

9. Neither the Owners nor the Bond Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bond because, without the consent of each affected Bondholder, neither the holders of the Equity Certificates of any the Trusts nor the Bond Trustee will be able to (i) change the stated maturity on any Bonds; (ii) reduce the principal amount of, or the rate of interest on, any Bond; (iii) change the provisions in the Indenture relating to the application of collateral collections to principal payments on the Bonds; (iv) impair or adversely affect the Mortgage Certificates securing a series of Bonds; (v) permit the creation of any lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Certificates; (vi) terminate the lien of the Indenture of any collateral at any time subject thereto (except in certain limited circumstances expressly permitted in the Indenture);[1] or (vii) otherwise

[1] The Indenture for each Trust will provide that amounts may be released from the lien of the Indenture after each Bond payment date and remitted to the Trust only if (i) the Bond Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Bond Trustee has received all fees currently owed to it, (iii) the firm of independent accountants has received all fees owed

Continued

deprive the Bondholders of the security afforded by the lien of the related Indenture. In addition, the sale of Equity Certificates of any Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account securing the Bonds or any reserve fund created under the Indenture to support payments of principal and interest on the Bonds.

10. The interests of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Trust and there will not be a conflict of interest between the Bondholders and the Owners for several reasons: (i) The collateral that will initially be deposited into each Trust will not be speculative in nature because it will consist solely of GNMA Certificates, FNMA Certificates, or FHLMC Certificates, which are guaranteeed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (ii) the Bonds will only be issued provided a Rating Agency has rated the Bonds in one of the two highest rating categories, which by definition means that the capacity of the issuer to repay principal and interest on the Bonds is extremely strong; (iii) the Indenture under which the Bonds have been issued will subject the collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders; and (iv) the Owners will be entitled to receive current distributions representing the residual payments on the collateral from each Trust in accordance with the terms of the applicable Trust Agreement, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. The Owners will be liable for the expenses, taxes and other liabilities of the Trust (other than the principal and interest on the Bonds) to the extent not previously paid from the trust estate. The choice of the form of issuer for the Bonds and the identity of the Owners of the equity interests in such issuer will not alter in any respect the payments made to the holders of the Bonds or the amount available to make such payments.

11. The excess cash flow, if any, from the Bond collateral that is available to Owners will always be far less than the cash flow from the Bond collateral that is used to make principal and interest payments to Bondholders. As a result, the purchase price of the entire beneficial interest of the Owners in each Trust will be significantly less than the purchase price of the Bonds. Applicant does not intend to deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 120% of the aggregate principal amount of the related Bonds.

12. Except for the limited right to substitute Bond collateral described in the application, it will not be possible for the Owners to alter the collateral initially deposited into a Trust, and, in no event will the right to substitute collateral result in a diminution in the value or quality of such collateral.

13. While certain purchasers of the Bonds and certain purchasers of the Equity Certificates may desire to purchase securities backed by Mortgage Certificates having specific characteristics that, for example, would generally result in faster or slower prepayment rates on the Mortgage Certificates, the Applicant's discretion in directing the purchase of the Mortgage Certificates by each Trust will not adversely affect either the Bondholders or the purchasers of the related Equity Certificates. The offering documents prepared in connection with the respective offers of the Bonds and Equity Certificates will provide investors with all material information concerning the characteristics of the related Mortgage Certificates, including the expected pass-through rates and maturities of such Mortgage Certificates, and will set forth information as to the anticipated return on investment that would be realized by a Bondholder or an Owner based on varying assumptions as to the prepayment rates on the Mortgage Certificates and as to other relevant factors specified in such offering documents. Each class of prospective investor will therefore be able to make an informed investment decision as to whether the Bonds or Equity Certificates represent an attractive investment opportunity based upon their payment terms and the investors' own determination as to the anticipated rate of prepayments on the underlying Mortgage Certificates. The actual prepayment experience of the Mortgage Certificates will, in any event, be determined by market conditions that are beyond the control of the Applicant or the Owners and are likely to affect in a similar fashion all Mortgage Certificates having similar payment terms and maturities.

14. The requested order is appropriate in the public interest because (1) the acquisition of Mortgage Certificates, the issuance of Bonds by the Trustee and the sale of the Equity Certificates by the Applicant in the manner described herein are not the types of activities intended to be regulated by the Act, (2) the safeguards afforded to purchasers of the Bonds fully protect investors in a manner comparable to those protections provided to purchasers of the collateralized mortgage obligations previously issued in reliance upon no-action letters under section 3(c)(5)(C) of the 1940 Act or exemptive orders granted under section 6(c) of the 1940 Act and (3) its activities will promote the public interest by expanding the market for mortgage securities, thereby increasing the pool of funds available for mortgage loans and increasing the capacity of mortgage lenders to meet the housing finance needs of the nation.

Applicant's conditions: If the requested order is granted, Applicant expressly consents to the following conditions:

1. Each series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration under section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. The mortgage collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates or FHLMC Certificates.

3. If a new Mortgage Certificate is substituted, the substitute collateral must: (i) be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in paragraphs (2) and (4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as security for a series of Bonds. In no event may any new mortgage collateral be substituted for any substitute mortgage collateral.

4. All Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds, directly, or indirectly,

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to it for services rendered under the Indenture and (iv) if and to the extent required, deposits have been made to certain reserve funds securing the Bonds. Under the Trust Agreement, the Owner Trust is obligated to collect all amounts released from the lien of the Indenture by the Bond Trustee, to pay all other current expenses of the Trust, including its own fees, and to remit the balance to the Owners on a pro rata basis. Each Trust Agreement provides that, once amounts have been released from the right of the Indenture, the Owner Trustee has a right superior to that of the Owners to the remaining cash flow.

will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act) of the Applicant. The Bond Trustee will be provided with a first priority perfected security or lien interest in and to all such Bond collateral.

5. Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered redeemable securities within the meaning of Section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent accountant will audit the books and records of each Trust and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Certificates will be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Bond Trustee.

7. All of the representations and undertakings relating to the Equity Certificates set forth above and discussed fully in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: December 3, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-27827 Filed 12-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15456 (File No. 811-4796)]

Norwest Collection Investment Trust

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Norwest Collection Investment Trust ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 17, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 29, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Eight and Marquette Avenue, Minneapolis, Minnesota 55479.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272-2799 or Brion Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3262 (in Maryland (301) 253-4300).

Applicant's Represenations

1. On August 13, 1986, Applicant filed a notification of registration on Form N-8A and a registration statement on Form N-1A, thereby registering under the 1940 Act as an open-end, diversified, management investment company. However, Applicant's registration statement on Form N-1A was never declared effective.

2. The officers of Applicant determined that there is not a sufficient market for Applicant's securities and thus wish to terminate Applicant's 1940 registration.

3. Applicant continues to exist as a trust organized under the laws of the state of Minnesota.

4. Applicant never made a public offering of its securities, has no debts or other liabilities outstanding and is not a party to any litigation or administrative proceedings. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: December 4, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-27828 Filed 12-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15454; File No. 811-106)]

United Fund Accumulative Series (TA); Notice of Application for an Order Declaring That Applicant has Ceased to be an Investment Company

December 4, 1986.

Notice is hereby given that United Fund Accumulative Series (TA) ("Applicant"), c/o Commerce Bank of Kansas City, N.A., Trustee, Box 248, Kansas City, Missouri 64141, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management company, filed an application on October 9, 1985, and an amendment thereto on November 12, 1986, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. 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 applicable provisions thereof.

Applicant states that it registered under the Act on November 1, 1940 and that it is a trust organized under a trust indenture ("Indenture") dated as of June 1, 1935, in the State of Missouri. The Indenture provides that Applicant shall terminate as of June 1, 1985, and the Trustee of the Applicant ("Trustee") shall liquidate the assets of Applicant and distribute such assets to the certificate holders. Applicant further states that by notice dated May 15, 1985, it notified the certificate holders of its termination and informed them that they should redeem their certificates on or before June 25, 1985. According to the application, liquidating distributions have been made to all certificate holders who have properly tendered their certificates. Applicant's remaining assets, net of liabilities, are less than $500,000 and there are 3960 certificate holders who cannot be reached at their last known addresses. Applicant states that it has made several efforts to inform all certificate holders of its termination and it will, before the end of 1986, distribute substantially all of its remaining assets to the State of Missouri, and to certain other jurisidictions, pursuant to the unclaimed property statutes of such jurisdictions. The distribution to certain other jurisdictions will be made through the Unclaimed Property Clearinghouse. Applicant anticipates that, after the distribution referred to above, it will have a maximum of approximately $50,000 in remaining assets which will consist of reserves for final winding-up

expenses and the value of interests of several certificate holders with whom Applicant has had some contact. Applicant states that, before the end of 1987, all assets still remaining will be distributed to the State of Missouri and/or other jurisdictions.

Applicant also states that it is not now a party to any litigation or administrative proceeding. Applicant further represents that it is not now engaged, nor proposes to engage, in any business activities other than those necessary to wind-up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 29, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

[FR Doc. 86-27829 Filed 12-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24255]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 4, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 29, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Niagara Mohawk Power Corporation et al (70-7319)

Niagara Mohawk Power Corporation ("Niagara Mohawk"), 300 Erie Boulevard West, Syracuse, New York 13202, an exempt holding company, and its wholly owned subsidiary, Hydra-Co Enterprises, Inc. ("Hydra-Co"), 100 Clinton Square, Suite 400, Syracuse, New York 13202, have filed an application pursuant to Sections 9 (a) and 10 of the Act.

Niagara Mohawk, organized in 1937, is engaged in the electric and gas utility business in the State of New York. It renders electric service to the public in an area of New York having a total population of about 3,500,000, including, among others, the cities of Buffalo, Syracuse, Albany, Utica, Schenectady, Niagara Falls, and Troy. It distributes natural gas in areas in central, northern, and eastern New York having a total population of approximately 1,700,000, nearly all of which are within its electric service area. Niagara Mohawk's total operating revenues for 1985 were $2,694,940,000, substantially all of which was derived from operations within the State of New York. Hydra-Co was incorporated in New York in 1981 for the purpose of marketing and constructing cogeneration energy plants for industries and the development of small hydroelectric projects.

Niagara Mohawk is seeking Commission authorization of the acquisition (through its subsidiary, Hydra-Co) of a 12.5% general partnership interst in Curtis/Palmer Hydroelectric Company, a New York limited partnership (the "Partnership"). The Partnership was formed as a vehicle through which International Paper Company could obtain investors willing to participate in financing the rebuilding of two hydroelectric facilities (the Curtis Facility and the Palmer Falls Facility) that it owned and had been using to provide power for its adjacent manufacturing facilities. International Paper has assigned to the Partnership a power purchase agreement with Niagara Mohawk providing for the sale to Niagara Mohawk of power produced by the Curtis and Palmer Falls Facilities that is not purchased by International Paper Company for use at its own manufacturing plant. That power purchase agreement has been approved by the New York State Public Service Commission. The Curtis Facility, which was conveyed to the Partnership as of December 1, 1985, consists of a power plant of approximately 9.6 megawatts, together with a dam, leasehold interests, and transmission lines connected to certain Niagara Mohawk power lines. The Palmer Falls Facility consists of a power plant of approximately 48 megawatts which is currently under construction, a dam, leasehold interests, and transmission lines. The Partnership presently owns the Palmer Falls' dam, related leasehold interests, and transmission lines. It is anticipated that title to the Palmer Falls' power plant will be transferred to the Partnership later this year. The Curtis and Palmer Falls Facilities are located on the Hudson River in the towns of Corinth and Lake Luzerne, New York, and are covered by a single Federal Energy Regulatory Commission license. Niagara Mohawk's investment of $5,000,000 in the Partnership is less than 0.07% of its total assets as of June 30, 1986.

System Energy Resources, Inc. et al (70-7324)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its wholly owned subsidiary System Energy Resources, Inc. ("SERI"), One Jackson Place, 188 East Capital Street, Jackson, Mississippi 39201 have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a) and 10 of the Act.

SERI proposes to issue and sell from time to time through December 31, 1987, and Middle South proposes to acquire, up to 75,000 additional shares of SERI's authorized but unissued common stock, without nominal or par value. The common stock will be sold at $1,000 per share for an aggregate cash purchase price of $75 million. The number of shares of SERI's common stock and the price per share would be adjusted to the equivalent amounts upon any split of SERI's common stock approved by SERI's Board of Directors. Proceeds from the sale of the common stock will be used to pay bank debt, construction costs, and nuclear fuel expenses.

Louisiana Power & Light Company et al (70–7326)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), and 10 of the Act.

LP&L proposes to issue and sell from time to time through December 31, 1987, and Middle South proposes to acquire, up to 11,364,000 shares of LP&L's authorized but unissued common stock, without nominal or par value. The common stock will be sold at $6.60 per share for an aggregate cash purchase price of $75 million. LP&L will use the proceeds of such sales for the financing, in part, of the deferred costs in connection with the phasing in of retail rate increases related to Unit No. 3 of LP&L's Waterford Steam Electric Generating Station (estimated to be $144.4 million for the calendar year 1987), its construction program (estimated to be $135.5 million for the calendar year 1987), and for other corporate purposes.

Arkansas Power & Light Company, et al (70–7327)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary, Arkansas Power & Light Company ("AP&L"), First Commercial Building, P.O. Box 551, Little Rock, Arkansas 72203, have filed an application-declaration pursuant to sections 6(a), 7, 9(a) and 10 of the Act.

AP&L proposes to issue and sell from time to time through December 31, 1987, and Middle South proposes to acquire, up to 4,000,000 shares of AP&L's authorized but unissued common stock, $12,50 par value. The common stock will be sold at $12.50 per share for an aggregate cash purchase price of $50 million. AP&L will use the proceeds of such sales for corporate purposes including the financing, in part, of its construction program and its phase-in costs in connection with its interest in Grand Gulf Nuclear Electric Generation Station, Unit No. 1.

Jersey Central Power & Light Company, et al (70–7333)

Jersey Central Power & Light Company ("JCP&L"), 161 Madison Avenue, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605 and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907 (collectively, "Companies"), subsidiaries of General Public Utilities Corporation, a registered holding company, have filed an application pursuant to sections 9(a) and 10 of the Act.

The Companies propose to enter into lease agreements ("Leases") with Prulease, Inc. ("Lessor"), an affiliate of the The Prudential Insurance Company of America. Under the proposed Leases, the Lessor would acquire title from and simultaneously lease to the Companies from time to time certain nuclear fuel, fuel assemblies and component parts ("Nuclear Material") for use in their jointly owned Three Mile Island, Unit No. 1 nuclear generating station. The Lessor's unrecovered acquisition costs for Nuclear Material and payments for related services and costs (collectively, "Acquisition Costs") would not exceed $100 million at any one time outstanding. Individual sublimits applicable to Met-Ed, JCP&L and Penelec are $50 million, $25 million and $25 million respectively. The Leases further provide that the Lessor's unrecovered Acquisition Costs, when added to such costs under the lease agreements between the Lessor and JCP&L concerning Nuclear Material for use at JCP&L's Oyster Creek nuclear generating station, as authorized by order of the Commission of September 24, 1986 (HCAR No. 23841), will not exceed a total of $175 million at any one time outstanding.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–27826 Filed 12–10–86; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 4, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Coca-Cola Enterprises, Inc. Common Stock, $1.00 Par Value (File No. 7–9437).

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 26, 1986 written data, views and arguments concering the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–27873 Filed 12–10–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 86–071]

National Boating Safety Advisory Council; Charter Renewal

AGENCY: Coast Guard, DOT.

ACTION: Notice of renewal.

SUMMARY: The Secretary of Transportation has approved the renewal of the Charter for the National Boating Safety Advisory Council.

The purpose of this Council is to advise the Secretary of Transportation with regard to major boat safety matters related to the Federal Boat Safety Act of 1971 (as recodified in Subtitle II of Title 46, U.S. Code).

FOR FURTHER INFORMATION CONTACT: Captain Michael B. Stenger, USCG, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G–BBS), Washington, DC 20593–0001. (202) 267–1060.

Dated: December 8, 1986.

T.T. Matteson,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 86–27849 Filed 12–10–86; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement; Dade and Monroe Counties, Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Dade and Monroe Counties, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to improve SR-5/US-1 in Dade and Monroe Counties, Florida. The proposed improvement would involve the reconstruction from two lanes to four lanes divided of SR-5/US-1 from County Road 905 in Monroe County to County Road 905 (Card Sound Road) in Dade County, a distance of 20.2 miles.

Alternatives under consideration include: (1) taking no action; (2) widening to a four-lane divided facility with shoulders, constructed on fill material, with grass or barrier median. Replacement of bascule bridges at Jewfish Creek and C-111 Canal; (3) widening to a four-lane divided facility with shoulders constructed on a combination of fill material with grass or barrier median and low-level structures. Replacement of bascule bridges at Jewfish Creek and C-111 Canal.

Federal, State, and local agencies have contributed early coordination comments through the State Advance Notification process. Additionally, a project planning team developing this project has contacted State, Federal, and local agencies for information relative to land-use planning, water quality analysis, wetland resources, endangered species and local planning needs. Public information meetings will be held during the development of the EIS. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. A formal scoping meeting is not planned for this project.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on December 5, 1986.

James E. St. John,

Assistant Division Administrator, Tallahassee, Florida.

[FR Doc. 86-27847 Filed 12-10-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Authority To Take Final Action to Prohibited Personnel Practices; Assistant Secretary of the Treasury (Management)

Dated: November 5, 1986.

Number: 102-08

Subject: Authority to Take Final Action with Respect to Prohibited Personnel Practices

By virtue of the authority vested in me as Secretary of the Treasury, inlcuding the authority in 31 U.S.C. 321(b), the Assistant Secretary of the Treasury (Management) is hereby delegated authority and responsibility to take all appropriate action in response to a recommendation by the Special Counsel or order by the Merit Systems Protection Board, except in the case of Presidential appointees.

Accordingly, Treasury Department Order No. 102-5, dated December 5, 1985, is amended by adding the following to the list of authorities delegated to the Assistant Secretary of the Treasury (Management):

(4) Take all appropriate action in response to recommendations by the Special Counsel or orders by the Merit Systems Protection Board, after consulting with the appropriate Senior Departmental Official on matters involving positions under his jurisdiction. Action on recommendations or orders directly affecting Presidential appointees is excepted from this delegation.

James A. Baker,

Secretary of the Treasury.

[FR Doc. 86-27845 Filed 12-10-86; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATE: Upon Publication.

FOR FURTHER INFORMATION CONTACT:

Ms. Patricia Hoxie (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, Tel: (202) 485-2617

or

Mr. John Welch (Co-Executive Secretary), Chief, Foreign and Domestic Personnel Policy Staff, Office of Personnel, Voice of America, U.S. Information Agency, 300 C Street SW., Washington, DC 20547, Tel: (202) 485-8732.

SUPPLEMENTARY INFORMATION: In accordance with section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following list supersedes the U.S. Information Agency Notice (50 FR 51981, December 20, 1985):

Chairperson: Associate Director for Management—Woodward Kingman (Presidential Appointee)

Deputy Chairperson: Associate Director, Voice of America—Richard Carlson (Presidential Appointee)

Career SES Members:

Mopix/TV Facilities Manager, Television and Film Service—Richard J. Caldwell

Director, Office of Security—Bernard C. Dowling

Director, Office of Broadcast Operations, Voice of America—Alan L. Heil, Jr.

Deputy for Project Management, Office of Engineering and Technical Operations, Voice of America—Robert E. Kamosa

Deputy General Counsel, Office of General Counsel and Congressional Liaison—C. Normand Poirier

Director, Office of Personnel, Voice of America—Glenn Sutton

Alternate Career SES Members:

Senior Advisor for Public Affairs, Office of the Deputy Director—William Anderson

Director, Office of Administration, Voice of America—Earl Klitenic.

This supersedes the previous U.S. Information Agency Notice (50 FR 51981, December 20, 1985).

Woodward Kingman,

Associate Director for Management, U.S. Information Agency.

[FR Doc. 86-27789 Filed 12-10-86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINSTRATION

Agency Form Letter Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form letter, (2) the title of the form letter, (3) the agency form letter number, if applicable, (4) how often the form letter must be filed out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form letter, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form letter and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place, NW, Washigton, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before February 9, 1987.

Dated: December 4, 1986.

By direction of the Administrator:

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Medicine and Surgery
2. Report on Loan Item
3. VA Form Letter 10-426
4. Non-recurring
5. Individuals or households
6. 14,500 responses
7. 247 hours
8. Not applicable

[FR Doc. 86-27773 Filed 12-10-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 238
Thursday, December 11, 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).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 86-27347.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, December 11, 1986, 10:00 a.m.

THE FOLLOWING ITEMS HAVE BEEN ADDED TO THE AGENDA:

Draft Advisory Opinion 1986-40—John R. Raese on behalf of West Virginia Republican Party
Proposed revisions of Title 26 Regulations
* * * * *

DATE AND TIME: Tuesday, December 16, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Proposed FEC Guideline for Presentation in Good Order for the 1988 Presidential primary election
Election of officers:
Election of Chairman
Election of Vice Chairman
Routine administrative matters
* * * * *

DATE AND TIME: Tuesday, December 16, 1986, immediately following close of open session.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee
* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-27924 Filed 12-9-86; 2:34 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., December 17, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Petition of Matson Navigation Company, Inc., for Amendment to Automobile Measurement Rule (46 CFR 550.5(b)(8)(xiv).
2. Docket No. 86-20—Truck Detention at the Port of New York—Increase in Penalty Charges; Consideration of Comments on Proposed Rule.
3. Docket No. 86-22—Miscellaneous Amendments to Rules of Practice and Procedure; Consideration of Comments on Proposed Rule.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

[FR Doc. 86-27938 Filed 12-9-86; 3:50 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 43494, December 2, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, December 8, 1986.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Proposed change in payroll computation procedures. (This item was originally announced for a closed meeting on December 1, 1986.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-27939 Filed 12-9-86; 3:51 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:30 a.m., Wednesday, December 17, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-27940 Filed 12-9-86; 3:52 pm]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, December 16, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. 701-TA-285 & 731-TA-365 & 366 (Preliminary) (Certain phosphoric acid from Belgium and Israel)—briefing and vote.
6. Inv. 701-TA-269 and 731-TA-311, 312, and 315 (Final) (Certain brass sheet and strip from Brazil, Canada, and South Korea)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

December 5, 1986.

[FR Doc. 86-27883 Filed 12-9-86; 10:33 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, December 18, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. 701-TA-272 and 731-TA-319 (Final) (Operators for jalousie and awning windows from El Salvador)—briefing and vote.

2. Inv. 731–TA–304 & 305 (Final) (Top-of-the stove stainless steel cooking ware from Korea and Taiwan)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

December 7, 1986.

[FR Doc. 86–27884 Filed 12–9–86; 10:34 am]

BILLING CODE 7020–02–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on December 1, 1986, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for January 5, 1987, in Washington, DC. The meeting will concern consideration of the Postal Rate Commission's Recommended Decision on Destination—BMC Parcel Post (Docket No. MC86–1), and consideration of a new Deputy Postmaster General.

The meeting is expected to be attended by the following persons: Governors Griesemer, McConnell, McKean, Nevin, Peters, Ryan and Setrakian; Postmaster General Tisch; Secretary to the Board Harris; General Counsel Cox; and Counsel to the Governors Califano.

As to the first of these items, the Board determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, discussion of the matter is exempt from the open meeting requirement of the Government in the Sunshine Act, [5 U.S.C. 552b(b)], because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing.

As to the second of these items, the Board determined that, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(6) and (10) of Title 5, United States Code, and § 7.3 (f) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 86–27882 Filed 12–9–86; 10:32 am]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 51, No. 238
Thursday, December 11, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-3119-3]

National Response Team; Proposed Hazardous Materials Emergency Planning Guide (Hazmat Planning Guide)

Correction

In notice document 86-27042 beginning on page 43466 in the issue of Tuesday, December 2, 1986, make the following correction:

On page 43467, in the first column, in the 18th line, "72274" should read "70274".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86M-0403]

Bausch & Lomb Optics Center; Premarket Approval of Bausch & Lomb® Fizziclean™ Protein Remover, Bausch & Lomb® Extended Wear Protein Remover, and Bausch & Lomb® Therma-Zyme™ Protein Remover

Correction

In notice document 86-24954 appearing on page 40263 in the issue of Wednesday, November 5, 1986, the heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86M-0408]

CILCO®, Inc.; Premarket Approval of CDS II™ (Sodium Chondroitin Sulfate)

Correction

In notice document 86-24955 beginning on page 40263 in the issue of Wednesday, November 5, 1986, make the following corrections:

1. On page 40264, in the first column, in the eighth line, "(LDRD)" should read "(CDRH)".

2. On the same page, in the **"SUPPLEMENTARY INFORMATION"**, in the fifth line, "Sodium" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86P-0393]

Petition Requesting 10 Years' Exclusivity for Hydrocortisone Butyrate

Correction

In notice document 86-25935 beginning on page 41667 in the issue of Tuesday, November 18, 1986, make the following correction:

On page 41667, in the first column, in the **SUMMARY**, in the eighth line, "255" should read "355".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-06-4220-10; A19123]

Notice of Conveyance of Public Mineral Estate; Reconveyed Mineral Estate Opened to Entry in Mohave County, AZ

Correction

In notice document 86-22746 beginning on page 36069 in the issue of Wednesday, October 8, 1986, make the following corrections:

1. On page 36069, in the second column, in the 24th line, insert "W½" before "SE¼".

2. On the same page, in the same column, in the 26th line from the bottom, insert "W½" before the last "SW¼".

3. On the same page, in the third column, in the sixth line, "NW½" should read "NW¼".

4. On the same page, in the same column, in the 14th line, remove the comma between the first "E½" and "W½".

5. On the same page, in the same column, in the 35th line, "E¼W¼" should read "E½W½".

6. On the same page, in the same column, in the 12th line from the bottom, "NE½" should read "NE¼".

7. On the same page, in the same column, in the 11th line from the bottom, "SE½" should read "SE¼".

8. On page 36070, in the first column, in the 23rd line, the last "NE¼" should read "NW¼".

9. On page 36071, in the first column, in the 19th line from the bottom, insert a comma after "E½".

10. On the same page, in the same column, in the 14th line from the bottom, remove the comma between "NE¼" and "NW¼".

BILLING CODE 1505-01-D

Federal Register

Thursday
December 11, 1986

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

Hazardous Waste Management System: Land Disposal Restrictions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

[SWH-FRL 3089-6]

Hazardous Waste Management System: Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is today proposing to codify the statutory land disposal prohibition levels for a list of hazardous constituents known as the "California List" wastes. EPA is taking this action in response to the requirements of the Resource Conservation and Recovery Act (RCRA), enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

Section 3004(d) of RCRA prohibits the land disposal of hazardous wastes containing the California list constituents in concentrations at or above specified levels after July 8, 1987. This section of the Act also authorizes EPA to substitute more stringent concentration levels where necessary to protect human health and the environment. Today's action proposes to codify the statutory concentration levels for all California waste categories, and requests comment on an alternative approach that would lower the restriction levels for some or all of the "California List" metals. Treatment standards are proposed for hazardous wastes with a pH less than or equal to two, those containing polychlorinated biphenyls at greater than 50 ppm, and those containing halogenated organic compounds in total concentration greater than 1000 mg/kg. This action also proposes methods for determining compliance with the regulatory requirements. In addition, this proposal includes discussion of treatment technologies which are capable of reducing the concentration of the California list wastes to below their respective restriction levels.

DATE: Comments on this proposed rule must be submitted on or before January 28, 1987. A public hearing is scheduled for January 14, 1987, 9:00 a.m. to 4:30 p.m.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (S-212) (WH-562), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the Docket Number F-86-LDR4-FFFFF on your comments. For additional details see the "OSW Docket" section in **SUPPLEMENTARY INFORMATION.** The public hearing will be held at the following location: Marriott Crystal Gateway Hotel, 1700 Jefferson Davis Highway, Arlington, VA (703-920-3230). A block of rooms has been reserved at the hotel for the convenience of attendees requiring overnight accommodations. Please make reservations by calling the hotel directly. Special room rates of $72.00 single and $97.00 double have been established.

Anyone wishing to make a statement at the hearings should notify, in writing, Ms. Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Persons wishing to make oral presentations must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 382-3000 locally.

For information on specific aspects of this proposed rule, contact: Stephen Weil, or Richard Dailey, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

OSW Docket

The OSW docket is located in the EPA RCRA Docket Room (subbasement), 401 M. St. SW., Washington, DC 20460. The docket is open from 9:30 to 3:30, Monday through Friday, except for public holidays. To review docket materials, the public must make an appointment by calling Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

Table of Contents—California List

I. Background

A. Congressional Mandate

According to Section 3004(d) of the Hazardous and Solid Waste Amendments of 1984 (HSWA), effective 32 months after the date of enactment, the land disposal of liquid hazardous wastes containing certain metals, free cyanides, polychlorinated biphenyls (PCBs), corrosives with a pH of less than or equal to 2.0, and liquid and non-liquid hazardous wastes containing halogenated organic compounds (HOCs) is prohibited unless the waste complies with treatment standards established by the Environmental Protection Agency (EPA) under section 3004(m), or a petition has been approved based on a showing that, to a reasonable degree of certainty, when such wastes are placed in a land disposal unit that "there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (section 3004(d)(1)). The list of California wastes and their respective restriction levels that are shown below were taken directly from the statute:

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) Arsenic and/or compounds (as As) 500 mg/l;

(ii) Cadmium and/or compounds (as Cd) 100 mg/l;

(iii) Chromium (VI and or compounds (as Cr VI)) 500 mg/l;

(iv) Lead and/or compounds (as Pb) 500 mg/l;

(v) Mercury and/or compounds (as Hg) 20 mg/l;

(vi) Nickel and/or compounds (as Ni) 134 mg/l;

(vii) Selenium and/or compounds (as Se) 100 mg/l;

(viii) Thallium and/or compounds (as Tl) 130 mg/l;

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

Collectively, these specific hazardous waste categories are referred to as the California list, since the State of California developed regulations to restrict the land disposal of wastes containing these constituents. Congress incorporated the California list into the provisions of HSWA primarily because California had conducted studies which demonstrated that wastes containing these constituents may be harmful to human health and the environment. (S. Rep. No. 284, 98th Cong., 1st Sess., 17 (1983)).

Congress intended the California list prohibitions as a starting point in carrying out the congressional mandate to minimize land disposal of hazardous waste. (H.R. Rep. No. 198, Part I, 98th Cong., 1st Sess. 34 (1983)). Congress' intent in specifying threshold levels for the land disposal of California list wastes was to avoid time-consuming litigation over the selection of appropriate levels (H.R. Rep. No. 198, Part I, at 34). While the legislation adopted the regulatory concentration levels developed by the State of California, section 3004(d)(2) of RCRA authorizes the Agency to substitute more stringent levels where necessary to protect human health and the environment.

B. Criteria for Selection of California List Constituents

In developing its list of specific categories of hazardous wastes, California sought to restrict those wastes that were known to create substantial risks to human health and the environment when land disposed. The State of California therefore identified hazardous constituents that are known to be highly toxic, persistent, bioaccumulative, mobile and corrosive. For example, high concentrations of free cyanides can be lethal to humans and to animals, and sublethal concentrations may cause gastrointestinal and neurological disturbances. Additionally, there is the potential for the formation of highly toxic hydrogen cyanide gas. The available evidence regarding polychlorinated biphenyls suggest that certain levels of exposure can cause birth defects, reproductive problems, liver malfunctions, digestive disturbances, and skin problems. Some evidence suggests that PCBs may be carcinogenic. Many of the halogenated organic compounds are carcinogenic, mutagenic, or teratogenic, while others cause damage to the liver, lungs, and kidneys. Corrosives are of concern because they may harm human skin, mobilize toxic constituents when co-disposed with other wastes, and damage land disposal containment systems. In doses exceeding the trace quantities necessary to living organisms, the listed metals can be acutely or chronically toxic. They are potentially mobile, and have been found to bioaccumulate in livestock, birds, aquatic organisms, and humans (California Department of Health Services, 1982).

In developing threshold levels for these hazardous constituents, California attempted to establish thresholds which would prohibit the land disposal of wastes that may pose substantial risk to human health and the environment. A number of considerations were involved in making these determinations, including toxicity to living organisms, adverse effects on the environment, and physical/chemical interactions in the land disposal environment. For example, California determined that liquid cyanide wastes containing greater than 1,000 mg/l cyanide could create dangerous emissions of hydrogen cyanide gas above land disposal facilities. Since hydrogen cyanide gas is known to be extremely hazardous to humans, the cyanide concentration threshold was set at 1,000 mg/l to lessen

the possibility of forming hydrogen cyanide gas.

With respect to metals, California developed a health-based threshold level using the National Interim Primary Drinking Water Standard and a 10,000-fold attenuation factor to take into account dispersion and dilution which generally occur when these constituents migrate to ground water. For nickel and thallium, however, a threshold level was derived from application of an attenuation factor of 10,000 applied to the Water Quality Criteria for these two metals.

California also restricts from land disposal liquid wastes having pH less than or equal to 2.0. These restrictions are based solely on the ability of these wastes to mobilize and react with other wastes and to breach or impair containment mechanisms such as drums and liners.

The level set for polychlorinated biphenyls was based primarily on considerations of consistency. The EPA regulates the disposal of polychlorinated biphenyls under the Toxic Substances Control Act of 1976 (TSCA). Under TSCA regulations codified in 40 CFR 761.60, liquid PCBs at concentrations between 50 ppm and 500 ppm may be landfilled if first absorbed. Therefore, California selected the 50 ppm level to be consistent with existing federal regulations.

Regarding HOCs, California established the 1,000 mg/kg level based on a combination of factors, including the toxicity of the compounds, the estimated volume of wastes that would be brought into the restrictions system, and the available capacity for handling such wastes.

II. Summary of Today's Proposal

A. Proposed Approach

The Agency is proposing to codify the statutory levels for the California list as set forth in section 3004(d) of the Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act.

The Agency is also proposing two changes to the list. The first change in the proposed codification would require that the statutory level for cyanides (1,000 mg/l) apply to *total* cyanide rather than *free* cyanide as specified in the statute. This proposed change, which is discussed more fully in section IV. B., is being considered because of a lack of consensus within the literature on the definition of "free" cyanide, and because complexed cyanide (total cyanide) may convert to free cyanide under certain conditions that may exist in the environment. The alternative is to adopt an intermediate definition based on an analytical method that would at necessity capture more than just "free" cyanides but would not capture "total" cyanides. The Agency is also requesting comment on whether isocyanides should be included as restricted cyanide-containing California list wastes.

The Agency is also proposing to define the universe of halogenated organic compounds (HOCs) as those that are listed or identified as hazardous under 40 CFR Part 261, or listed as a hazardous constituent under 40 CFR Part 261, Appendix VIII including PCBs. An alternative approach under consideration would not require that the HOCs be limited to Appendix VIII, but would bring any RCRA hazardous waste containing halogenated organic compounds (including polymers such as polyvinyl chloride) above 1,000 mg/kg within the scope of the prohibition, regardless of the degree of hazard associated with the HOC. The Agency is soliciting comment on this approach.

The Agency has considered an approach that would lower the statutory levels for those metals for which Extraction Procedure (EP) toxicity characteristic levels exist (*i.e.*, arsenic, cadmium, chromium, lead, mercury, selenium) to the EP levels. While the Agency currently is rejecting this approach, which is discussed in Section IV.C. of today's proposal, the Agency is requesting comment on this and other possible alternatives. The Agency also solicits comment on whether the statutory levels should be lowered for wastes other than those for which the EPA has established EP levels.

B. Testing/Recordkeeping and Waste Analysis Requirements

The Agency is proposing analytical procedures and methods for the identification of wastes that are subject to the California list land disposal restriction rules. The tests EPA is proposing to require in order to implement this program are: (1) The Paint Filter Liquids Test to determine whether a waste is a liquid or a non-liquid, and; (2) the Toxicity Characteristic Leaching Procedure (TCLP) in order to provide a leachate from which it can be determined whether the particular California list constituent exceeds the restriction level. Additionally, the Agency recommends several reference works that may be used as guidance in determining appropriate qualitative/quantitative analytical methods for California list constituents. The Agency is also proposing several approaches for which part or parts of the waste must be analyzed for hazardous constituents. All of the above, including references for analytical guidance, are described in more detail in Section IV.A. The regulatory framework for the above (except for the Paint Filter Liquids Test) was published in the **Federal Register** in the solvents and dioxins final rule November 7, 1986 (51 FR 40572), and is to be codified at 40 CFR 268.7.

The Agency is also proposing (with some minor changes) that those California list wastes for which treatment standards have been established must comply with the basic certification and recordkeeping requirements established by the solvents and dioxins rule, published in the **Federal Register** in November 7, 1986, and which are to be codified at 40 CFR 268.7. The Agency is asking for comment on some changes to these requirements that are specific to the California list restrictions. The Agency is also proposing to require certification and recordkeeping for all wastes potentially subject to the California list provisions.

C. Best Demonstrated Available Treatment (BDAT) Technologies.

In today's notice, the Agency defines BDAT as the application of specified technologies (see Section IV.G) to restricted wastes containing HOCs, PCBs, and corrosives (wastes with a pH of less than two). For PCB-containing wastes, BDAT is proposed to be incineration, or thermal destruction in high-efficiency boilers, or other "equivalent methods" in accordance with the requirements promulgated under the Toxic Substances Control Act (TSCA) at 40 CFR 761.60 and 761.70. Best demonstrated available technology for California list wastes containing HOCs at greater than 1% (including both liquids and organic and inorganic solids and sludges) is proposed to be incineration in accordance with the requirements of 40 CFR 264.343 for permitted facilities or 265.343 for interm status facilities. For non-liquid hazardous wastes containing greater than 1000 mg/kg HOCs and less than 1% total organic carbon, the Agency is proposing that BDAT be incineration as described above. BDAT treatment for corrosive wastes is proposed to be defined as neutralization to a pH of greater than two.

The Agency is not proposing BDAT for HOC-containing liquid wastes between 1,000 ppm and 10,000 ppm. While technologies such as biological treatment, carbon adsorption, and steam stripping are generally applicable treatment technologies for some halogenated organic wastes (such as

halogenated solvents) at these concentrations, the Agency, at this time, does not have adequate data to specify which, if any, of these treatments would be applicable to all HOC-containing wastes, nor is it able to define operating parameters or technologies based on performance standards.

The Agency is not proposing BDAT for other California list constituents at this time. This notice does include a discussion of treatment technologies for California list metals and cyanides which, when used, may reduce the concentrations of those constituents in liquid hazardous wastes to below their respective statutory levels (see Section IV.G.). These technologies may become the basis for BDAT when the Agency sets treatment standards for the metal-bearing and cyanide-bearing wastes under the Schedule for Final Land Disposal Restrictions which was published in the **Federal Register** at 51 FR 19300, May 28, 1986.

D. Prohibition on Dilution and/or Evaporation as Treatment

The Agency today proposes to amend the § 268.3 prohibition on dilution as treatment (51 FR 40639, November 7, 1986) to prohibit dilution as a means of achieving the statutory concentration levels and prohibit dilution as a means of circumventing the effective date of a prohibition under Subpart C. A detailed discusssion of the dilution prohibition is found in Section IV. I.

The Agency is also considering a prohibition on evaporation for purposes of the § 268.4 treatment in surface impoundments exemption from the land disposal prohibitions. A discussion of the evaporation prohibition is found under Section IV. J.

E. Nationwide Variances From the Ban Effective Date

As discussed earlier, today's notice proposes several treatment technologies that are to be considered BDAT for the purposes of establishing treatment standards for the restricted HOC and PCB-containing wastes. Incineration required as BDAT for the HOCs and PCBs is also required to treat solvent-containing and dioxin-containing wastes (51 FR 40572). It has been estimated that the available incineration capacity will be exhausted by the treatment of both solvent-containing and dioxin-containing wastes. Therefore, the Agency is proposing (under the authority granted in section 3004(h)(2)) to grant two-year nationwide variances to the ban effective date for HOC-containing and PCB-containing California list wastes. A discussion of the ban effective dates and the nationwide variances is found in Sections V. A and L.

F. Petition Processes

Today's notice proposes to adhere to the regulatory framework established by the Solvents and Dioxins Final Rule of November 7, 1986 for (1) granting extensions of the ban effective date on a case-by-case basis, and, (2) the land disposal of wastes not meeting a relevant treatment standard. These two petition processes are codified at §§ 268.5, and 268.6, respectively.

G. Prohibition on Storage

Today's notice proposes to treat storage of the California list wastes in the same way as other restricted wastes, as noted in the solvents and dioxins final rule (see 51 FR 40572, November 7, 1986). In that final rule, the Agency prohibited storage except for the purposes of accumulating such quantities as are necessary to facilitate proper recovery, treatment, or disposal. The Agency has established in the regulation a rebuttable presumption that such storage is necessary (the burden of proof is on the Agency to show that it is not necessary). Storage of restricted wastes for longer than one year is allowed provided that the owner/operator is able to demonstrate that the additional time is required solely to accumulate quantities of waste that facilitate the treatment and disposal of restricted wastes. These requirements are codified at 40 CFR 268.50.

H. Facilities Operating Under a Permit or Interim Status

The Agency is proposing two amendments to Part 270 to give treatment and storage facilities more flexibility in handling restricted wastes. First, the Agency is proposing to allow permitted facilities to use the minor modification process to obtain approval to change their facilities to treat or store restricted wastes in tanks or containers as necessary to comply with the Part 268 land disposal restrictions. Second, EPA is proposing to allow interim status facilities to expand their operations by more than 50 percent to treat or store restricted wastes in tanks or containers as necessary to comply with the Part 268 land disposal restrictions. (See Section IV.J.). These modifications would cover all restricted wastes, and not just California list wastes.

I. Treatability Variances

The Agency is requesting comment on a simplified (non-rulemaking) procedure for granting treatability variances. (See Section IV.L. in this notice.)

III. Scope and Applicability

A. RCRA Section 3004(d) Requirements

The RCRA section 3004(d) provisions prohibit the land disposal of hazardous wastes containing California list constituents above specified concentrations. With the exception of halogenated organic compounds (HOCs), the restricted wastes are liquids. In order to be subject to the section 3004(d) provisions, a given waste must meet each of the four criteria discussed in this section: (1) The waste must contain a constituent specified in the California list provisions in section 3004(d) or have a pH less than or equal to two (2.0); (2) the physical form of the waste must be a liquid (except for HOCs); (3) the waste containing the California list constituent must be listed or identified as hazardous under RCRA section 3001 (as implemented in 40 CFR Part 261); and (4) the waste must contain a concentration of one or more California list constituents at or above the levels specified in section 3004(d) (or more stringent levels that may be promulgated by EPA).

1. Definition of California List Constituents

The California list metals are easily defined with reference to the periodic table of elements. The requirement applies both to individual constituents and to the relevant metal portion of any compounds containing California list metals. The Agency is proposing that wastes having a pH less than or equal to two (2.0) are to be determined using the method specified for determining the characteristic of corrosivity at 40 CFR 261.22. The proposed definition of PCBs is consistent with an existing definition in the PCB regulations promulgated under the Toxic Substances Control Act (TSCA) at 40 CFR 761.3. HOCs are defined to include any halogenated organic compounds either identified or listed as hazardous under 40 CFR Part 261 or listed as a hazardous constituent under 40 CFR Part 261, Appendix VIII. An alternative definition being considered would not limit HOCs to those specified in Part 261. Cyanides are defined as any substance that can be shown as having a resonance structure containing a carbon-nitrogen triple bond. More detailed definitions of wastes containing cyanides, PCBs, and/or HOCs are provided later in the preamble sections addressing those constituents.

2. Physical Form Requirement

Except for HOCs (which are prohibited from land disposal in both

liquid and non-liquid form), RCRA section 3004(d) prohibits the land disposal of California list wastes only it such wastes exist in liquid form.[1] For purposes of determining whether a given waste is a liquid, the Agency is proposing to require that the Paint Filter Liquids Test (Method 9095 in EPA Publication SW–846) be used. On April 30, 1985 (50 FR 18370), EPA promulgated a final rule requiring use of the Paint Filter Liquids Test in determining whether a waste sample contains free liquids. Today's proposal is consistent with this existing requirement.

The California list wastes are determined to be liquids, and, therefore, potentially subject to the section 3004(d) prohibitions, at the point of disposal. While this differs from the final solvents and dioxins rule, which requires that wastes are determined to be restricted from land disposal at the point of generation (see 51 FR 40572, November 7, 1986), EPA believes that determining whether the California list wastes are liquid or non-liquids at the point of disposal is consistent with congressional intent.

Except for the HOC wastes, which are prohibited in both liquid and non-liquid form, Congress was concerned with the land disposal of California list constituents only in their liquid or mobile form. Therefore, a liquid hazardous waste containing a California list constituent may be treated so as to render the waste a non-liquid and subsequently land disposed without being subject to the restrictions in section 3004(d). It should be noted that RCRA section 3004(c) (as codified at 40 CFR 264.314 and 265.314) requires that bulk or non-containerized liquid hazardous wastes be rendered non-liquid by means other than by the use of absorbents prior to placement in a landfill.

3. Hazardous Waste Requirement

RCRA section 3004(d)(2) states that the California list land disposal prohibition "applies to the following hazardous wastes listed or identified under section 3001." According to the plain language of this provision, section 3004(d) applies only to those wastes which are listed as hazardous under 40 CFR Part 261 or exhibit one or more of the characteristics of hazardous waste identified in Part 261 (i.e. ignitability, corrosivity, reactivity, or toxicity), and which also contain a California list constituent as defined above.

4. Concentration Levels Prohibited From Land Disposal

The California list prohibitions in RCRA section 3004(d) establish certain concentration levels above which there is a strong statutory presumption against land disposal. The only circumstances in which California list wastes may be land disposed in concentrations above the levels specified in section 3004(d) (or those more stringent levels as may be promulgated by EPA) are those cases where the waste meets a treatment standard established under section 3004(m) or, as provided for in section 3004(d)(1), a petition has been granted based on a demonstration that "to a reasonable degree of certainty, there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous." (See the solvents and dioxins rule final at 51 FR 40572, November 7 1986, for a more complete discussion of the petition process.)

Although RCRA specifies allowable concentration levels for each of the California list constituents, the statute directs EPA to establish more stringent concentration levels when necessary to protect human health and the environment. This requirement applies when the Administrator has sufficient evidence to show that there is a substantial threat to humans and the environment when wastes containing statutory concentrations of California list compounds are land disposed. The Agency recognizes that the California list prohibitions were only intended as a starting point in minimizing reliance on land disposal. Land disposal of listed or characteristic wastes containing these constituents will be reevaluated according to the Agency's final schedule for promulgating land disposal restrictions (51 FR 19300).

Considering the factors specified by Congress, EPA acknowledges that many of the California list constituents may be toxic, persistent, bioaccumulative, mobile and corrosive. EPA believes, however, that the primary purpose of the statutory concentration limits is to control the timing of EPA's review of the wastes containing the California list constituents. The statutory concentration limits were not intended to distinguish wastes that are appropriate for land disposal from those that are not. Indeed, the legislative history indicates that no presumption is to be drawn that less concentrated wastes are less hazardous. *See* H.R. Rep. No. 198, 98th Cong., 2d Sess., Part 1, at 34 (1983). Rather, the statutory thresholds were intended to require EPA to consider under section 3004(d) those wastes containing constituent concentrations that are clearly "highly toxic," while allowing the remainder of the wastes to be reviewed according to the schedule in section 3004(g). *See* S. Rep. No. 284, 98th Cong., 2d Sess. 17 (1983). Thus, the constituent concentrations of wastes that fall below the California list levels still may be of concern. In the context of this statutory structure and legislative history, EPA believes that in order to show that more stringent concentration limits are necessary to protect human health and the environment, EPA should show that wastes containing concentrations of constituents below the statutory thresholds are of such concern that they should be considered on an accelerated schedule rather than under the schedule in section 3004(g). EPA does not have such data for any of the California list wastes. For this reason, the Agency is proposing to defer to the statutory levels for the California list wastes. These wastes will be addressed as part of the schedule for restricting wastes for land disposal and establishing BDAT (51 FR 19300).

However, as noted in the summary of today's notice, the Agency is requesting comment on an approach that would substitute more stringent concentration levels for at least those metal-bearing wastes for which EPA has already established EP toxicity limits. Although EPA does not have data to suggest that lower levels (such as the EP toxicity levels) for the California list metals are necessary to avoid substantial risks to human health and the environment when wastes are disposed in hazardous waste disposal facilities, the Agency is concerned with the toxicity and persistence of these metals when placed in other types of land disposal facilities and, therefore, requests comment and data on possible hazards posed by these compounds in Subtitle C facilities. In establishing the EP toxicity levels, EPA modeled a mismanagement scenario involving co-disposal of wastes in an actively decomposing municipal landfill overlying a ground water aquifer (45 FR 33110, May 19, 1980). Given the additional technological requirements for RCRA hazardous waste disposal facilities, disposal of wastes below the statutory levels may not pose such a severe threat as to warrant consideration of such wastes in this

[1] EPA will address non-liquid forms of the California list wastes (except PCBs, which are not currently regulated as RCRA hazardous wastes) at later dates in accordance with the schedule finalized on May 28, 1986 (51 FR 19300). Listed wastes containing metals in a non-liquid matrix will be addressed pursuant to the various time frames in the final schedule and non-liquid wastes identified by characteristic will be addressed no later than May 8, 1990, in accordance with the provisions in RCRA section 3004(g)(4) and the final schedule.

rulemaking rather than under section 3004(g).

B. Impact of the RCRA Section 3004(c) Liquids in Landfills Prohibition

Effective May 8, 1985, RCRA section 3004(c)(1) prohibits the placement of bulk or non-containerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not absorbents have been added) in any landfill. This statutory prohibition was codified by EPA in 40 CFR 264.314 and 265.314 on July 15, 1985 (50 FR 28702), and it extends to liquid California list wastes, liquid wastes that meet treatment standards promulgated under section 3004(m) but which have not been delisted or otherwise rendered no longer a RCRA hazardous waste, and those subject to a successful petition granted under 40 CFR Part 268. Furthermore, even where the waste is no longer hazardous, section 3004(c)(4) (also codified at §§ 264.314 and 265.314) prohibits its placement (in most cases) in a hazardous waste landfill. Because these prohibitions apply to the same category of wastes that are the major focus of the California list prohibitions (i.e. liquid hazardous wastes), today's proposed rule will impose additional requirements on Subtitle C landfill operations only to the extent that such landfills dispose of non-liquid hazardous wastes containing greater than 1,000 mg/kg HOCs. Therefore, the primary impact of the California list prohibitions is on land disposal in facililties other than landfills (*e.g.* surface impoundments).

C. Exemption for Treatment in Surface Impoundments

Restricted wastes may be placed in treatment surface impoundments under certain conditions as authorized by RCRA sections 3005(j)(11) (A) and (B) and implemented in 40 CFR 268.4. A detailed explanation of the surface impoundment exemption is found in the regulatory framework for the final solvents and dioxins rule at 51 FR 40572, November 7, 1986. Essentially, the Agency is proposing to expand the § 268.4 treatment in surface impoundments exemption to the California list wastes. The Agency has construed the requirement in section 3005(j)(ii)(B) to remove "residues which are hazardous" to apply to residues that have not been delisted, do not meet the treatment standards, or have not been the subject of a successful petition. In addition, the Agency is proposing that any treatment residues that do not meet the treatment standards or prohibition levels (where no treatment standards have been established) must also be removed at least annually. EPA believes that it is reasonable to include wastes meeting the California list levels because these are no longer prohibited wastes and could be disposed in another surface impoundment.

IV. Regulatory Approach for California List Wastes

A. Testing and Recordkeeping Requirements

1. Definition of a Liquid

Except for the halogenated organic compounds, section 3004(d) specifies that all of the wastes that are to be restricted from land disposal are either liquids or sludges containing free liquids. In order to define those wastes that are to be considered liquids for the purpose of the California list land disposal restriction rules, the Agency is proposing to require the use of the Paint Filter Liquids Test (See method 9095 in EPA publication SW–846, Test Methods for Evaluating Solid Waste, or 50 FR 18370, April 30, 1985) as the method for distinguishing liquid from non-liquid wastes. The Agency is using this test in other contexts to determine if wastes are liquid for other regulatory requirements. Basically, the method consists of placing a predetermined amount of liquid into a paint filter. If any portion of the material passes through the filter within five minutes, the material is deemed to contain free liquids and, for the purposes of this rule, will be considered a liquid. The Agency believes that the use of this test is appropriate because the test is intended to identify wastes that are likely to leach materials into the environment. The Agency requests comment on this definition and on other possible definitions of what constitutes a liquid.

2. Leachate Generation Method

Determining whether a waste meets the concentration levels set out in section 3004(d) or more stringent limits established by regulation at times may require the use of a leachate generation technique (see the discussion in subparagraph three below). The Agency is today proposing that the Toxicity Characteristic Leaching Procedure (TCLP) be used as the method for generating a leachate from California list-containing wastes that have been demonstrated to be liquids by the Paint Filter Liquids Test. The TCLP was proposed at 51 FR 21648, June 13, 1986 and was promulgated for the purposes of the land disposal restrictions rules for the wastes addressed in the final solvents and dioxins rule on November 7, 1986.

3. Determination of Concentration Levels

Using the Paint Filter Liquids Test to determine whether or not a waste is a liquid results in a filtrate (the liquid that comes through the filter) and, in many cases, a residue that is left behind. The hazardous constituents of concern for the California wastes may be contained in the filtrate, entrained in the matrix of the solid residue left on the filter, or may be partitioned between the two phases. Because of this possible partitioning, the Agency is considering several approaches as to which part or parts of the wastes should be analyzed in order to determine if the California list constituents meet or exceed the restrictions levels, and is requesting comment on these possible approaches.

a. *Analysis of the Paint Filter Liquids Test filtrate.* The State of California, which uses the Paint Filter Liquids Test to determine if a waste is a liquid, identifies the hazardous constituents of concern by analyzing only the Paint Filter Liquids Test filtrate. Since Congress adopted the HSWA land disposal restrictions directly from California's program, the Agency considered analysing only the Paint Filter Test filtrate to determine whether the restriction levels were exceeded. The Agency is not proposing this approach because it believes that the approach does not fully reflect congressional concern about the potential for the California list constituents to migrate from the waste, and the possible contamination of groundwater. Analysis of only the Paint Filter Liquids Test filtrate does not take into account the hazardous constituents that may be entrained in the waste matrix, and which may leach out over a period of time. Therefore, EPA believes that this approach is not consistent with congressional intent and, therefore, is not the best approach for implementing the California list land disposal restrictions.

b. *Use of the Toxicity Characteristic Leaching Procedure (TCLP).* As indicated above, the Agency believes that wastes which fail the Paint Filter Liquids Test may have hazardous constituents contained not only in the liquid portion that passes through the paint filter, but in the residue that remains on the filter as well. The possibility that these constituents, when land disposed, may migrate from the waste matrix to ground water is of concern to the Agency, and EPA believes that it was of concern to Congress as well. Therefore, the Agency today proposes that the Toxicity

Characteristic Leaching Procedure be used on wastes that have been defined as liquids by the Paint Filter Liquids Test and to generate a leachate from which it may be determined if those wastes exceed the California list restriction levels. In the TCLP, depending upon the percent solids content of the waste, an initial liquid filtrate and the test-generated leachate may be combined for both qualitative/quantitative analysis. The procedure is designed so that potentially mobile constituents are likely to leach from the waste matrix and be present in the collected leachate. Thus, the potentially mobile fraction of the constituents in the waste are considered.

c. *Total constituent analysis.* A third approach considered by the Agency is the total constituent analysis. This approach, which would be the most conservative of the three, would analyze the entire waste sample for constituents of concern, and may more directly account for the effects of direct exposure (*e.g.*, dermal exposure or inhalation). However, the Agency does not believe that direct exposure is a significant problem for these wastes following land disposal in a properly operated land disposal facility and, therefore, believes that this approach is not necessary.

d. *Analytical methods.* The Agency is recommending that the methods found in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW–846, 2nd ed., July 1982, as amended, be used for the qualitative and quantitative analysis of hazardous wastes containing the California list constituents of concern whenever such tests are necessary as proposed in today's notice.

4. Recordkeeping

Today's notice proposes to adopt, where applicable, the recordkeeping and certification requirements that have been established in the regulatory framework in the solvents and dioxins final rule for implementation of the California list land disposal restrictions rule. (See 51 FR 40572, November 7, 1986.) The Agency is also considering modifying those requirements to require periodic testing by generators. The California list prohibitions also differ for solvents and dioxins in that wastes meeting the threshold level can continue to be land disposed regardless of whether a treatment standard has been met. Wastes rendered non-liquid (except HOCs) can be land disposed as well. The recordkeeping and certification requirements will be modified to account for this difference.

B. Cyanides

According to section 3004(d)(2), effective 32 months after the enactment of the Hazardous and Solid Waste Amendments of 1984, "liquid hazardous wastes . . . containing free cyanides at concentrations greater than or equal to 1000 mg/l" are subject to the land disposal restrictions. In order to characterize the wastes that will be subject to section 3004(d)(2), the Agency must define the term "free" cyanides. However, a review of the literature indicates that there is no widely accepted definition of the term.

Therefore, for the purposes of this rulemaking, EPA considered using a very narrow definition of "free" cyanides as that cyanide present as CN^- and as molecular HCN. However, complex cyanides are known to dissociate to form CN^- and HCN under conditions that may exist in the environment. Because of this phenomenon, cyanide-containing wastes that would be exempt from the land disposal restrictions if the Agency were to use the narrow definition could produce "free" cyanide after disposal.

Because of the potential dissociation of complex cyanides and the difficulty in defining the term "free" cyanides the Agency is proposing to take a conservative approach by assuming that any liquid hazardous waste containing free or bound cyanide may be subject to the requirements of section 3004(d)(2). The Agency's approach is described in more detail below.

1. Definition of "Free" Cyanide

There is currently no regulatory definition for "free" cyanide, nor is there a commonly accepted definition based on an analytical method. According to *Standard Methods for the Examination of Water and Wastewater* (16th edition, 1985) (Ref. 4), free and potentially dissociable cyanides may be estimated as weak acid dissociable cyanides or as cyanides amenable to chlorination, with the exception of certain industrial wastes (e.g., steel industry and petroleum refining wastes and pulp and paper effluents) that contain substances that may interfere with the latter test. The definition of "free cyanide" in *The Annual Book of ASTM Standards* (1984) (Ref. 5) is similar, and refers to the cyanide ion that is determined by titration with silver nitrate without pretreatment for complex dissociation. Other methods include the colorimetric method using chloramine-T and the cyanide-selective electrode test method.

Both Lowenheim (1978) (Ref. 8) and Cherry (1982) (Ref. 6) used the definition approved by the American Society of Testing and Materials (ASTM) in B374, Standard Definitions of Terms Relating to Electroplating:

> Free cyanide:
> *True*: "The actual concentration of cyanide radical (CN^- or HCN) or equivalent alkali cyanide, not compounded in complex ions with metals in solution."
> *Calculated*: "The concentration of cyanide or alkali cyanide, present in solution in excess of that calculated as necessary to form a specified complex ion with a metal or metals present in solution."
> *Analytical*: "The free cyanide content of a solution as determined by a specified analytical method."

According to *Electroplating*, the definition of "free cyanide" is not straightforward:

> Free cyanide is "intended to represent the concentration of cyanide ion beyond that required to form the metal-cyanide complex in question. Therefore, its determination requires a knowledge of the formula of the metal-cyanide complex, and this is not always known with any certainty . . . Therefore, since we do not know how much of the total cyanide is tied up with the metal, we cannot know how much of it is free. Hence, where possible, it is preferable to specify, and determine, total cyanide; if free cyanide must be known, the formula of the complex is chosen arbitrarily, as the most probable of the several possibilities." (Lowenheim, 1978.)

The various definitions provided above support the Agency's assertion that currently there is no commonly accepted definition of "free cyanides."

2. Dissociation of Complex Cyanides

Some complex cyanides (e.g., cyanide salts, cyanogens) can be converted to free cyanides under certain chemical conditions that can exist in the environment. According to *Standard Methods* (1985) and Kelada et al. (1978) (Ref. 7), silver and nickel cyanide complexes dissociate slowly, while the strong metal cyanide complexes of cobalt, gold, iron, and platinum do not dissociate readily. However, dilute solutions of iron cyanide dissociate rapidly upon exposure to ultraviolet light, producing free and simple cyanides. Kelada et al. (1978) analyzed solutions of nitriles, various metal cyanide complexes, and other potentially cyanide-forming materials for free and simple cyanides. The researchers detected free cyanide in cadmium and nickel cyanide complex solutions and in the cyanohydrins. In that study, free cyanide was not detected in the nitrile, cyanate, and thiocyanate solutions.

3. Proposed Approach

Because of the potential for complex cyanides to dissociate and because of the difficulty in defining the term "free" cyanides, the Agency intends to take a conservative approach by assuming that all cyanide-containing or potentially cyanide-forming wastes may contain free cyanides. Therefore, any waste containing a compound that can be shown to have a resonance structure with a carbon-nitrogen triple bond is potentially affected by section 3004(d)(2), including wastes that contain free cyanides, complexed cyanides, and cyanide salts. Isocyanides contain a true cyanide triple bond. Because of their toxicity and reactivity, the Agency is proposing to also include isocyanides in the definition of cyanides, and requests comment on this approach.

To determine whether a cyanide-containing waste is subject to the land disposal restrictions under section 3004(d)(2), the Agency proposes that the owner/operator of a disposal facility must analyze the waste using the Toxicity Characteristic Leaching Procedure (TCLP) with a zero-headspace extractor. The owner/operator must then determine the concentration of cyanide in the leachate. For this purpose, the Agency recommends using Method 9010 for Total Cyanide in "Test Methods for Evaluating Solid Wastes, Physical/ Chemical Methods," EPA Publication No. SW-846.

4. Alternative Approaches

Because strong metal cyanide complexes do not appear to dissociate in the environment, we are also proposing and requesting comment on several alternative analytical methods that could be used for the purposes of defining cyanide concentration in this rulemaking:

1. Cyanides detectable as "Weak and Dissociable Cyanide," Method 412H, *Standard Methods*;

2. Cyanide amenable to chlorination, Method 9010, SW-846; and

3. Non-complex cyanides, as detected by direct titration without distillation (see *Standard Methods*, Method 412).

These tests vary in the degree to which they will measure complexed cyanides by causing dissociation prior to measuring the solution cyanide strength. One or more of these tests may provide a more accurate determination of the potential for dissociation of complex cyanides in the environment than would a total cyanide test.

Specifically, the Agency requests comments on its proposed interpretation of section 3004(d)(2) and on the alternatives to that interpretation discussed above. The Agency also requests comment on the analytical method that should be used to determine the cyanide concentration in the leachate of a waste for the purposes of this section. The Agency also solicits comments on the dissociation of complex cyanides and data demonstrating the extent to which free cyanides are present in wastes containing complex cyanides.

C. California List Metals

1. Characterization

The 1984 HSWA amendments to RCRA, in section 3004(d)(2) statutorily prohibit (among other things) the land disposal of liquid hazardous wastes containing concentrations of certain metals greater than or equal to specified levels unless the waste complies with EPA-established treatment standards or is the subject of a successful petition. This group of metals is shown below in Table 1.

Table 1.—California List Metals and Concentrations

Arsenic and/or compounds (as As)—500 mg/l
Cadmium and/or compounds (as Cd)—100 mg/l
Chromium (VI and/or compounds (as Cr VI))—500 mg/l
Lead and/or compounds (as Pb)—500 mg/l
Mercury and/or compounds (as Hg)—20 mg/l
Nickel and/or compounds (as Ni)—134 mg/l
Selenium and/or compounds (as Se)—100 mg/l
Thallium and/or compounds (as Tl)—130 mg/l

These metals were selected because their effects have been been widely studied and their toxicities generally recognized. Additional discussion on the toxicities of these compounds, their persistence in the environment, and their occurrence in wastes is presented in the background document for this proposed rule.

2. Two Approaches to Limit the Land Disposal of California List Metals

The Agency has considered two approaches to limiting the land disposal of metal-bearing wastes. Both of these approaches are discussed below.

a. *Proposed approach: codification of statutory levels.* In the absence of data showing it is necessary to lower the statutory concentrations limits, the Agency is today proposing to codify the statutory land disposal restriction levels found in section 3004(d)(2).

Congress intended the California list compounds and their respective restriction levels to serve as a starting point in a national effort to prohibit the land disposal of hazardous wastes. The Agency may substitute more stringent restrictions levels; however, the Agency is authorized to lower the California list restriction levels only if EPA determines that the statutory levels are not protective of human health and the environment. In order to promulgate restriction levels that are lower than those provided in the statute, the Agency must have adequate data indicating that, considering the persistence, toxicity, mobility and potential for bioaccumulation of the California list metals, wastes below the statutory restriction levels are of such concern that they should be considered in this rulemaking rather than later pursuant to the schedule established under section 3004(g). However, at this time, the Agency lacks adequate data to indicate that such a determination is necessary. Therefore, the Agency is proposing to codify the land disposal restriction rules for the California list wastes at the statutory levels, and solicits comment on this approach.

b. *Reduce to the extraction procedure (EP) toxicity characteristic levels.* As discussed earlier, Congress authorizes the Administrator to establish standards below those specified in the California list if he concludes that lower levels are necessary to protect human health or the environment. In order to make these findings, the Agency must conclude that the concentrations of the metals should be reduced to some lower level, determine the concentrations for metals that would be protective, and be able to provide a rational basis for such a reduction.

The extraction procedure toxicity characteristic (EP) has been defined as a maximum contaminant concentration level which, when exceeded, will render a waste hazardous and, therefore, subject to Subtitle C regulation. Disposal of these wastes in a sanitary landfill or other type of Subtitle D facility is then prohibited.

The Agency believes that wastes that meet the toxicity characteristic may present a hazard to human health and the environment when disposed in a Subtitle D environment. This is demonstrated by the language contained in 40 CFR 261.10(a)(1) (i) and (ii) which state that a waste may be considered characteristically hazardous when it can "cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness"; or, "pose a

substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed."

The EP toxicity values were based on the National Interim Primary Drinking Water Standards (NIPDWS) (see 40 FR 59566). The NIPDWS, which must be met by public drinking water systems, are considered to be the levels at which chronic exposure to drinking water contaminants will not cause adverse health effects. However, the Agency does not have adequate data to demonstrate that land disposal of the California metals at concentrations below the statutory levels poses a degree of hazard that necessitates accelerating the schedule for consideration of wastes below the statutory level.

The EP levels were developed by using a scenario that was based on the co-disposal of the metal-bearing wastes with municipal waste in a Subtitle D facility. Since they are lower than the statutory levels, they are more conservative than the statutory levels. However, it is not clear that lowering the levels to the EP levels is required to protect human health and the environment for a waste disposed of in a Subtitle C hazardous waste disposal facility.

The Agency is soliciting comment and data that would support lowering the restriction levels for metals to the EP levels or to concentrations other than the EP levels for the California list metals. The Agency has not promulgated EP toxicity characteristic levels for nickel and thallium. Since the Agency has no data that would support lower levels for these metals to any other level, one approach would be to adhere to the statutory requirements. Another approach would be to follow the apparent rationale used by California which, since no NIPDWS standards had been developed, multiplied the Ambient Water Quality Criteria (AWQC) for nickel and thallium by a factor of 10,000. Since the EP levels for the California list metals are 100 times less than the statutory requirements, the Agency, in order to be consistent, would also consider lowering the restriction levels for nickel and thallium to 1.34 and 1.30 mg/l, respectively, if this approach were to be adopted. The Agency solicits comments or data that would support this approach or that would suggest a different approach.

D. Corrosives

1. Characterization of Corrosive Wastes

Congress mandated that liquid hazardous waste having a pH less than or equal to two be prohibited from land disposal effective 32 months from the date of enactment of the HSWA. The EPA has identified the principal corrosive hazardous waste as EPA hazardous waste D002. D002 wastes are hazardous by virtue of exhibiting the characteristic of corrositivity. Corrosive wastes are generated primarily by the Chemical and Allied Products Industry (SIC 28) and the Primary Metal and Fabricated Metal Products Industries (SICs 33 and 34). Additionally, many corrosive wastes also contain other California list constituents, such as metals and cyanides. An example of such a corrosive waste is hydrofluoric acid etch from the semiconductor industry. Similarly, EPA hazardous waste K011 was identified as a potential California list waste for both its potential acidic nature and the occurrence of cyanide.

2. Effect of Corrosives on Liners

Corrosive wastes are acutely toxic and damaging to living tissue. However, in addition to hazards associated with toxicity, corrosive wastes also present risks to human health and the environment as a result of their reactivity with other wastes and liner materials. The Agency has conducted studies to assess the impact of these wastes may result in the formation of reaction of acids with codisposed wastes may result in the formaiton of toxic and flammable gases and in the solubilization of toxic substances from the waste matrix. Acidic wastes may also degrade clay liners and contribute to the mobility of other hazardous constituents in the environment, but are not generally incompatible with synthetic liner materials. (refs: Goldman and Tatsch, May 1985) (Ref. 13). While these data are not pH-specific, they indicate, nonetheless, that strong acids are potentially hazardous or may contribute to increased hazards from other materials when land disposed.

3. Proposed Approach and Rationale for the Statutory Level

EPA is proposing to impose the statutory level of less than or equal to a pH of two (2.0). This level is consistent with EPA's current approach to defining waste as hazardous based on the characteristic of corrosivity, and in the absence of data indicating that weaker acids present a hazard to human health and the environment when disposed of in a Subtitle C facility, EPA is not considering modifying the statutory level at this time. The Agency is requesting comment on pH-specific data regarding the effects of corrosive wastes on both clay and synthetic liners and codisposed wastes.

4. Treatment Standards

The Agency is proposing that treatments which neutralize corrosive wastes to above two (2.0) are considered to be BDAT treatment for the characteristic of corrosivity. Wastes so treated will no longer be considered California list wastes (in fact, wastes with a pH of above two are not considered characteristically hazardous, and may be land disposed in a Subtitle D facility).

The Agency requests comment on whether this type of treatment should be codified as a treatment-method (§ 268.42), or performance-based standard (§ 268.41).

E. Polychlorinated Biphenyls (PCBs)

1. RCRA section 3004(d)(2)(D) Requirements

Effective July 8, 1987, RCRA section 3004(d)(2)(D) prohibits the land disposal of liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

a. *Definition of polychlorinated biphenyls (PCBs).* For the California list restrictions, the Agency is proposing to define PCBs consistent with the definition in 40 CFR 761.3. That provision defines PCBs for purposes of regulation under the Toxic Substances Control Act (TSCA) as "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance." In addition, inadvertently generated PCBs are defined as "the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5." This was inserted in the TSCA regulations in recognition that monochlorinated biphenyls are less toxic and persistent than dichlorinated biphenyls, which are themselves less toxic and persistent than polychlorinated biphenyls with greater than two chlorines.

In the absence of an alternative definition of PCBs specified in RCRA, EPA believes that it is reasonable to adopt the existing definition as stated in the TSCA regulations. The definition is intended to account for differing degrees of hazard associated with different compounds. Such a determination

appears to be consistent with the intent of Congress in section 3004(d) to concentrate on wastes that are known to create substantial risk. Moreover, the Agency believes that an alternative definition would add confusion to an already complex and overlapping framework for regulating PCBs. An alternative definition being considered would not employ the use of division factors for inadvertently generated PCBs. Under this definition, PCBs would be defined as "the biphenyl molecule that has been chlorinated to any degree." EPA does not believe that this interpretation is consistent with the intent of Congress.

b. *Hazardous waste requirement.* Since PCBs are not listed as hazardous wastes under RCRA, PCB-containing wastes are only subject to the section 3004(d)(2)(D) prohibition if they are mixed with wastes which are listed as hazardous under 40 CFR Part 261 or exhibit one or more of the characteristics of hazardous waste identified in Part 261.

For example, transformers often contain both PCBs and hazardous constituents listed at 40 CFR Part 261, Appendix VIII. However, if the waste containing these constituents is not a listed or characteristic hazardous waste, the section 3004(d)(2)(D) prohibition will not apply. For example, some transformers contain isomers of tetrachlorobenzene and trichlorobenzene. Although several of these isomers (e.g. 1,2,4,5-tetrachlorobenzene and 1,2,4-trichlorobenzene) are listed as Appendix VIII hazardous constituents, EPA has not listed wastes containing these isomers as hazardous where the source of the waste is a spent dielectric fluid. Consequently, these PCB-containing spent dielectric fluids will be subject to the section 3004(d)(2)(D) land disposal prohibition only if they are mixed with a listed hazardous waste or if they exhibit a characteristic identified in Part 261.

c. *Proposed approach.* The prohibition in section 3004(d)(2)(D) applies only to liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm. EPA is proposing to codify the 50 ppm prohibition specified in HSWA. This level is consistent with the comprehensive PCB regulations existing under the Toxic Substances Control Act (TSCA), and EPA does not have information to suggest that a different level is necessary.

2. Existing Regulation of PCBs

Regulations promulgated pursuant to TSCA currently address the land disposal of PCB wastes. The TSCA requirements at 40 CFR Part 761 vary depending on the concentration of PCBs in the waste and the physical form in which the waste is disposed, i.e., whether the waste is disposed in bulk liquid form, as a containerized liquid, or as a non-liquid. Disposal of PCBs at concentrations below 50 ppm are not regulated under TSCA unless they were created by diluting a higher concentration of PCB or are used in specified ways, i.e. as a sealant, coating, dust control agent, pesticide carrier, or as a rust prevention agent on pipes. Liquid PCBs at concentrations greater than or equal to 50 ppm but less than 500 ppm may be incinerated or burned in a high efficiency boiler. This may also be land disposed pursuant to the TSCA regulations, but with certain limitations, some of which are summarized below. Liquid wastes containing PCBs at concentrations greater than or equal to 500 ppm must be incinerated according to TSCA regulations or disposed of by any other approved alternate methods (40 CFR 761.60(e)) that can achieve a level of performance equivalent to the technical standards set in 40 CFR 761.70. Such wastes cannot be land disposed without prior treatment.

3. Relationship Between HSWA and Existing Regulations

Several provisions in HSWA impose restrictions on the land disposal of PCB wastes which are not contained in the existing TSCA or RCRA regulations. The TSCA regulations at 40 CFR 761.1(e) clearly state that where there is an inconsistency between TSCA and RCRA standards, the more stringent regulations govern. In addition, the legislative history to an unrelated provision (H. R. Rep. No. 198, Part I, 98th Cong., lst Sess. 56 (1983)) suggests that allowing the more stringent provisions to govern is also consistent with Congress' understanding of the regulatory scheme.

a. *Disposal of bulk liquids containing PCBs.* Under 40 CFR 761.75(b)(8)(ii), bulk liquids containing PCBs at concentrations below 500 ppm may be disposed in a TSCA approved landfill only if such waste is pretreated and/or stabilized to eliminate the presence of free liquids prior to final disposal. This regulation is superseded in part by RCRA section 3004(c)(1) (codified at 40 CFR 264.314 and 265.314) which prohibits the placement of bulk liquid hazardous wastes in landfills even where absorbents have been added. Therefore, if the bulk liquids containing PCBs are a hazardous waste or are mixed with a RCRA hazardous waste, the resulting liquid waste is prohibited from being placed in any landfill, regardless of the concentration of PCBs (even if below 50 ppm), unless the waste is rendered non-liquid by means other than the use of absorbents (e.g. chemical stabilization and certain types of solidification). However, if the concentration is greater than or equal to 50 ppm, all types of land disposal are prohibited under RCRA section 3004(d)(2)(D).

Even where the PCB-containing waste is not a RCRA hazardous waste, section 3004(c)(3) of RCRA (which is codified at 40 CFR 264.314 and 265.314) prohibits liquid wastes from being placed in a hazardous waste landfill that is regulated under RCRA unless the only reasonably available alternative is placement in a landfill or surface impoundment which contains or may reasonably be anticipated to contain hazardous waste and such disposal will not present a risk of contamination of any underground source of drinking water. However, because the TSCA regulations at 40 CFR 761.75(b)(8)(ii) require the elimination of free liquids from wastes containing greater than or equal to 50 ppm PCBs prior to placement in a landfill, obtaining an exemption under section 3004(c)(3) will not relieve an owner or operator of the obligation to solidify such wastes prior to landfilling.

b. *Disposal of containerized liquids containing PCBs.* The TSCA regulations allow containerized liquids with less than 500 ppm PCBs to be disposed of in an approved landfill if each container is surrounded by an amount of inert sorbent material capable of absorbing all of the liquid contents of the container. RCRA section 3004(c)(2) directs EPA to promulgate regulations minimizing the disposal of containerized liquid hazardous wastes in landfills and to minimize the presence of free liquids in containerized hazardous waste to be disposed of in landfills. Until such regulations are promulgated, existing RCRA regulations at 40 CFR 264.314 and 265.314 apply to the disposal of containerized liquid hazardous wastes. Those regulations require the waste to either be placed in very small containers, such as an ampule, or require any free standing liquid to be eliminated through solidification, mixture with absorbents, decantation, or other methods.

Where the containerized liquid hazardous waste is mixed with PCBs and the PCBs are present in concentrations greater than or equal to 50 ppm, section 3004(d)(2)(D) supersedes the existing RCRA regulations mentioned above and all types of land disposal are prohibited. If the concentration of PCBs in the

containerized liquid hazardous waste is below 50 ppm, the RCRA regulations for disposal of liquid wastes at 40 CFR 264.314 and 265.314 apply. Where the containerized liquid PCB waste is not mixed with a RCRA hazardous waste, the TSCA regulations requiring that each container be surrounded by absorbents apply to land disposal in TSCA approved landfills. RCRA section 3004(c)(3), however, prohibits the disposal of such liquids in RCRA hazardous waste landfills in most cases despite the fact that PCBs are not regulated as hazardous under RCRA and are containerized in this instance.

4. Treatment Technologies (BDAT)

EPA is proposing to establish treatment standards for liquid hazardous wastes containing greater than or equal to 50 ppm PCBs. The Agency has determined that thermal treatment (i.e., treatment in incinerators or high efficiency boilers) of PCBs pursuant to the requirements set forth in 40 CFR 761.60 and 761.70 is generally the best demonstrated available technology for such wastes. As described in The Solvent and Dioxin Final Rule (§ 268.42) (51 FR 40572, November 7, 1986), the Agency proposes to allow, upon approval by the Administrator, the use of alternate methods that can achieve a level of performance equivalent to the high efficiency boiler standards at § 761.60 or the incinerator standards at § 761.70. See section IV.G for a further discussion of PCB treatment technologies.

5. Nationwide Variance From Statutory Effective Date

EPA has determined that there is inadequate thermal treatment capacity for the liquid hazardous wastes containing PCBs subject to today's proposed prohibitions, therefore the Agency is proposing a 2-year nationwide variance from the statutory effective date. See Unit V for a further discussion of capacity determinations.

F. Halogenated Organic Compounds (HOCs)

1. RCRA Section 3004(d)(2)(E) Requirements

Effective July 8, 1987, RCRA § 3004(d)(2)(E) prohibits the land disposal of hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

a. *Definition of Halogenated Organic Compounds (HOCs).* HOCs are compounds containing a carbon and a halogen in the molecular formula. Halogens include the five nonmetallic elements in Group VIIA of the periodic table: Fluorine (F), chlorine (Cl), bromine (Br), iodine (I), and astatine (At). For purposes of the RCRA section 3004(d)(2)(E) land disposal prohibition, the Agency proposes that the definition of HOC would require the compound to contain a carbon-halogen bond. The Agency believes that compounds lacking such a bond, but that have a halogen attached to an atom such as nitrogen, which is subsequently bonded to carbon (*e.g.*, aniline hydrochloride) is not a true organohaline compound. The proposed carbon-halogen definition of HOCs presents a potential problem in that it would include a number of polymerized compounds that are generally considered non-hazardous because of their relative immobility.

However, EPA does not believe that Congress meant to include in the prohibition every possible HOC such as polymers that comprise solid plastics and vinyls. Instead, EPA believes that Congress was concerned with constituents that are mobile (*e.g.*, liquids) and/or potentially hazardous to human health and the environment. Therefore, the Agency is proposing to limit the definition of HOCs included under the section 3004(d)(2)(E) prohibition to those HOCs which are identified or listed as either hazardous wastes under 40 CFR Part 261 or as hazardous constituents under Part 261, Appendix VIII. The prohibition paragraph in section 3004(d)(1) supports this approach in its explicit concern for the migration of "hazardous constituents" from the land disposal unit or injection zone for as long as the waste remains hazardous. The term "hazardous constituent" is a term of art referring to compounds listed in Appendix VIII. As previously stated, the Agency is today proposing that organic compounds containing a halogen atom that is not bound directly to a carbon atom (such as the organic salt aniline hydrochloride) would not be included in the universe of restricted halogenated organic compounds. However, the Agency solicits comment and data on this proposal, and on a possible alternative to that definition, which would include compounds where the chlorine is not directly attached to a carbon atom, but attached to an atom such as nitrogen or sulfur, which is subsequently attached to a carbon atom.

An alternative interpretation would bring all hazardous wastes containing HOCs under the section 3004(d)(2)(E) prohibition regardless of whether the HOC was identified or listed as a hazardous waste or hazardous constituent. This approach may be more suitable to halogenated wastes that are determined to be liquids under the Paint Filter Liquids Test (and therefore are more likely to be mobile in the environment), but this approach would bring many innocuous non-liquid HOCs (*e.g.*, plastics) within the scope of the California list prohibitions. The Agency does not believe that Congress intended to regulate these HOCs, but solicits comments on the definition of HOCs covered under the section 3004(d)(2)(E) land disposal prohibition.

Unlike the other constituents specified in the section 3004(d) prohibitions, HOCs are prohibited in either liquid or non-liquid form. Because HOCs are the only California list wastes for which Congress specified both liquid and non-liquid wastes for prohibition, the Agency must identify a practical test method for detecting HOCs and determining the concentration of these constituents in non-liquid hazardous waste. The Agency is proposing to require use of the Toxicity Characteristic Leaching Procedure (TCLP) to generate the analyte for both liquid and non-liquid hazardous wastes. However, EPA is soliciting comment on other methods for defining and evaluating non-liquid wastes for HOCs.

b. *Hazardous waste requirement.* Wastes containing HOCs are only subject to the section 3004(d)(2)(E) prohibition if the waste is listed as hazardous under 40 CFR Part 261 or exhibits one or more of the characteristics of hazardous waste identified in Part 261. However, the waste listing or characteristic need not be related to the HOC content of the hazardous waste for it to be covered.

c. *1,000 mg/kg requirement.* The prohibition in section 3004(d)(2)(E) applies only to hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg. Although EPA is proposing to codify the 1,000 mg/kg prohibition specified in RCRA, the Agency will be evaluating each HOC regulated as hazardous under Part 261 in accordance with the final schedule for implementing land disposal restrictions (51 FR 19300). At that time, prohibitions on land disposal and treatment standards will be established to the extent necessary for individual HOCs or groups of related HOCs.

2. Relationship to RCRA section 3004(d)(2)(D) Prohibition on PCBs

RCRA section 3004(d)(2)(D) prohibits the land disposal of liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm. EPA interprets this provision as placing an upper limit of 50 ppm on the concentration of PCBs that may be

contained in a hazardous waste containing HOCs which is land disposed. The limitation of 50 ppm, however, is only applicable to liquid hazardous wastes containing PCBs, therefore a non-liquid hazardous waste containing PCBs at concentrations above 50 ppm may be land disposed without violating the section 3004(d)(2)(E) prohibition on HOCs as long as the total concentration of HOCs does not exceed 1,000 mg/kg. For example, a non-liquid hazardous waste containing 200 mg/kg (ppm) PCBs and 700 mg/kg (ppm) other HOCs can be land disposed because the 50 ppm prohibition does not apply to non-liquids and because the 900 mg/kg total HOC concentration does not exceed the 1,000 mg/kg threshold specified in HSWA section 3004(d)(2)(E).

If the total concentration of HOCs in either a liquid or non-liquid hazardous waste is greater than or equal to 1,000 mg/kg, the waste is prohibited from land disposal even if the concentration of PCBs is below 50 ppm. For example, a liquid hazardous waste containing 25 mg/kg (ppm) PCBs and 980 mg/kg HOCs other than PCBs is prohibited from land disposal under section 3004(d)(2)(E) despite the fact that the section 3004(d)(2)(D) prohibition on PCBs would allow up to 50 ppm PCBs to be land disposed. Also, a non-liquid hazardous waste containing 400 mg/kg (ppm) PCBs and 700 mg/kg HOCs other than PCBs is prohibited from land disposal despite the fact that existing regulations promulgated under TSCA would allow such non-liquid PCB wastes to be disposed in an approved landfill.

3. Treatment Technologies (BDAT)

EPA is proposing to establish treatment standards for most hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg. Incineration is proposed as BDAT for many of these wastes. The Agency is not proposing BDAT for wastewaters with less than 10% TOC. See Section IV.G for further discussion of these technologies.

4. Nationwide Variance From Statutory Effective Date

EPA has determined that there is inadequate treatment capacity for the HOC wastes covered by today's proposed treatment standards, therefore, the Agency is proposing a 2-year nationwide variance from the statutory effective date for HOCs for which BDAT has been proposed. See Unit V for a further discussion of capacity determinations.

G. Applicable Treatment Technologies

The following section discusses treatment standards for the California list wastes. EPA is proposing BDAT for HOC-containing hazardous wastes (except for HOC-containing wastewaters), for PCB-containing hazardous wastes, and for corrosive hazardous wastes. Where BDAT is not proposed, this section includes a discussion of those technologies that may serve as the basis for setting BDAT when wastes containing these constituents are addressed later in accordance with the final schedule promulgated at 51 FR 19300.

1. Proposed BDAT Treatment Technologies

a. *Halogenated organic compounds.* Technologies applicable to hazardous wastes containing HOCs in concentrations greater than 1000 mg/kg are similar to those identified for solvent-containing hazardous wastes F001–F005. These technologies include incineration, batch distillation, thin film evaporation, fractionation, biological degradation, activated carbon adsorption, and steam stripping.

As explained in the November 7, 1986 Final Solvents and Dioxins rule (51 FR 40572), EPA believes that data from the solvents rulemaking under section 3004 support a determination that incineration represents the best demonstrated available technology for most organic liquid and organic and inorganic sludges and solids (e.g., soils). In that rulemaking EPA also found that wastewater treatment technologies, such as biological treatment, activated carbon, and steam stripping should be the basis for determining performance standards for solvent-containing wastewaters containing less than 1% total organic carbon or less than 1% F001–F005 solvents.

However, the wide variety of wastes included within the term "halogenated organic compounds," even as limited along the lines proposed by EPA in this notice, and the wide variation in their physical properties and waste matrices, makes it impractical for EPA to develop wastewater treatment standards expressed either as concentration levels or as treatment technologies at this time. EPA will be addressing all of the wastes included in today's HOC proposal (except for the solvent- and dioxin-containing wastes for which EPA has already established concentration-based treatment standards on November 7, 1986) pursuant to the schedule published in the **Federal Register** on May 28, 1986 (51 FR 19300).

EPA has identified the incineration as the treatment technology that is BDAT for all hazardous waste containing HOCs in concentrations greater than 1000 mg/kg except wastewaters, and is proposing to promulgate treatment standards for HOCs expressed as a specified technology under 40 CFR 268.42. Treatment technologies specified as a method, however, are only applicable to those HOCs that are not covered by other Agency rulemakings under §§ 268.41, 268.42, or 268.43. For example, a waste containing only F001 trichloroethylene (an organic hazardous waste containing the halogen chlorine) is already subject to a concentration-based treatment standard which was published in the **Federal Register** on November 7, 1986 and is to be codified at 40 CFR 268.41. As discussed in that final rule, the Agency prefers to establish concentration-based treatment standards rather than treatment standards expressed as specified technologies because EPA believes that this approach will provide the regulated community with greater flexibility in meeting treatment standards and will encourage the development of more efficient and innovative technologies. In order to maintain this flexibility, EPA intends that any treatment standards established for individual HOCs will supercede today's proposed standards, which are expressed as specified technologies. Therefore, the F001 trichloroethylene waste mentioned above need only be treated in accordance with § 268.41. In other words, the waste must be treated to the specified level and the technologies specified in § 268.42 do not necessarily have to be utilized in reaching this level. However, if the waste also contains an HOC for which no treatment standard is established, the specified concentration level for trichloroethylene must be achieved and the method specified for the other HOC must be utilized, at least with respect to that portion of the waste which is not F001 trichloroethylene. This would allow the separation of the waste in order to provide flexibility in meeting the trichloroethylene level. However, as a practical matter, the Agency anticipates that in most cases waste managers will treat the entire waste using the methods specified in § 268.42.

Since the California list was intended only as a starting point in prohibiting land disposal and the group of California list wastes known as HOCs is very broad and diverse, the Agency may revise the treatment standards established under section 3004(d) when it develops further data to support treatment standards for individual

HOCs in future rulemakings under section 3004(g).

For hazardous wastes containing HOCs with a total organic carbon (TOC) content of greater than 1%, including liquids organic and inorganic solids and sludges, and non-liquid HOC-containing hazardous wastes at greater than or equal to 1000 mg/kg BDAT is proposed to be incineration in accordance with the requirements of 40 CFR 264.343 or 265.343. Because of the wide variety of chemical compounds that are included as HOCs (even in the limited universe of HOCs that the Agency has proposed), EPA does not believe that it can set treatment standards for HOC-containing wastewaters.

Application of technologies such as biological treatment, activated carbon adsorption or steam stripping may be effective for these materials, but a generalization that one or all of them constitutes BDAT for the wide variety of chemicals included as HOCs is not possible. EPA intends to pursue the applicability of these technologies to specific wastes in much greater detail in subsequent rulemakings for the wastes scheduled to be considered under section 3004(g). As part of those regulations, EPA plans to develop concentration-based treatment standards and reduce reliance on treatment standards defined as use of a specific technology or group of technologies.

EPA's analysis of available capacity for treatment of F001–F005 solvent wastes indicates that virtually all available incineration capacity and organic wastewater treatment capacity will be used up in complying with the solvent regulations promulgated on November 7, 1986. Based on this analysis and on the similarity of treatment required, EPA is proposing a two-year national variance for HOCs requiring incineration. However, because EPA is not able to specify BDAT for HOC-containing wastewaters, the Agency is not able to propose an extension of the effective date, which must be based on an estimate of the earliest date by which treatment capacity capable of meeting the treatment standard can be made available. EPA requests comment on its proposal of incineration as BDAT for all HOCs except wastewaters. The Agency also requests comment and data relevant to its proposal to extend the effective dates for these wastes. Finally, EPA requests comment on its decision not to propose BDAT for HOC-containing wastewaters and the related interpretation that it must not extend the effective date when it does not establish BDAT.

b. *Polychlorinated biphenyls.* The Agency is proposing to establish BDAT for liquid hazardous wastes containing greater than or equal to 50 ppm PCBs as thermal treatment pursuant to the technical requirements in 40 CFR 761.60 (high efficiency boiler standards) and § 761.70 (incinerator standards). Note that the TSCA regulations require the incineration of liquid PCB wastes in concentrations greater than or equal to 500 ppm. Such wastes cannot be treated in high efficiency boilers. EPA is not proposing to modify this determination in today's proposal.

Under the PCB regulations at § 761.60(e), any person who is required to thermally treat PCB wastes may obtain approval to use alternate equivalent methods as long as such methods do not present an unreasonable risk of injury to health or the environment.

EPA will also accept such petitions for equivalent treatment for mixed PCB/Hazardous wastes. (Note that this is not the same as the variance from the treatment standard as described in the November 7, 1986 final rule for solvents and dioxins). Such petitions should be submitted to the Administrator, with copies to the Director, Exposure Evaluation Division, Office of Toxic Substances and to the Chief, Waste Treatment Branch, Office of Solid Waste.

The Agency recognizes that its regional offices have developed a certain degree of expertise in evaluating alternate treatment methods for PCB wastes. However, the PCB wastes subject to today's proposal are mixed with hazardous wastes and, in many cases, may contain as little as 50 ppm PCBs and as much as 200,000–300,000 (or 20–30%) ppm as hazardous wastes regulated under RCRA. Since many of these wastes may not be comprised of predominantly PCBs, the Agency believes that EPA headquarters is better suited to handle petitions for these mixed wastes at the present time.

c. *Corrosive wastes.* BDAT for liquid hazardous wastes with a pH less than or equal to 2.0 (corrosives) is proposed to be neutralization to a pH above two. When the pH of the waste is above 2.0, it will no longer be subject to the California list land disposal prohibitions. Further, it will not be regulated as hazardous under RCRA Subtitle C, if it is hazardous solely because it exhibits the characteristic of corrosivity. Therefore, neutralization of corrosive wastes to levels above a pH of 2.0 is appropriate for purposes of the California list prohibitions, and the Agency proposes to consider such treatment BDAT for the purposes of the land disposal restrictions.

2. Other Applicable Treatment Technologies

In this section, EPA presents available data on treatment for those California list wastes for which the Agency lacks sufficient data to establish BDAT. The Agency solicits comment and data that would support establishing BDAT for these wastes.

a. *Cyanides.* While not proposed as BDAT under today's approach, the treatment most often used for cyanides is alkaline chlorination. This treatment consists of adding chlorine gas, under alkaline conditions, to convert cyanides to cyanates. The cyanates can then be converted to carbon dioxide and nitrogen by adding sodium hydroxide. Two alternative treatments are chlorination by sodium hydroxide and chlorination by sodium hypochlorite. Available data indicate that these treatments can reduce cyanide concentrations from as much as 12,000 ppm to as low as 5 ppm. However, the effectiveness of alkaline chlorination depends on the extent to which other constituents of the waste are more readily oxidized than cyanide. In cases where there are competing constituents, the addition of chlorine in amounts consistent with normal operating practice may not result in optimal levels of cyanide oxidation. The presence of metals, which will complex cyanides into metallocyanides, may also affect the performance of cyanide oxidation.

At this time, the Agency does not have adequate data to define BDAT either as a concentration-based standard or as a treatment technology for the wide variety of cyanide wastes included in the California list. It also should be noted that solidification to convert liquid cyanide wastes to non-liquid cyanide wastes meets the statutory requirement to exclude waste from consideration under today's proposed rule. While this method of treatment may satisfy the requirements of this proposed rulemaking, generators are cautioned that performance standards that will be established under later rulemakings are likely to be based on more effective technologies such as alkaline chlorination.

b. *Metals.* The treatment technology most often applied to liquid hazardous wastes containing California list metals is chemical precipitation. For cadmium, chromium, lead, nickel and selenium, the most common reagents are sodium or calcium hydroxide. When chromium is

present as hexavalent chromium (Cr VI), it is first reduced to trivalent chromium (Cr III) by using sulfur dioxide at low pH levels. Arsenic, mercury and thallium generally require the use of sulfide to effect precipitation. Frequently, these wastes are treated by filtration to remove fine particles that did not settle out in the clarifier. The precipitated material is often dewatered and/or stabilized with lime, kiln dust, portland cement or other materials after removal from the clarifier or the filter in order to further reduce the mobility of the waste.

Given the variety of wastes that may be covered by this category, and the lack of adequate data on the performance of stabilized materials, the Agency does not believe that it is in a position to specify BDAT at this time. While it is known that precipitation is frequently used as treatment for these types of wastes, EPA's analysis of the available stabilization data indicate that waste matrix effects can play a substantial role in the type and quantity of stabilizing agents needed. In particular, the overall organic content and the presence of oils and chlorinated solvents will influence the effectiveness of most stabilization processes.

EPA does not have adequate data to characterize all waste streams that the California list metals restrictions may cover at this time, and because of the role that composition of the waste stream plays in the effectiveness of the treatment, EPA cannot at this time establish BDAT either as a concentration-based standard or as a treatment technology or series of technologies. Unlike the case for incineration of HOCs, "normal" operation of the system may not result in substantial treatment.

H. Comparative Risk and Available Treatment Alternatives

As EPA recognized in establishing a framework for implementing the statutorily mandated land disposal restrictions, Congress did not intend that risks to human health and the environment be increased as a result of such restrictions. To help prevent these increased risks, the Agency conducted comparative risk assessments for the first category of wastes subject to the land disposal restrictions, i.e. certain dioxin-containing and solvent-containing hazardous wastes. (See the solvents and dioxins final rule of November 7, 1986 51 FR 40572, which establishes the framework for implementing the land disposal restrictions).

The Agency is conducting comparative risk assessments in conjunction with establishing section 3004(m) treatment standards for several of the California list wastes. The methodology being employed is similar but not identical to that utilized in the November 7, 1986 solvents and dioxins final rule. The RCRA Risk-Cost Analysis (WET) Model continues to be the primary tool for assessing comparative risks; however, the WET Model has been revised on the basis of detailed case studies performed for the November 7, 1986 final rule and public comments responding to the Agency's approach in that rulemaking.

Results of the comparative risk analysis will not be used to allow continued land disposal of hazardous waste. Instead, treatment technologies that are determined to pose greater risks than land disposal of untreated wastes will be considered "unavailable" as a basis for establishing the section 3004(m) BDAT treatment standard for the waste. If the best or most efficient treatment technology for a waste is determined to be riskier than land disposal, the decision to classify it as unavailable will have a direct impact on the level or method established as the section 3004(m) treatment standard. The treatment standard, which must be based on the capabilities of the best demonstrated available treatment technologies for a waste, would then be based upon the capabilities of the best demonstrated treatment technology that does not pose greater risks than land disposal. To the extent that the next best treatment technology performs less efficiently than the best technology (in terms of the fate of its residuals in the environment), the resulting section 3004(m) treatment standard will be less stringent.

As noted in the November 7, 1986 final rule, treatment technologies classified as "unavailable" due to their greater risks may, however, continue to be used by waste managers to comply with treatment standards expressed as constituent concentrations. Accordingly, EPA intends to develop sufficient regulatory controls or prohibitions over the design and operation of these technologies to ensure that their use in complying with concentration-based treatment standards does not result in increased risks to human health and the environment. The analyses conducted in support of these comparative risk assessments will provide a basis for developing such controls or prohibitions, however they will most likely need to be augmented by additional data. Where, as in today's proposed rule, the section 3004(m) treatment standards are expressed as specific methods which must be utilized, a determination to classify a treatment alternative as unavailable will prohibit the use of that technology in complying with the BDAT standards applicable to the restricted wastes in question.

Preliminary results indicate that the best demonstrated treatment methods for PCBs and other HOCs are not clearly riskier than land disposal. Whenever treatment is less risky or it is uncertain that a given treatment technology or treatment train is clearly riskier than land disposal, as in today's proposed rule concerning California list wastes, the Agency will consider the treatment available for determining BDAT and will develop the necessary data to support any additional regulatory controls which may be appropriate.

A comparative risk assessment for the corrosive wastes subject to today's proposal was not performed because the Agency's establishment of a BDAT standard at the statutory threshold does not impose any new requirements for treatment. In both cases, in order to be rendered non-hazardous, liquid hazardous wastes having a pH less than or equal to two (2.0) must be treated to a level above 2.0 before being land disposed. Therefore, EPA believes that a comparative risk assessment for corrosives is not necessary for the California list restrictions. However, the Agency is requesting comments and data on whether neutralization is riskier than land disposal of corrosive wastes.

I. Dilution Prohibition

In establishing a framework for implementing the congressionally mandated land disposal prohibitions, EPA prohibited as a dilution substitute for adequate treatment of restricted wastes (51 FR 40572, November 7, 1986). In the November 7, 1986 Federal Register notice, the Agency promulgated a final rule (to be codified at 40 CFR 268.3) which prohibits the regulated community from diluting restricted wastes "as a substitute for adequate treatment to achieve compliance with Subpart D of this part."

Subpart D of 40 CFR Part 268 establishes treatment standards for restricted wastes pursuant to RCRA section 3004(m). Subpart C identifies those wastes that are prohibited from land disposal according to RCRA, along with the respective effective dates of such prohibitions. Since the dilution prohibition promulgated on November 7, 1986 is only applicable to wastes treated "to achieve compliance with Subpart D", the prohibition does not apply to dilution for the purposes of meeting the concentration limits established under section 3004(d). The Agency believes that this is contrary to congressional

intent as expressed in H. R. Rep. No. 198, Part I, 98th Cong., 1st Sess. 34–35 (1983), which states that:

> The [Energy and Commerce] Committee intends that dilution to a concentration less than the specified [California List] thresholds by the addition of other hazardous waste or any other material during waste handling, transportation, treatment, or storage, other than dilution which occurs as a normal part of a manufacturing process, will not be allowed; such hazardous waste would still be prohibited from land disposal.

Therefore, EPA is today proposing to amend the § 268.3 dilution prohibition to include dilution to avoid a prohibition in Subpart C of Part 268 (e.g., dilution to below the restrictions levels for the California list wastes). In addition, section 268.3 as amended covers those situations where wastes are diluted in order to circumvent the effective date of a Subpart C prohibition on land disposal. Capacity determinations are based on estimates of quantities of waste at the point of generation. Allowing dilution to a lower concentration in order to qualify for a nationwide variance undermines this determination. As stated in the preamble to the November 7, 1986 final rule, section 268.3 is intended to prohibit dilution as a means of circumventing the requirements imposed by the land disposal prohibitions. EPA does not intend to prohibit dilution which is necessary to facilitate proper treatment.

J. Evaporation Prohibition

The Agengy is soliciting comment on the issue of whether evaporation should be prohibited as a means of treatment under the 40 CFR 268.4 treatment in surface impoundment exemption. The Agency is considering this action because of its particular concern that the hazardous constituents in wastes be treated to reduce toxicity or mobility, and not just moved from one media to another. This prohibition is not intended to cover evaporation that occurs along with other treatment, such as an active biological treatment process with mechanical aeration. Where the restricted liquid hazardous waste contains volatile or semi-volatile constituents, evaporation, whether as a dewatering process or a constituent reduction process, would result in the volatile components being transferred to the air. This may increase the mobility of the toxic constituent and may increase the associated risk.

The Agency is requesting comment on the risks posed by treatment processes that simply transfer hazardous constituents from one environmental component to another.

K. Facilities Operating Under a Permit or Interim Status

The Agency is proposing to amend Part 270 to give facilities more flexibility to handle restricted wastes. First, the Agency is proposing to add a new paragraph (p) to § 270.42 to allow permitted facilities to use the minor modification process, under certain conditions, to obtain approval to change their facilities to treat or store restricted wastes in tanks or containers as necessary to comply with Part 268 land disposal restrictions. Second, EPA is proposing to amend § 270.72(e) to allow interim status facilities to expand their operations by more than 50 percent (in terms of capital expeditures) to treat or store restricted waste in tanks or containers as necessary to comply with Part 268 land disposal restrictions. These changes are in addition to the amendment to § 270.42, promulgated in the November 7, 1986 final rule establishing land disposal restrictions for solvents and dioxin-containing wastes, that allows permitted treatment facilities to use the minor modification process, under certain conditions, to manage restricted wastes not previously listed in their permits.

1. Minor Modifications

Under the current rules, permitted facilities desiring to change their operations to treat or store restricted wastes in tanks or containers are required to seek approval to make these changes through the major permit modification process of § 270.41 with the exception of facilities treating new wastes in accordance with § 270.42(o). (See 51 40752, November 7, 1986.) The major modification procedures, which are the same as the permit issuance procedures, require a draft permit, public notice and comment, an opportunity for a public hearing, and administrative approval before the owner or operator is allowed to make the requested changes. These procedures are time consuming and could seriously delay treatment of restricted wastes in accordance with Part 268. In addition, the major permit modification process may seriously inhibit the ability of facilities to add short-term storage capacity to handle restricted wastes as treatment proceeds.

In contrast, under § 270.42, minor modifications to a permit can be made by the permitting authority upon consent of the permittee without formal notice and comment procedures. The Agency believes that the major modification process may seriously reduce the flexibility needed by facilities to respond to the land disposal restrictions in a timely fashion. Given the critical need to expand treatment capacity for restricted wastes and the significant environmental benefits that result from treatment instead of land disposal, EPA believes that expanding the current minor modification provisions to provide greater flexibility for the treatment or storage of restricted wastes is necessary and appropriate.

The Agency is proposing that owners or operators seeking to use the proposed minor modification process of § 270.42(p) comply with three conditions. First, the owner or operator must submit a complete major permit modification application pursuant to §§ 124.5 and 270.41. Second, the applicant must demonstrate that changes in a unit to treat or store restricted wastes in tanks or containers is necessary to comply with the land disposal restrictions of Part 268. Third, the applicant must ensure that such unit complies with the applicable Part 264 standards pending final administrative disposition of the major permit modification request. For example, any tanks used to treat or store restricted wastes would be subject to the tank system standards of Part 264, Subpart J, which include secondary containment requirements (*see* 51 FR 25422, July 14, 1986). The authorization to continue in operation with the changes terminates upon final administrative disposition of the major modification request or the termination of a permit.

In proposing this amendment to § 270.42, the Agency recognizes that the Part 124 public participation requirements will be deferred until a permittee's major modification request is processed. However, EPA believes that this approach represents a reasonable balance between its policy in favor of public participation and the need to provide facilities managing restricted wastes with the flexibility to respond to the land disposal restrictions in a timely and effective manner.

The proposed change to the minor modifications requirements does not apply to storage or treatment other than in containers or tanks. EPA believes that the addition of other treatment processes, such as incineration, is likely to raise issues that would be best addressed through the major modification process. However, the Agency is exploring these issues as part of an overall review of the permit modification regulations. The EPA is now conducting regulatory negotiations on permit modifications, (announced on July 16, 1986 in the **Federal Register** (51 FR 25739)) and expects to issue a proposed rule during the next year. The

Permit Modification Negotiating Committee will be invited to submit comments on today's proposed rule. Furthermore, the language in today's proposal is not intended to limit the Permit Modification Negotiating Committee's independent consideration of changes in the overall permit modification process. Rather, the Agency has proposed to amend § 270.42 at this time because of the need to ensure that the provisions are in place when land disposal restrictions on the California list wastes become effective. If adopted, these permit modification provisions would be used until the permit modification process is further amended.

2. Reconstruction Limits

The Agency is also proposing to allow interim status facilities to modify their operations to treat or store restricted wastes in tanks or containers as necessary to comply with the land disposal restrictions of Part 268, without being required to obtain a permit even if such facility modifications amount to "reconstruction." Under existing 40 CFR 270.72(e), EPA prohibits any modifications to an interim status facility that amount to the reconstruction of the facility. For the purposes of this prohibition, EPA considers reconstruction to occur when the capital value of the changes to the facility exceeds fifty percent of the capital costs of a comparable new hazardous waste management facility.

EPA believes that the current regulations generally provide reasonable flexibility to interim status facilities to comply with the land disposal restrictions. Under certain circumstances, however, an owner or operator of an interim status facility that manages restricted wastes may need to expand the facility by more than 50 percent (in terms of cost) to comply with the Part 268 land disposal restrictions. In these circumstances under the existing regulations, the owner or operator would have to delay the changes or discontinue operations until the changes could be approved in connection with the issuance of a permit. EPA believes that, in light of the limited availability of hazardous waste treatment facilities, the time-consuming process necessary for permitting, and the clear evidence of congressional intent to allow interim status facilities to make the specific changes necessary to comply with new regulatory requirements, this result would be unacceptable.

To address this problem, EPA is proposing to amend § 270.72(e) to allow owners or operators to modify interim status facilities to handle wastes restricted from land disposal necessary to comply with Part 268 without being subject to the fifty percent capital expenditure limit in § 270.72(e). Under the proposed regulation, interim status facilities would be required to file a revised Part A application prior to such changes. The applicant would have to demonstrate that the changes were necessary to comply with the land disposal restrictions of Part 268. In addition, the only allowable changes would be for treatment or storage in containers or tanks. EPA believes that the addition of other processes that amount to reconstruction, such as incineration, is likely to raise issues that would be addressed best through the permitting process.

Facilities allowed to expand their operations by more than 50 percent (in terms of cost) under the proposed change would be subject to Part 265 standards. For example, any tanks used to treat restricted wastes would be subject to the tank system standards of Part 265, Subpart J, which include secondary containment requirements (51 FR 25422, July 14, 1986).

L. Procedures for Obtaining a Variance From Treatment Standards

As a result of comments on the Agency's proposed BDAT standards, the Agency has provided a procedure to allow interested parties to obtain a variance from the treatment standards. *See* 40 CFR 268.44, 51 FR 40572 (November 7, 1986). This procedure may be used by those whose wastes cannot be treated to meet the treatment standard issued by EPA. Essentially, the Agency will establish a separate treatment standard for a waste if the interested party presents data which, if properly considered by the Agency at the time the standards were promulgated, would have required that a separate subcategory be created for the waste. The procedure allows the Agency to fine-tune the regulations by considering the full range of current practices to which the treatment standards should apply.

Section 268.44 establishes a variance procedure in the form of a rulemaking that amends the regulatory treatment standards each time a variance is granted. The preamble to that rule lists a number of factors that the Agency believes will be relevant to the variance application. However, as noted in the preamble to the final rule, the Agency believes that the statute does not preclude establishing a more streamlined variance procedure. The Agency has construed the statute to allow the setting of treatment standards applicable to specific treatability groups; the same result could be achieved by issuing a variance in a case where EPA did not have sufficient data to establish treatability groups at the time of the final rule.

EPA received comments both for and against providing a more streamlined petition procedure but did not have enough time before the final rule was issued to consider these comments carefully. EPA therefore requests further comments on the advisability of modifying the current procedure. Specifically, are there disadvantages that would outweigh the benefits of a simplified procedures? Should the Agency allow any interested party to apply? Should the procedure allow the Agency to adjust the treatment standards to be more stringent as well as less stringent? Should the Agency establish a deadline for applications, *e.g.*, 3 or 6 months after the effective date of the treatment standards that apply to the waste? What public notice procedures should apply? Are the factors cited in the preamble to the final rule published on November 7, 1986, the appropriate factors for the Agency to consider? EPA also solicits comments on any other relevant aspect of the treatability variance procedure.

V. Alternative Capacity and Ban Effective Date

RCRA section 3004(h)(2) states that the Agency may grant a nationwide variance of up to 2 years from the statutory effective date if adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment is not available. Congress, however, intends for the land disposal restrictions to "go into effect immediately upon promulgation whenever and wherever possible." (S. Rep. No. 284, 98th Cong., 1st Sess. 19 (1983).) The legislative history also states that "[t]he Agency should expend every effort to assure that unsafe practices are terminated as quickly as possible." Therefore, "[e]xtensions based on capacity shortfalls should be infrequently granted. Given consistent regulatory and economic incentives, adequate capacity will be quickly developed." (S. Rep. No. 284, 98th Cong., 1st Sess. 19 (1983).) EPA will consider several factors when calculating alternative capacity and when determining the length of any variance from the effective dates mandated by RCRA. These factors, which were also used for determination of alternative capacity for the solvents and dioxins rule, are discussed below.

A. Agency Authority With Respect to Effective Dates

EPA will develop estimates of treatment capacity needed versus capacity available to determine if current capacity for alternative treatment, recovery, and disposal technologies is adequate to manage restricted wastes. These estimates will be developed from currently available data on capacity requirements and technology capacity.

If capacity is available, the restrictions will go into effect immediately. If capacity is not available, RCRA section 3004(h)(2) requires that the effective date of the restrictions shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment becomes available. Establishment of the ban effective date will not be affected by the processing of petitions under RCRA section 3004 (d), (e), and (g). The interaction between the variance to the effective date and the case-by-case extension under section 3004(h)(3) is discussed later in this unit.

B. Regional and National Capacity

The Agency will determine both the quantity of retricted waste generated and the capacity of alternative treatment, recovery, and disposal technologies on a nationwide basis. If there is a significant shortfall in capacity to treat all of the restricted waste, the Agency will extend the effective date of the restrictions. If national capacity is sufficient, the restrictions will become effective immediately. If national capacity is only slightly lacking, EPA may grant case-by-case effective date extensions while allowing the nationwide restrictions to go into effect immediately.

C. The Nationwide Variance and the Case-by-Case Extension

In cases where EPA has not granted a nationwide variance, it is not precluded from granting case-by-case effective date extensions. For instance, if alternative capacity exists to manage most of the restricted wastes, but appears to be slightly inadequate, the Agency might choose not to grant a nationwide variance. In these cases, it is more desirable to grant case-by-case extensions to specific applicants who lack alternative capacity than to allow everyone, even those for whom alternatives are available, to continue to land dispose of their wastes. This approach is consistent with congressional intent to restrict land disposal at the earliest possible time.

For the same reasons, EPA may grant a variance of less than 2 years, even though some facilities may require more time to be completed. These facilities could be completed under a case-by-case extension, if all applicable criteria are met, without allowing continued land disposal nationwide.

D. Determination of Capacity Requirements by Waste Treatability Group

In general, EPA will develop treatment technologies for waste groups derived from the physical/chemical characteristics of the banned wastes. Where possible, EPA will also determine the quantities of wastes that require specific treatment or recovery methods by waste treatability group. These treatability groups will enable EPA to compare required capacity (capacity demand) with available capacity (capacity supply). The quantities of wastes land disposed will be grouped according to the description of their characteristics. In addition, EPA will consider other increases in capacity demand generated by emergency and remedial responses. EPA also will include, to the extent possible, the impact of other final rulemakings such as the regulation of small quantity generators, that have occurred since EPA's capacity data were collected.

E. Definition of Available Capacity

In estimating available capacity, the Agency will consider (1) current on-line facilities, which include permitted facilities and facilities operating under RCRA interim status and (2) planned facilities and capacity extensions that will be on-line by the time the ban goes into effect.

Current on-line facilities consist of off-site and on-site facilities, as well as stationary and mobile facilities. They are facilities that have been approved to operate and accept pertinent wastes under current regulations by applicable Federal, State, and local agencies. Facilities operating under RCRA interim status meet these criteria, and therefore will be included in the capacity determination.

F. Definition of Alternative Treatment Capacity

RCRA section 3004(h)(2) states that a variance from the effective date of a land disposal restriction "shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available." In general, all treatment technologies that are capable of meeting the treatment standards established under 3004(m), are considered to be available treatment capacity under the above standard.

Section 3004(m) directs EPA to establish standards based on treatment that will minimize long- and short-term threats to human health and the environment. The Agency believes that this "minimize" standard generally will be met by technologies classified as BDAT (best demonstrated achievable technology).

In most cases, treatment levels or methods based on BDAT are expected to fully protect human health and the environment. Accordingly, technologies that form the basis for such standards are candidates for the capacity evaluation undertaken pursuant to 3004(h) (2) and (3).

G. Definition of Alternative Recovery and Disposal Capacity

In assessing available capacity, the Agency will consider the capacity of all on-line recovery and disposal facilities "that are more protective than existing land disposal methods" (see 51 FR 40599). Planned facilities, including expansion of existing facilities, also will be considered where appropriate. On-line facilities are defined as those facilities that have received approval from applicable Federal, State, and local agencies to operate a recovery or disposal facility for the waste in question or for a similar waste.

However, alternative land disposal methods (e.g., deep well injection) will not be considered as available capacity for restricted wastes unless EPA has determined that such methods of disposal are fully protective of human health and the environment for the waste in question. This question will arise frequently in the context of assessing underground injection as alternative capacity. RCRA section 3004(f) allows the Agency until August 1988 to study the disposal by deep well injection of solvents, dioxins, and California List wastes and to promulgate any necessary regulations banning these wastes from deep well injection. This deadline occurs after the mandated deadlines for ban decisions concerning disposal of these wastes by other land disposal methods. For wastes scheduled for later banning, the Agency will make decisions to ban from deep well injection concurrently with decisions to ban from other land disposal methods. Accordingly, in evaluating the capacity of alternative protective disposal methods for these wastes prior to a

decision under section 3004(f), EPA will not consider underground injection to be available disposal capacity, since the Agency will not have determined whether the injection of such wastes is fully protective of human health and the environment.

H. Estimation of Capacity

EPA will estimate the annual unused or surplus capacity of alternative treatment, recovery, and disposal facilities that are available nationwide to manage wastes restricted from land disposal. This nationwide capacity (capacity supply) will then be compared with quantities of banned waste generated annually nationwide (capacity demand).

Surplus capacity will be expressed as the throughput capacity, the volume of waste that can be treated per year. Since data on actual unused throughput may be difficult to obtain in some instances, EPA may need to use other available information to calculate this value, such as the difference between a practical maximum design capacity and the capacity currently utilized, to calculate capacity. In turn, practical maximum design capacity represents the theoretical maximum design capacity, minus an estimate of the amount of potential operating time lost to normal maintenance.

Frequently, treatment and recovery technologies consist of a series of unit processes. In these cases, treatment system capacity will be based on the capacity of the unit operation within that system that is most likely to limit the capacity of the whole system, if any. This would occur, for example, if a large metals precipitation system contained a much smaller capacity for chromium reduction. In this case, the capacity for trivalent chromium precipitation (which does not require reduction) would be much greater than for hexavalent chromium precipitation that would require reduction.

For this proposal, capacity estimates are based on currently available information, primarily the 1981 OSW RIA Mail Survey. The Agency is currently working on a new survey of commercial and private treatment facilities and will use the results of this survey when they become available to calculate capacity for future rulemakings.

1. Current Surplus Capacity

Current surplus capacity is defined as present capacity that is not being utilized. Surplus capacity can be any of the following:

(a) Commercially available.

(b) Private capacity which can be used to process additional wastes produced by the owner.

(c) Private, where the owner will be willing and able to accept wastes from other generators, i.e., to provide commercial services.

EPA will assume that commercial facilities are willing to accept wastes that they are capable of treating. In cases where commercial capacity is inadequate, EPA will consider the likelihood that available private capacity not needed to process additional waste produced by the owner will be converted to commercial capacity. Due to limited information on the availability of private capacity, EPA has only considered commercial capacity for this proposal. The Agency solicits comment on the assumptions used in this analysis (i.e., willingness of commercial facilities to treat California list wastes), and also asks for comment and data on private capacity. Data received during the comment period will be included in the final rule.

2. Planned Capacity

EPA's general methodology calls for EPA to use, if possible, planned capacity estimates in determining available capacity. If EPA finds that current capacity is insufficient for a particular waste, it evaluates the potential for the development of planned facilities and capacity by the statutory ban effective date. If a national variance is granted, planned capacity is considered in determining the length of a variance. Planned facilities and capacity will be considered available only if EPA determines that, by the time the ban goes into effect, the facility will be on-line. However, EPA has not included planned capacity for this proposal due to lack of data. EPA is developing new data on planned capacity. Because these data are not expected to be available in time for promulgation of this rule, the Agency solicits comment on planned capacity not considered in this proposal.

I. Time to Develop Capacity and Length of Variance

According to RCRA section 3004(h)(2), if the Agency determines that sufficient capacity currently exists, or if the necessary additional capacity can be developed by the time of the mandated ban date for each waste, the ban will go into effect on that date. If not, a variance of up to 2 years may be granted at the same time that the final rule is promulgated. The length of the variance will depend on the time required to provide alternative capacity that meets the criteria described above. EPA's analysis of time to provide capacity indicates that treatment requiring a permit will require at least two years to develop. Treatment not requiring a permit (such as treatment in 90-day accumulation tanks) can be provided in as quickly as 6 months, depending on the complexity of the facilities to be constructed.

J. Wastes for Which Treatment Standards Have Not Been Established

Where EPA does not have sufficient information to establish treatment standards for a waste, the prohibition on land disposal for that waste will generally be immediately effective. EPA believes that, considering the criteria described below, the Agency will generally not be able to establish a nationwide variance for such wastes. As noted above, the purpose of the variance is to allow time for alternative protective capacity to develop. If the Agency cannot determine what specific type of treatment is needed for a waste (as is the case for metals and cyanides in this proposal), it will not be able to define the capacity needs for that waste. For this proposed rulemaking, EPA has been able to calculate alternative capacity for wastes containing HOCs, PCBs, and corrosives because it has been able to specify a technology as BDAT. However, it has not made BDAT determination for cyanides and metals. Therefore, it cannot estimate the capacity needed or available to treat these wastes.

However, EPA has included in the preamble and in the docket information on the capacity of various treatment technologies that may be used to treat metals and cyanides to below the threshold concentrations triggering the applicability of today's rule. Our review of these data suggests that BDAT, when developed, may be significantly more stringent than these threshold concentrations. In the interim, however, generators will be able to utilize the capacity of all of these alternative treatment technologies in complying with the standards. If EPA receives or develops sufficient information to establish BDAT for these wastes, the information in the docket on the specific technologies meeting the definition or performance identified as BDAT will be used to determine whether a variance is needed. The Agency invites comment on its analysis of the statutory requirements and on its capacity information. This unit describes EPAs estimates of the unused capacity that is currently available to treat banned wastes by these methods.

1. Incineration Capacity

The Agency has already determined for the purpose of the solvents rulemaking November 7, 1986 (51 FR 40572) that inadequate capacity exists to incinerate the solvent-bearing wastes. Since this same incineration capacity must be used to dispose of HOC- and PCB-containing hazardous wastes it follows that there is no capacity available for these wastes at this time.

2. Capacity for Other Treatment

Although the Agency is not proposing BDAT for cyanides and the metals, the treatment methods that the Agency believes are applicable are chemical precipitation, chromium reduction and cyanide oxidation. All of these treatment methods are referred to as tank treatment under the RCRA TSDF regulation.

The OSW RIA mail survey is currently EPA's only source of information concerning the unused capacity for these treatment methods. The survey provides information on tank treatment capacity at both commercial and private facilities, although the data at wastewater treatment facilities exempted from RCRA requirements are somewhat limited. As discussed above, EPA will consider only commercial wastewater treatment capacity in this proposed rulemaking. For each facility, the survey provided information on each tank used for treatment, types of wastes managed in tanks, and total tank treatment capacity for the facility. Using this information, EPA estimated this capacity for the specific types of tank treatment. The estimated available capacities for tank treatment are:

(1) Chemical precipitation—165×10^6 gal.

(2) Chromium reduction—35×10^6 gal.

(3) Cyanide oxidation—65×10^6 gal.

Thus, the total capacity available to treat the metal and cyanide containing hazardous wastes restricted from land disposal under section 3004(d) in commercial treatment facilities is approximately 265 million gallons.

Although it has no specific data to substantiate its position, the Agency believes that the relative case of constructing new 90-day accumulation facilities that may simultaneously provide neutralization solidification capacity (or utilization of the extensive capacity in existing units) argues that there will be much more than 265 million gallons of capacity available by July 8, 1987. We believe that, with the notice provided today, generators will be able to develop the relatively simple treatment facilities needed to meet the threshold concentrations that establish applicability of this date to wastes containing metals, cyanides, or pH less than 2. In fact, we believe extensive use of solidification already is occurring to meet EPA's regulations limiting the disposal of liquids in landfills. As a result, we believe this regulation only may reinforce the need for facilities to continue to use existing solidification capacity. EPA solicits comment on these judgments and data on the capacity to treat these wastes.

K. Alternative Treatment Capacity Required for California List Wastes

1. Quantities of Wastes Land Disposed

EPA has estimated the total quantities of California list wastes which are land disposed annually, based primarily on data provided in the OSW RIA Mail Survey of Treatment, Storage, and Disposal Facilities regulated in 1981 (Ref. 12). Complete analysis of the data is provided in the background document to support today's proposed rule (Ref. 1).

These estimates required four conservative assumptions because of the limited characteristics provided by the survey. First, EPA assumed all wastes identified in the 1981 survey containing metals or cyanides described as liquids or sludges were liquids using the paint filter test. Only those cyanide and metal wastes described specifically as solids were assumed to not be classified as liquids by this test and exemption from this proposed regulation. EPA believes that many of wastes that are described as sludges by generators contain free liquids and are actually liquids based on EPA's test definition.

Second, in order to estimate the quantity of corrosive wastes that were acidic rather than basic, EPA also assumed that all corrosive wastes that were not specifically described as basic were acidic with a pH of less than or equal to 2 and subject to this rule. Third, EPA assumed that all metals wastes identified as containing chromium contain chromium in the hexavalent oxidation state and are subject to regulation.

Finally, EPA has assumed that the concentrations of constituents of all wastes identified by waste codes associated with the California list constituents are in excess of the threshold levels set by any of the options in today's proposed rule. Therefore, the entire universe of these California list wastes would be considered subject to the proposed restrictions.

The following table indicates the distribution of the total quantities of wastes that were estimated to be corrosive wastes (pH <2) or to contain total cyanides, halogenated organic compounds (HOC), or metals (As, Cd, Cr, Pb, Ni, Hg, Se, Tl). The quantity of liquid metal wastes containing hexavalent chromium (Cr+6) is presented separately because of the frequent requirement for treatment separate from other metals to reduce it to trivalent chromium to facilitate precipitation as a hydroxide. Figures in the following table do not include the quantities of those California list wastes that are deep well injected.

Management technique	Quantities in millions of gallons				
	Acidic corrosives pH <2	Total cyanide wastes	Metal wastes		HOC wastes
			Without Cr+6	With Cr+6	
Surface impoundments:					
Treatment	6,387	1,451	822	2,976	52.3
Storage (only)	3,928	395	111	2,782	463
Disposal	316	81.3	57.6	3,785	96.8
Waste piles	6.3	22.1	15.5	168	<.1
Land application	35.2	<.1	1.2	613	<.1
Landfill	70.9	72.8	60.5	286	302
Total land disposed	10,743.4	2,022.2	1,067.8	10,610	914.1

The total quantity of wastes containing HOCs in this estimate includes both solid or liquid wastes, consistent with the statutory requirements for HOCs. However, this quantity does not include those wastes containing halogenated waste solvents or dioxins that have already been addressed previously in a final regulation specific to those wastes. It also does not include mixed RCRA/PCB wastes. EPA has separately estimated in the background document that 7.0 million gallons of mixed RCRA/PCB wastes that are both liquid and that exceed 50 ppm are land disposed per year.

Because data are not currently available on quantities of California list wastes generated by small quantity generators and generated from remedial or removal actions anticipated to be

taken under CERCLA or RCRA corrective action, these have not been included in the total quantity estimates. However, EPA does not anticipate that significantly large quantities result from any of these sources. Small quantity generators produce less than 1% of all wastes generated and were responsible for less than 1% of the waste solvents EPA considered in the previous rulemaking. CERCLA responses and RCRA corrective actions generally produce wastes that contain less than the statutory concentrations of waste constituent, but can include acid wastes. EPA will attempt to develop estimates for all these wastes prior to promulgation of today's proposed rule.

2. Quantities Requiring Alternative Capacity

In order to estimate the alternative treatment capacity required to address the volumes of California list wastes given in the previous section and to determine the effective date for the land disposal restrictions, these wastes must be assigned to potential alternative treatment methods. The technologies identified in this section are those which EPA believes will generally be used to treat these California list wastes.

EPA believes that neutralization generally will be used for acidic liquid wastes. EPA does not believe that capacity will be an issue for waste solely requiring neutralization. Such neutralization can be done rapidly in tanks or even in pipes. However, EPA's limited waste characterization data suggest that the majority of the acidic corrosive wastes also contain significant concentrations of metals that will need treatment to meet the constituent concentrations established by any the options on today's proposed rule. Therefore, EPA is assuming that all acidic wastes also will require chemical precipitation or solidification. This is a conservative assumption because some acidic wastes will require only neutralization. To the extent that neutralization could be used for these wastes, EPA recognizes that it has overestimated the capacity requirements for chemical precipitation or solidification.

EPA also believes that all liquid wastes identified as metal wastes (containing As, Cd, Cr, Pb, Ni, Hg, Se, Tl) will require chemical precipitation, and wastes that contain hexavalent chromium (Cr+6) will require additional chemical reduction. For the purpose of estimating capacity needs EPA has assumed wastes containing cyanide will require chemical oxidation of the cyanide. Alternatively, solidification to meet the paint filter test definition of non-liquid may be used for metals or cyanides.

EPA has assumed that all wastes identified as containing HOCs or PCBs will require incineration. EPA also has estimated, based on its economic impact assessment that the majority of the California list wastes treated in surface impoundments will continue to be treated in these impoundments after compliance with RCRA section 3005(j)(11) (A) and (B). However, EPA has assumed that wastes treated in these impoundments will be treated by alternative methods (in tanks, by solidification, etc.), on an interim basis while the impoundments are retrofitted to meet the minimum technology requirements of section 3004(o) as specified in section 3005 (j)(11).

The information presented below represents the Agency's best estimate of the volumes of California list wastes that may require alternative treatment capacity. However, EPA is unable to determine the incremental capacity required for any wastes other than the HOC and PCB wastes.

[Millions of gallons]

Alternative treatment technology	Quantities requiring capacity
Acid corrosive wastes	6745
Metals wastes without chromium	1554
Hexavalent chromium wastes	896
Cyanide wastes	7542
HOC and PCB wastes	458

VI. 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. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a state with final authorization administered its hazardous waste program 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 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 RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time that they take effect in nonauthorized states. EPA is directed to carry out these 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, HSWA applies in authorized states in the interim.

Today's rule is proposed pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924). Therefore, it will be added to Table 1 in 40 CFR 271.1(j), which identifies the federal program requirements that are promulgated pursuant to HSWA and take effect in all states, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section. When this rule is promulgated, Table 2 in 40 CFR 271.1(j) will be modified also to indicate that this rule is a self-implementing provision of HSWA.

B. Effect on State Authorizations

As noted above, EPA will implement today's proposal in authorized states until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a state submitting a program modification may apply to receive either interim or final authorization under RCRA 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 for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that states that have final authorization must modify their programs to reflect federal program changes, and must subsequently submit the modification to EPA for approval. The deadline for the state to modify its program for this proposed regulation will be determined by the date on which this regulation is promulgated in final form. If final rule promulgation occurs before July 1, 1987, state program modifications must be made by July 1, 1989, if only regulatory changes are necessary, or July 1, 1990 if statutory changes are necessary. If this

rule is promulgated in final form after July 1, 1987, state program modifications must be made by July 1, 1991, if only regulatory changes are necessary or July 1, 1992, if statutory changes are necessary. These deadlines can be extended in exceptional cases (see § 271.21(e)(3)).

States with authorized RCRA programs may have requirements similar to those in today's proposal. These state regulations have not been assessed against the federal regulations being proposed today to determine whether they meet the tests 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 will work with states under 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 these regulations may be approved without including equivalent standards. 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.

C. State Implementation

There are three unique aspects of today's proposal which affect state implementation and impact state actions on the regulated community:

1. Under Part 268, Subpart C, EPA is proposing land disposal restrictions for all generators and disposers of certain types of hazardous waste. In order to retain authorization, states must adopt the regulations under this Subpart since state requirements can be no less stringent than federal requirements.

2. Also under Part 268, EPA may grant a national variance from the effective date of land disposal prohibitions for up to two years if it is found that there is insufficient alternative treatment capacity. Under § 268.5, case-by-case extensions of up to one year (renewable for an additional year) may be granted for specific applicants lacking adequate capacity.

The Administrator of EPA is solely responsible for granting variances to the effective date because these determinations must be made on a national basis. In addition, it is clear that RCRA section 3004(h)(3) intends for the Administrator to grant case-by-case extensions after consulting the affected states, on the basis of national concerns which only the Administrator can evaluate. Therefore, states cannot be authorized for this aspect of the program.

3. EPA may grant petitions of specific duration to allow land disposal of certain hazardous waste where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous.

States which have the authority to impose bans may be authorized under RCRA section 3006 to grant petitions for exemptions from bans. Decisions on site-specific petitions do not require the national perspective required to ban waste or grant extensions. In accordance with RCRA section 3004(i), EPA will publish notice of the State's final decision on petitions in the **Federal Register.**

States are free to impose their own disposal bans if such actions are more stringent or broader in scope than Federal programs (RCRA section 3009 and 40 CFR 271.1(i)). Where States impose bans which are more stringent than an EPA action, such as granting a case-by-case extension or petition, the more stringent State ban governs as a matter of State law.

VII. Effects of the Land Disposal Restrictions Program on Other Environmental Programs

As an alternative to using BDAT treatment, the regulated community might dispose of restricted California list wastes using non-RCRA disposal options. Two options regulated under the Marine Protection, Research, and Sanctuaries Act (MPRSA) (33 U.S.C. 1401 et. seq.) are ocean dumping and ocean-based incineration. EPA is in the process of revising the MPRSA regulations. If the Agency were to relax the current regulations, there could be increased demand for ocean-based waste management due to the impact of the land disposal restrictions. If, for example, the regulations are revised to allow the issuance of permits to applicants whose wastes fail to comply with one or more of the MPRSA environmental criteria but who successfully demonstrate a need for the permit, the demand for ocean disposal could increase substantially.

The Agency conducted an analysis of the potential shift in demand for ocean disposal (ocean dumping or ocean-based incineration) resulting from the restrictions on land disposal of solvent, dioxin, and California list wastes. The results are described in "Assessment of Impacts of Land Disposal Restrictions on Ocean Dumping and Ocean Incineration of Solvents, Dioxins, and California List Wastes." (Ref: U.S. EPA, 1986) This assessment was based on a methodology to score and rank waste streams for relative acceptability for ocean disposal, supplemented with an analysis of cost factors and capacity constraints.

The scoring/ranking methodology was based on technical requirements (e.g., physical form and heating value) and MPRSA environmental criteria (e.g., constituent concentrations, toxicity, solubility, density, and persistence of the waste) associated with ocean disposal of hazardous waste. The capacity analysis assumed that those wastes least acceptable for ocean disposal will be treated or disposed of by land-based methods. The cost analysis assumed that additional land-based treatment capacity would be built to treat waste streams for which the costs of land-based treatment would be less than the costs of ocean disposal (including on land transportation to a port located on the East coast).

The results of the cost/capacity analysis indicated that, as a result of the land disposal restrictions, approximately 20.3 million gallons per year of hazardous wastes containing HOCs, 15.1 million gallons per year of liquid hazardous wastes containing metals, and 8.2 million gallons per year of liquid hazardous wastes containing PCBs potentially could create demand for ocean dumping and ocean-based incineration. Such demands result from capacity shortfalls of land-based treatment (incineration and chemical precipitation) and the relatively lower cost of ocean dumping and ocean-based incineration, taking into account the costs of transportation on land. These results estimate the demand that may be created if the MPRSA regulations are revised to allow the issuance of permits for wastes that do not comply with MPRSA environmental criteria, because the analysis did not take into account technical requirements or environmental criteria.

The Agency expanded the cost/capacity analysis to eliminate those wastes that do not meet technical requirements or MPRSA environmental criteria. The results of that analysis indicated that none of the California list waste streams identified as likely to create potential demand for ocean disposal in the cost/capacity analysis would be acceptable for ocean dumping, based on existing ocean dumping regulations. Conversely, some of the PCB-containing wastes (4.4 million

gallons per year) identified by the cost/capacity analysis would be acceptable for ocean-based incineration, based on technical requirements and the proposed ocean incineration regulations. The other potential waste stream candidates (HOC-containing wastes, liquid metal-containing wastes, and the remaining PCB-containing wastes) would fail one or both of the technical requirements for ocean-based incineration (i.e, physical form and heating value).

VIII. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or
2. A major increase in costs or prices for consumers or individual industries; or
3. Significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has performed an analysis of the proposed regulation to assess the economic effect of associated compliance costs. Total costs of proposed restrictions on affected wastes are expected to amount to approximately $100 million. The proposal thus constitutes a major rule under Executive Order 12291, and EPA has prepared a formal regulatory impact analysis of today's proposal.

The remainder of Unit VIII describes the economic analysis performed by EPA in support of today's proposed rule affecting all California list wastes identified in section 3004(d)(2) of RCRA.

1. Cost and Economic Impact Methodology

EPA has assessed the costs and potential economic effects of this proposed rule and of major regulatory alternatives to it.

EPA is proposing to codify the levels specified by Congress in section 3004(d)(2) of RCRA. In addition to assessing the proposed regulation, the Agency has examined major regulatory alternatives to it. In this preamble, EPA presents results for the proposed rule only. Each of the alternatives is explored in detail in the regulatory impact analysis. The methodology for establishing total costs and economic impacts of the rule has three steps. First, EPA estimates the population of facilities and waste management practices which will be affected. Next, total social costs of the regulation are derived by adding costs for individual facilities. Finally, economic impacts on affected facilities are assessed.

a. *Affected population and practices.* The affected population is the total number of hazardous waste treatment, storage and disposal facilities (TSDFs) and generators land disposing of California list wastes either directly at the generation site or indirectly through the purchase of off-site commercial land disposal services. Four distinct types of plants comprise this population: non-commercial TSDFs, which generate and dispose of their own wastes; commercial TSDFs, which manage wastes generated elsewhere; generators that send large quantities of wastes off-site for management; and small quantity generators, who generate between 100 and 1000 kg of hazardous waste per month. Waste management practices for each of these groups are assessed to identify current costs of managing wastes and incremental cost increases attributable to today's rule.

The number of facilities that land dispose affected wastes was determined using the EPA's 1981 Regulatory Impact Analysis Mail Survey.[2] Waste quantities and management costs for facilities responding to the Mail Survey are scaled up to represent the national population by means of weighting factors developed for the survey. EPA estimates that 495 facilities comprise the total national population of commercial and non-commercial facilities land disposing of California list wastes on-site, excluding facilities disposing of PCB containing waste. This estimate is based on 1981 survey data adjusted for intervening regulatory requirements. Because the 1981 survey was a statistical sample and not a census, updating it with more current information available to the Agency from other sources is difficult. Based on these sources, however, EPA believes that this estimate may overstate the actual number of TSDFs now land disposing of California list waste.

EPA estimates that an additional 3,279 plants generate more than 1,000 kilograms per month of wastes that are sent off-site for management. The waste is disposed of by either non-commercial TSDFs (e.g. owned by the firm generating the waste but at a different location) or by a commercial TSDF.

Generators of less than 1,000 kilograms per month were not included in the 1981 survey because they were considered exempt at that time. However, the 1984 amendments to the Solid Waste Disposal Act direct EPA to lower the exemption for small quantity generators (SQGs) from 1,000 to 100 kilograms per month by March 31, 1986, so SQGs generating between 100 and 1000 kilograms of waste per month for off-site disposal are also included in the affected population. The Agency estimates that SQGs add 2,131 plants to the affected population. Plant and waste specific data on this group are derived from EPA's Small Quantity Generator Survey.[3]

Because of the design of the Mail Survey, generators of PCBs mixed with hazardous wastes regulated under RCRA were not represented in it. Data on this group have been developed more recently, and indicate approximately 63 generators of mixed PCB/RCRA hazardous wastes.[4]

EPA's characterization of management practices for these groups includes the cost of compliance with regulations which have taken effect since the 1981 survey was conducted. In particular, EPA adjusted waste management practices reported to reflect compliance with the provisions of 40 CFR Part 264 of RCRA. In making this adjustment, the Agency assumes facilities elect the least costly legal methods of compliance. This adjustment defines not only current management practices and costs associated with them, but also the number of waste streams in the affected population. For example, for 55 facilities, the costs of land disposing of certain wastes are driven so high by regulations predating this proposal that other management modes are less likely to resolve disposal of these wastes and, therefore, that these wastes are no longer part of the population of waste streams that may be affected by any restrictions on land disposal. No aggregate models have been developed for the population of

[2] EPA conducted the RIA Mail Survey of hazardous waste generators and TSDFs to determine waste management practices in 1981. Facilities that handled less than 1000 kilograms of waste per month were not regulated in 1981 and thus are not included in the data. For more information see the "National Survey of Hazardous Waste Generators and Treatment Storage and Disposal Facilities Regulated under RCRA in 1981."

[3] Office of Solid Waste, "National Small Quantity Hazardous Waste Generator Survey," February 1985.

[4] Office of Solid Waste, "Characterization of Mixed PCB/RCRA Hazardous Wastes," February 1985.

treatment, storage and disposal facilities and small quantity generators examined in this analysis. Instead, individual case observations in the data sources have been weighted to represent the national population of wastes and management practices. For generating plants disposing of large quantities of California list wastes off-site, "model" plants representing average, maximum and minimum waste quantities were developed to assess the range of potential economic effects. For generators of mixtures of PCBs and RCRA hazardous wastes, economic effects were assessed using "model" plants representing typical waste quantity and plant size characteristics.

b. *Development of costs.* Once waste quantity, type and method of treatment are known for the affected population, EPA developed estimates of costs of compliance for individual facilities. The analysis detailed in this section is based on cost estimates for surveyed facilities representing the affected population. Wastes amenable to similar types of treatment were grouped to identify economies of scale available through co-treatment and disposal.

EPA developed current waste management costs by adjusting 1981 waste management practices to reflect compliance with regulatory requirements predating restrictions on land disposal. Estimated costs for disposal in surface impoundments assume compliance with Part 264 of RCRA, which requires surface impoundments to have double liners and leachate collection systems between liners, subject to certain exemptions. This assumption could lead to an overestimate of current disposal costs and, thus, to an underestimate of incremental costs for surface impoundments exempted from these requirements. Existing requirements under RCRA are also considered in developing costs for disposal in landfills and waste piles.

Facilities face several possible options if they may no longer land dispose of their wastes. EPA applies the same rationale in predicting facility choice among these options as it does in establishing the affected population: facilities are assumed to elect the least costly method of complying with the requirements of this proposal. Costs of compliance are derived by predicting the minimum-cost method of compliance with land disposal restrictions for each facility and calculating the increment between that and current disposal costs. As in the analysis of current costs, economies of scale in waste management are considered.

Shipping costs for wastes sent off-site for management are also considered. In the development of current waste management costs, the transportation distance assumed for off-site waste treatment and/or disposal is 100 miles. Most plants now sending wastes off-site do so for disposal. Although the likely effect of restrictions will be to require pretreatment in addition to disposal, the Agency has not increased the assumed transportation distance. This assumes that plants now sending wastes off-site for disposal only can also purchase treatment services from the same commercial facilities. But even if the assumption of no increase in transportation distance does *not* accurately predict the effects of this rule, our examination of the sensitivity of results to this assumption found that varying the assumption in travel distances, even by as much as a factor of eight, has a minimal effect on results. This is because many plants that send wastes off-site send small amounts, and thus economies of scale (reflected in per unit prices of waste disposal at large commercial facilities) outweigh even major increases in shipping costs.

EPA developed facility-specific compliance costs in two components, which are weighted and then summed to estimate total national costs of the proposal. The first component of the total compliance cost is incurred annually for operation and maintenance (O&M) of alternative modes of waste treatment and disposal. The second component of the compliance cost is a capital cost, which is an initial outlay incurred for construction and depreciable assets. Capital costs are restated as annual values by adjusting them into equivalent yearly payments using a capital recovery factor based on a real cost of capital of 7 percent. These annualized capital costs are then added to yearly O&M costs to derive an annual equivalent cost. The result is EPA's estimate of the impact of the regulation on annual firm cashflow.

c. Economic impact analysis.

i. Non-commercial TSDFs and SQGs. Economic impacts on non-commercial TSDFs and SQGs are assessed in several steps. First, a general screening analysis compares facility-specific incremental costs to financial information about firms, disaggregated by Standard Industrial Classification (SIC) and number of employees per facility. This comparison generates two ratios, which are used to identify facilities likely to experience adverse economic effects. The first is a ratio of individual facility compliance costs to costs of production. A change exceeding five percent is considered to imply a substantial adverse economic effect on a facility. The second is a "coverage" ratio, relating cash from operations to costs of compliance. For this ratio, a value of less than 20 is considered to represent a significant adverse effect. The coverage ratio is the more stringent of the two ratios, but exceeding the critical level in either one suggests that a facility is likely to be significantly affected. Both of these ratios implicitly assume that facilities will be unable to pass on compliance costs to consumers of their products and services in the form of higher prices. This analysis considers only pre-tax costs, because census data are stated in before-tax terms.

Once facilities experiencing adverse economic effects are identified using the two screening ratios, more detailed financial analysis is performed to verify the results and to focus more closely on affected facilities. For this subset of facilities, the coverage ratio is adjusted to allow a portion of costs to be passed through. Economic effects on individual facilities are examined assuming that product price increases of one and five percent are possible. Those facilities for which the coverage ratio is still less than two are considered likely to close.

ii. Commercial TSDFs. Commercial TSDFs are defined here as those facilities which accept fees in exchange for management of wastes generated elsewhere. For this group of facilities, there exists no Census SIC from which to draw financial information. Two SICs which we might use as proxies, 4953 and 4959, do not distinguish between financial data for hazardous waste treatment firms and for firms managing municipal and solid wastes. Consequently, our analysis of economic effects on commercial facilities is qualitative. This analysis includes an examination of the quantity of waste each facility receives from the waste group restricted by today's proposal. EPA also examines the ability of each facility to provide the additional treatment required once these restrictions are promulgated, and thus to retain or expand that portion of its business generated by restricted wastes.

iii. Generators of large quantities of wastes. EPA's analysis of the economic effects of this proposal on generating plants disposing of large quantities of affected wastes off-site assumes that commercial facilities can entirely pass on to them the costs of compliance with this regulation in the form of higher prices for waste management services. Because of data limitations in the Mail Survey, EPA has not developed plant-

specific waste characterization, treatment methods, and compliance costs for generators, as it has for TSDFs. Our analysis of the economic effects of the proposed regulation on this group uses RIA Mail Survey data to develop model plants generating average, maximum and minimum waste quantities. This allows EPA to assess the range of possible effects on generating plants.

2. Costs and Economic Impacts

Total costs of regulating California list wastes qualify today's proposal as major under Executive Order 12291, since total annualized costs of restricting land disposal of these wastes are estimated at $97 million. These costs are not adjusted for the effect of taxation, which is merely a transfer from one sector of the economy to another. Costs are stated in 1985 dollars.

The proposed regulation and alternatives will affect entities in a variety of four-digit SICs, including chemicals and allied products, petroleum products, and metals industries. Among non-commercial TSDFs, three sectors account for approximately 61 percent of all land disposal restriction compliance costs likely to be incurred by sectors land disposing of California list wastes. SIC 28, chemicals and allied products, alone accounts for 40 percent. Two other sectors also contribute significant amounts, although much less: SIC 33, primary metals, accounts for 16 percent; and SIC 34, fabricated metal products, accounts for 5 percent. In the aggregate, non-commercial TSDFs account for 65 percent of the costs of this proposed rule. Commercial TSDFs, included predominantly in SIC 4953, account for the balance.

Economic effects have been assessed for both non-commercial and commercial facilities. Non-commercial facilities are those that generate and manage their own wastes, as distinct from facilities that accept fees in exchange for management and disposal of wastes generated by others. Of 457 (weighted) non-commercial facilities nationally, 84 may experience financial distress because of this rule, and 9 of these appear likely to close. Five of the 9 likely closures belong to the chemical industry (SIC 28), and the primary (SIC 33) and fabricated metals (SIC 34) Lndustries. Employment effects associated with these 9 closures amount to 188 jobs lost.

We estimate that 38 commercial facilities incur incremental costs as a result of the restriction on land disposal of California list wastes. Forty-two percent of these commercial facilities offer a range of hazardous waste management services, including land-based disposal, storage and treatment. The increased demand this rule will create for highly-priced treatment services may actually strengthen the financial position of these firms by allowing them to increase market share. For the 16 percent of commercial facilities that offer solely land-based management of restricted wastes, on the other hand, the increased emphasis on treatment prior to land disposal may prove economically disadvantageous. It was not possible to characterize the remaining 42 percent of commercial facilities based on services offered.

Turning to effects on generators, EPA found that based on average waste quantities, the 187 sectors generating California list waste include 3,279 plants. Of these, 133 plants may experience significant financial distress based on costs imposed by restrictions on land disposal. This represents nearly four percent of all the waste-generating plants that may face increased waste management prices. Most significantly affected plants belong to either the chemical or primary or fabricated metals products industries. Based on further analysis, 14 of the 133 distressed plants appear likely to close. Employment effects associated with these closures amount to 264 jobs.

Total annualized national costs for the 2,131 small quantity generators of California list wastes are $5.1 million. Based on engineering estimates of prices for off-site waste management services, costs for SQGs generating the maximum of 1,000 kilograms per month of nothing but hazardous wastes named in the California list would incur less than $13,200 annually in incremental compliance costs. Economic ratios for all plants in each 4-digit sector represented in the SQG survey were examined, and in 66 cases plants seemed likely to experience some financial distress, and two of these plants appear likely to close. Thus, restricting land disposal of California list wastes may have substantial adverse economic effect on approximately 3 percent of all generators of small quantities of wastes.

Economic effects on generators of mixed PCB/RCRA wastes are also not expected to be significant, although because of data limitations no plant-specific analysis could be undertaken. Further information on economic effects on all groups mentioned above is available in the regulatory impact analysis supporting this proposed rule.

3. Benefits and Cost-effectiveness of Restricting Land Disposal of California List Wastes

The regulatory impact analysis performed by the Agency evaluated three regulatory alternatives for restricting the land disposal of California list wastes. As with the discussion of cost and economic impacts, this preamble presents results associated with the proposed approach, to codify the statutory levels for the California list as set forth in section 3004(d).

The benefits of today's proposal were evaluated by considering the reduction in the number of cases of human health effects that result from treating California list wastes with alternative technologies rather than management by current land disposal practices. Predicting potential human health effects entails estimating quantitatively the consequences of human exposure to disease causing agents. Human health risk is the probability of injury, disease, or death over a defined time period. To estimate risks of baseline and alternative technologies, the analysis characterizes wastes, technologies, releases, environmental transport, and dose-responses, based largely on comparative risk assessment methodologies. The analysis includes an evaluation of individual risk due to chronic exposure, where the risk determination accounts for the dose, the chronic risk per unit dose, a factor that distinguishes between the dose-response for carcinogens and other types of substances. The analysis also weights the cases by the relative severity of the toxic effect. The individual risk is converted into a number of cases using estimates of the population exposed. For each combination of California list waste, technology, and environment, the model derives estimates of the total number of people affected by the waste management practice.

In assessing the benefits of the proposed approach, the analysis is limited to reductions in human health effects attributed to a reduction in exposure to the toxic constituents in these wastes. As a result, the benefits of the land disposal restrictions for California list wastes may be underestimated. Other benefit considerations such as improvements in environmental quality were not quantified. Furthermore, the assessment may underestimate benefits since the effects of the comparative risk analysis were not included. Therefore, negative benefits resulting from a technology

considered riskier than land disposal (which would be designated not available as an alternative to land disposal) were included in the analysis. Although this assessment does not estimate potential increases in risk from increased transportation and handling of California list wastes, an initial analysis indicates that increases are not likely to be significant.

Based on this benefits analysis, implementing the statutory levels and defining BDAT technologies for HOCs and PCBs are estimated to result in a net reduction in health risks equal to 2853 weighted cases (e.g., cancer, fetal toxicity, decreases in reproductive capacity, etc.) over seventy years, or a 33.9 percent reduction from baseline practices. As mentioned earlier, the total increase in annualized cost of restricting land disposal of California list wastes is estimated at $97 million. This yearly incremental cost represents a 250 percent increase in costs over current land disposal practices. Division of the total increase in annualized cost by the annualized reduction in health risks, 40.76 cases, determines that the cost of the proposed regulatory approach is $2.38 million per case avoided.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined the rule's potential effects on small businesses as required by the Regulatory Flexibility Act and has concluded that today's proposed rule will not have a significant economic effect on a substantial number of small entities. As a result of this finding, EPA has not prepared a formal Regulatory Flexibility Analysis document in support of this rule. The following discussion summarizes the findings on which the conclusions above are based. More detailed information is available in the record and in technical background documents prepared in support of this rulemaking.

EPA evaluated the economic effect of the proposed rule on small entities, defined here as firms employing fewer than 50 people. Because of data limitations, this small business analysis excludes generators of large quantities of California list wastes. The "small business" population examined therefore includes only two groups: all treatment, storage and disposal facilities employing fewer than 50 persons, and all small quantity generators that are also small businesses. 158 TSDFs are small businesses. Of these, 5 exceed threshold values on the cost of production ratio, a figure that represents 3 percent of this small business population.

Of the total of 2,131 small quantity generators examined in this analysis, the vast majority (1,914 or 97 percent of the total population of SQGs) are also small businesses. A total of 5 SQGs (or less than one percent of all small businesses) exceeded threshold values on the cost of production ratios. According to EPA's guidelines for conducting Regulatory Flexibility Analysis, if over 20% of the population of small business are likely to experience financial distress based on the costs of a rule, then the Agency is required to consider that the rule will have a significant effect on a substantial number of small entities and must perform a formal Regulatory Flexibility Analysis.[5] Economic impacts on small entities are not expected to exceed three percent of the total small business population, and thus EPA has not prepared a formal RFA.

C. Review of Supporting Documents and Request for Public Comments

1. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by the proposed regulation is EPA's National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities. Waste stream characterization data and engineering costs of waste management are based on the Mail Survey and on reports by the Mitre Corporation, "Composition of Hazardous Waste Streams Currently Incinerated," (April 1983), and U.S. EPA, "The RCRA Risk-Cost Analysis Model," (March 1984). The survey of small quantity generators has been the major source of data on this group. Data used to characterize generators of mixed PCB/RCRA hazardous wastes were taken from an EPA study, "Characterization of Mixed PCB/RCRA Hazardous Wastes," (February 1985).

For financial and value of shipment information for the general screening analysis, 1982 Census data were used, adjusted by 1983 Annual Survey of Manufactures data. Producer price indices were also used to restate 1983 dollars in 1985 terms.

2. Request for Public Comments

EPA recognizes that due to constraints of time and data availability, this analysis has significant limitations. Specifically, EPA requests comment on the following:

a. EPA would like to refine the assumption that costs imposed on commercial hazardous waste facilities can entirely be passed through in the form of higher prices. The Agency requests any estimates of typical profit margins in the commercial hazardous waste industry, data on waste management fees, and on the percent price increase in waste management fees that may force substitution on generators.

b. The Agency requests public comment and data on the feasibility of small business waste recycling, reclamation, or in-process reduction.

c. The Agency requests comment and data on the technical feasibility of, and costs associated with, waste segregation.

IX. References

Background Documents

(1) U.S. EPA. "Background Document for Land Disposal Restrictions of Hazardous Wastes Listed in section 3004(d) of the Resource Conservation and Recovery Act." U.S. EPA, OSW, Washington, DC, 1986

(2) U.S. EPA. "Comparative Risk Assessment of Selected California List Wastes for the RCRA Land Disposal Restrictions." U.S. EPA, OSW, Washington, DC, 1986

Regulatory Impact Analysis

(3) U.S. EPA. "Regulatory Analysis of Proposed Restrictions on Land Disposal of California List Wastes." U.S. EPA, OSW, Washington, DC, 1986

Other References

(4) American Public Health Association, American Water Works Association, Water Pollution Control Federation. *Standard Methods for the Examination of Water and Wastewater.* 16th edition, 1985

(5) American Society of Testing and Materials. *Annual Book of ASTM Standards.* Philadelphia, PA, 1984

(6) Cherry, K.F., 1982, *Plating Waste Treatment.* Ann Arbor Science

(7) Kelada, N.P., Lue-Hing, C., and Lordi, D.T., 1978, "Cyanide Species and Thiocyanate Methodology in Water and Wastewater," Chapter 20, In: *Chemistry of Wastewater Technology.* Ann Arbor Science

(8) Lowenheim, F.A., 1978, *Electroplating.* Sponsored by the American Electroplating Society, McGraw-Hill Book Company, New York, New York

[5] See U.S. EPA, "Guidelines for Compliance with the Regulatory Flexibility Act," February 1982.

(9) U.S. EPA. "Assessment of Impacts of Land Disposal Restrictions on Ocean Dumping and Ocean Incineration of Solvents, Dioxins, and California List Wastes." U.S. EPA, OSW, Washington, DC, 1986
(10) U.S. EPA. "Characterization of Mixed PCB/RCRA Hazardous Wastes." U.S. EPA, OSW, Washington, DC, 1985
(11) U.S. EPA. "National Small Quantity Hazardous Waste Generator Survey." U.S. EPA, OSW, Washington, DC, 1985
(12) U.S. EPA. "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981." U.S. EPA, OSW, Washington, DC, 1984
(13) Goldman, L.J. and Tatsch, C.E., "Compatibility of Corrosive Acids with Codisposed Wastes," 1985

List of Subjects in 40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

Adminstrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water pollution control, Water supply.

Dated: November 28, 1986.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that Chapter I of Title 40 be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, and 3019, 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 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939).

2. In § 260.11, paragraph (a) introductory text is revised to read as follows:

§ 260.11 References.

(a) When used in Parts 260 through 268 of this chapter, the following publications are incorporated by reference:

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for Part 268 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924).

2. The Table of Contents for Subpart C is amended by adding an entry for § 268.32 to read as follows:

Subpart C—Prohibitions on Land Disposal

* * * * *

268.32 Waste specific prohibitions—California list wastes.

Subpart A—General

3. Section 268.3 is revised to read as follows:

§ 268.3 Dilution prohibited as a substitute for treatment.

No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with Subpart D of this part, to circumvent the effective date of a prohibition in Subpart C of this part, or to otherwise avoid a prohibition in Subpart C of this part.

4. In § 268.4, paragraph (a)(2) is revised and paragraph (b) is added to read as follows:

§ 268.4 Treatment surface impoundment exemption.

(a) * * *

(2) The residues of the treatment are analyzed, as specified in § 268.7, to determine if they meet the applicable treatment standards in Subpart D of this part, or, where no treatment standards have been established for the waste, the applicable prohibition levels specified in Subpart C of this part. The sampling method, specified in the waste analysis plan under § 264.13 or § 265.13, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples. The treatment residues (including any liquid waste) that do not meet the treatment standards promulgated under Subpart D of this part, or the applicable prohibition levels promulgated under Subpart C of this part (where no treatment standards have been established), or which are not delisted under § 260.22 of this chapter, must be removed at least annually. These residues may not be placed in any other surface impoundment for subsequent management. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume to the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement. The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residue which does not meet the Subpart D treatment standards, or Subpart C prohibition levels where no treatment standards have been established, must be specified in the facility's waste analysis plan as required under § 264.13 or § 265.13 of this chapter.

* * * * *

(b) Evaporation of hazardous constituents is not considered treatment for purposes of an exemption under this section.

5. In § 268.5, paragraph (a)(2) is revised to read as follows:

§ 268.5 Procedures for case-by-case extensions to an effective date.

(a) * * *

(2) He has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in Subpart D or, where treatment standards have not been specified, such disposal capacity is protective of human health and the environment.

* * * * *

Subpart C—Prohibitions on Land Disposal

6. In Subpart C, § 268.32 is added to read as follows:

§ 268.32 Waste specific prohibitions—California list wastes.

(a) Effective July 8, 1987, the following liquid hazardous wastes are prohibited from land disposal (except in injection wells):

(1) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing cyanides at concentrations greater than or equal to 1,000 mg/l;

(2) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) Arsenic and/or compounds (as As) 500 mg/l;

(ii) Cadmium and/or compounds (as Cd) 100 mg/l;

(iii) Chromium (VI and/or compounds (as Cr VI)) 500 mg/l;

(iv) Lead and/or compounds (as Pb) 500 mg/l;

(v) Mercury and/or compounds (as Hg) 20 mg/l;

(vi) Nickel and/or compounds (as Ni) 134 mg/l;

(vii) Selenium and/or compounds (as Se) 100 mg/l; and

(viii) Thallium and/or compounds (as Tl) 130 mg/l;

(3) Liquid hazardous wastes having a pH less than or equal to two (2.0); and

(4) Liquid hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg but less than 1%.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes are treated to meet the standards of Subpart D of this part; or

(2) The wastes are disposed at a facility that has been granted a petition under § 268.6; or

(3) An extension has been granted under § 268.5; or

(4) The wastes are treated in surface impoundments pursuant to § 268.4.

(c) The requirements of paragraph (a) of this section do not apply until November 8, 1988 where the wastes are contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or a corrective action required under RCRA Subtitle C.

(d) Effective July 8, 1989, the following wastes are prohibited from land disposal (subject to any regulations promulgated with respect to disposal in injection wells):

(1) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm;

(2) Non-liquid hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg;

(3) Liquid hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1%.

(e) The requirements of paragraph (d) of this section do not apply if:

(1) The wastes are treated to meet the standards of Subpart D of this part; or

(2) The wastes are disposed at a facility that has been granted a petition under § 268.6; or

(3) An extension has been granted under § 268.5; or

(4) The wastes are treated in surface impoundments pursuant to § 268.4.

(f) To determine whether or not the waste is a liquid under paragraphs (a) or (d) of this section, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW–846 (incorporated by reference, see § 260.11(a)).

Subpart D—Treatment Standards

7. Section 268.42 is amended by adding paragraphs (a)(1) and (a)(2) and by revising paragraph (b) to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

(a) * * *

(1) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm but less than 500 ppm must be incinerated in accordance with the technical requirements of 40 CFR 761.70 or burned in high efficiency boilers in accordance with the technical requirements of 40 CFR 761.60. Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 500 ppm must be incinerated in accordance with the technical requirements of 40 CFR 761.70.

(2) Non-liquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg and liquid hazardous wastes containing HOCs in total concentration greater than or equal to 1% must be incinerated in accordance with the requirements of § 264.343 or § 265.343.

(b) The applicant must submit information demonstrating that his treatment method is in compliance with all federal, state, and local requirements and will not present an unreasonable risk to human health or the environment. The applicant must submit information demonstrating that his treatment method will not present an unreasonable risk to human health or the environment. On the basis of such information and any other available information, the Administrator may approve the use of the alternative treatment method if he finds that the alternative treatment method provides a level of performance equivalent to that achieved by methods specified in paragraph (a) of this section. Any approval must be stated in writing and may contain such provisions and conditions as the Administrator deems appropriate. The person to whom such certification is issued must comply with all limitations contained in such a determination.

8. 40 CFR 268.43 is added to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) Liquid hazardous wastes having a pH less than or equal to two (2.0) must be treated in order to raise the pH of the waste to a level above two (2.0).

(b) [Reserved]

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation of 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).

Subpart D—Changes to Permits

2. In § 270.42, paragraph (p) is added to read as follows:

§ 270.42 Minor modifications of permits.

* * * * *

(p) Allow changes at a permitted facility to treat or store in containers or tanks hazardous wastes subject to land disposal restrictions imposed by Part 268, provided that the permittee: requests a major permit modification pursuant to § 124.5 and § 270.41; demonstrates in the major permit modification request that the treatment or storage is necessary to comply with the land disposal restrictions of Part 268; and ensures that the added units comply with the applicable Part 264 standards pending final administrative disposition of the major permit modification request. The authorization to make changes conferred herein shall terminate upon final administrative disposition of the permittee's major modification request under § 270.41 or termination of the permit under § 270.43.

Subpart G—Interim Status

3. In § 270.72, paragraph (e) is revised to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(e) In no event shall changes be made to an HWM facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new HWM facility. Changes prohibited under this paragraph do not include changes to treat or store in containers or tanks hazardous wastes subject to land disposal restrictions imposed under Part 268, provided that such changes are made solely for the purpose of complying with Part 268.

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Federal Register

Thursday
December 11, 1986

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 784 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program Performance Standards; Underground Coal Mining Activities; Hydrologic-Balance Protection; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 784 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program Performance Standards; Underground Coal Mining Activities; Hydrologic-Balance Protection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is proposing to amend certain portions of its regulations applicable to restoration of recharge capacity for underground mines. This action is being taken in response to the Secretary of the Interior suspending this rule (50 FR 7274) pending the development of a more complete administrative record concerning the legal and policy considerations associated with this rule. This proposal will discuss two options which consist of (1) retaining paragraphs 30 CFR 784.14(g) and 817.41(b)(2) in their entirety as they were published on September 26, 1983, at 48 FR 43956, and (2) modifying paragraph 30 CFR 784.14(g) by removing the phrase "and restore approximate premining recharge capacity" and by removing paragraph 30 CFR 817.41(b)(2) from the Federal regulations.

DATES:

Written Comments

OSMRE will accept written comments on the proposed rule until 5 p.m. eastern time on February 19, 1987.

Public Hearings

Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC, Denver, Colorado, and Knoxville, Tennessee, at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. eastern time on January 22, 1987.

ADDRESSES:

Written Comments

Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street NW., Washington, DC, or mail to the Office of Surface Mining, Administrative Record, Room 5315, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearings

Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for Public Hearings

Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Raymond Aufmuth, Division of State Program Assistance, OSMRE, Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343-5843.

SUPPLEMENTARY INFORMATION:

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act) sets forth general regulatory requirements governing surface coal operations and the surface impacts of underground coal mining. OSMRE has by regulation implemented or clarified many of the requirements of the Act and set performance standards to be achieved by surface mining and underground mining activities. *See* 30 CFR Parts 816 and 817.

On June 25, 1982, OSMRE proposed revised regulations on hydrology at 47 FR 27712. This action was taken primarily to clarify the hydrology provisions of the Act and to provide improved direction to the regulatory authorities and applicants.

On September 26, 1983, at 48 FR 43956, OSMRE published final rules on hydrologic-balance protection taking into consideration comments received. 30 CFR 784.14 of this final rule applicable to the permitting requirements of underground mine operators requires:

> (g) Hydrologic reclamation plan. The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Part 817, including § 817.41 to § 817.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; and to meet applicable Federal and State water quality laws and regulations. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water-treatment facilities when needed; control drainage; *and restore approximate premining recharge capacity.* The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under paragraph (e) of this section and shall include preventive and remedial measures. (emphasis added)

30 CFR section 817.41(b)(2) of this final rule applicable to the performance standards for underground mine operators, provides:

> Ground-water quantity shall be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

The industry plaintiffs in *In Re: Permanent Surface Mining Regulation Litigation (II)* No. 79-1144 (D.D.C. 1984) *(In Re: Permanent (II))*, challenged this requirement to restore approximate premining recharge capacity arguing that it is inconsistent with the Act and that it violates the Court's May 1980 ruling that underground mine operators are not required to replace water supplies.

In response to industry's argument, the Secretary in his brief filed December 21, 1984, indicated that he would suspend 30 CFR 817.41(b)(2) pending a new rulemaking that would develop a more complete administrative record concerning the complex legal and policy issues associated with the requirements for underground miners to take certain actions on the surface to restore hydrologic recharge capacity.

On February 21, 1985, OSMRE published a notice suspending § 817.41(b)(2) in its entirety. (50 FR 7274)

Accordingly, OSMRE solicits comments on whether OSMRE should retain the permitting and performance requirements that underground mine operators handle earth materials and control runoff in such a manner so as to restore approximate premining ground-water recharge capacity. Specifically, OSMRE requests commenters to focus on the following issues:

1. The statutory authority in the Surface Mining Control and Reclamation Act to require these rules;

2. The technical justification for the application of these regulations.

1. Statutory Authority

The "Environmental Protection Performance Standards" at Section 515(b)(10) of the Act require an operator to:

> Minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation . . .

This statement is then supplemented with subheadings which deal with: (A) Avoiding acid or other toxic mine drainage; (B) preventing additional contributions of suspended solids to stream flow and constructing siltation structures; (C) reclamation of the siltation structures; (D) restoring recharge capacity to approximate premine conditions; (E) avoiding channel deepening; (F) preserving essential hydrologic functions of alluvial valley floors, and (G) other actions as the Regulatory Authority may prescribe.

The environmental protection performance standards "Surface effects of underground coal mining operations", at section 516(b)(9) of the Act, require the operator to:

> Minimize the disturbances of the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface [and] groundwater systems both during and after coal mining operations and during reclamation . . .

This requirement is further defined with two subheadings which deal with (A) avoiding acid or other toxic mine drainage; (B) preventing additional contributions of suspended solids to stream flow or runoff; and avoiding channel deepening. The specific reference to the restoration of recharge capacity found at section 515(b)(10) is not contained in the underground mining counterpart of section 516(b)(9).

OSMRE solicits comments on the statutory basis for deleting or retaining the requirement for underground coal mine operations to restore the approximate premining recharge capacity in the areas where overburden is removed and replaced. OSMRE asks commenters specifically to focus on whether such a requirement is supportable under any of the following: (1) section 516(b)(9) of the Act; (2) sections 516(b)(10) and 515(b)(10) of the Act; (3) section 516(b)(7) of the Act; or (4) section 510(b)(3) of the Act.

2. Technical Justification of Application of This Regulation

Section 516(a) of the Act requires the Secretary to consider the distinct differences between surface coal mining and underground coal mining in any rules adopted which apply to underground mining.

It may be that areas where underground mining operators remove the overburden and then replace it to return the area to approximate original contour, following completion of mining, are relatively small when compared to the size of the recharge area of an aquifer. The duration of underground mining and surface mining may be so different that final surface configuration of areas where overburden has been removed and subsequently replaced at underground mines may not be conducive to restoring premining recharge capacity. Therefore, OSMRE is soliciting comment with respect to the technical justification of either retaining or removing this paragraph from the regulations.

II. Public Commenting Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings will be announced in the **Federal Register** at least 7 days prior to any hearings which are held.

Any person interested in participating at a hearing at a particular location should inform Raymond Aufmuth (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on January 22, 1987. If no one has contacted Mr. Aufmuth to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

III. Discussion of Proposed Rule

OSMRE is proposing two options with respect to 30 CFR 817.41(b (2), Restoration of Recharge Capacity:

Option 1 consists of retaining paragraphs 30 CFR 784.14(g) and 817.41(b)(2) in their entirety as published on September 26, 1983 (48 FR 43956). This would require underground mine operators to protect ground-water quality through the handling of earth materials and runoff in such a way that following reclamation, the ground-water recharge capacity of the land would approximate the premining recharge capacity. This requirement would not apply to coal mine waste disposal areas and fills.

Option 2 consists of modifying the permitting requirement found in 30 CFR 784.14(g) "hydrologic protection plan" to remove the phrase measures to be taken to . . . "restore approximate premining recharge capacity;" and of removing paragraph 30 CFR 817.41(b)(2) from the Federal regulations in its entirety, thereby not requiring underground mine operators to handle earth materials and runoff in a manner which will restore approximate premining ground-water recharge capacity.

After consideration of the comments received, both in writing and at any scheduled public hearing, OSMRE will promulgate a final rule.

IV. Procedural Matters

Federal Paperwork Reduction Act

There are no information collection requirements in this proposed rule which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

The removal of § 817.41, paragraph (b)(2) will result in no change in the information gathering required of the operator. However, the possibility of the modification of the "hydrologic protection plan", could result in a decrease in the information gathering required of the operator due to the fact that they would not have to include in their plan, maps and description on how they will. . . . "restore approximate premining recharge capacity." When the

final rule is drafted, the information collection requirements will be evaluated again and any changes, if needed, will be made.

Executive Order 12291

The Department of the Interior (DOI) has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis. This rule would impose only minor costs to the coal industry since the impacts of implementing this rule would not be expected to be burdensome to individual operators. Likewise, the impact upon the consumers of coal would be negligible.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. that the proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would impact a relatively small number of coal operators the majority of which would not be small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment and has determined that the preparation of any additional environmental documents under section 102(2) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c), is not required.

List of Subjects

30 CFR Part 784

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 817

Coal mining, Environmental protection, Underground mining.

Accordingly, 30 CFR Parts 784 and 817 are proposed to be amended as follows:

Dated: October 6, 1986.

J. Steven Griles,

Assistant Secretary for Lands and Minerals Management.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. The authority citation for Part 784 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat 938 (30 U.S.C. 1257), unless otherwise noted.

Option 1

2. Section 784.14(g) is retained in its entirety.

Option 2

3. Paragraph (g) of § 784.14 is revised to read as follows:

§ 784.14 Hydrologic information.

* * * * *

(g) *Hydrologic reclamation plan.* The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Part 817, including §§ 817.41 to 817.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; and to meet applicable Federal and State water quality laws and regulations. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; and control drainage. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under paragraph (e) of this section and shall include preventive and remedial measures.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

4. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), unless otherwise noted.

Option 1

5. In § 817.41, lift the suspension in paragraph (b)(2).

Option 2

6. In § 817.41, paragraph (b)(2) is removed.

[FR Doc. 86–27690 Filed 12–10–86; 8:45 am]

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Federal Register

Thursday
December 11, 1986

Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 318
Sharwil Avocados From Hawaii

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-332]

7 CFR Part 318

Sharwil Avocados From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of old proposed rule and establishment of new proposed rule.

SUMMARY: A document published in the Federal Register on November 19, 1985, proposed to amend the "Hawaiian Fruits and Vegetables" regulations to allow Sharwil avocados to be moved pursuant to a certificate from Hawaii to any place in the United States based on compliance with certain harvesting and handling provisions. This proposal on November 19 is hereby withdrawn. In lieu of the proposal of November 19, this document propsoes to amend the "Hawaiian Fruits and Vegetables" regulations to allow Sharwil avocados to be moved pursuant to a limited permit from Hawaii to Alaska based on compliance with certain harvesting and handling provisions and based on compliance with provisions designed to ensure that the avocados are distributed in the United States only in Alaska. It is necessary to regulate the interstate movement of avocados from Hawaii because of the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly. The provisions of the proposal of November 19 do not appear to be adequate to ensure that the Sharwil avocados moved from Hawaii would not present a significant risk of causing the spread of such fruit flies. However, it appears that Sharwil avocados moved to Alaska from Hawaii in accordance with the new proposed provisions would not present a significant risk of causing the spread of such fruit flies.

DATE: Written comments must be received on or before January 12, 1987.

ADDRESSES: Written comments should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-332. Written comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Larry H. Tengan, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6506 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The "Hawaiian Fruits and Vegetables" regulations (contained in 7 CFR 318.13 *et seq.* and referred to below as the regulations), among other things, regulate the interstate movement from Hawaii of avocados) in a raw or unprocessed state (referred to below as avocados). It is necessary to regulate the interstate movement from Hawaii of avocados because of infestations in Hawaii of the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)); the melon fly (*Dacus cucurbitae* (Coq.)); and the oriental fruit fly (*Dacus dorsalis* (Hendel)). These fruit flies are commonly referred to as "Trifly."

Regulated articles accompanied by a certificate are eligible to be moved interstate to any destination in the United States. Limited permits are issued for regulated articles when the Department has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, e.g., movement to limited areas or movement for limited purposes. Under the regulations, avocados currently are allowed to be moved interstate from Hawaii (except for certain movements to Guam) to any destination pursuant to a certificate only if, among other things, they have been treated in accordance with a treatment specified in either § 318.13-4e or § 318.13-4f of the regulations. This document proposes to amend the regulations to set forth provisions for allowing avocados identified as Sharwil avocados to be moved pursuant to a limited permit from Hawaii to Alaska without treatment.

Based on experience, it has been determined that the treatments specified in § 318.13-4e and § 318.13-4f are not commercially feasible. The regulations in § 318.13-4e provide for treatment of avocados by fumigation with methyl bromide at normal atmospheric pressure at the rate of 2 pounds per 1,000 cubic feet for 4 hours at 70 °F. or above under certain conditions. This treatment causes pitting, causes internal and external discoloration, and reduces the shelf life of the avocado by 2 to 4 days, all of which adversely affects the marketability of avocados. The regulations in § 318.13-4f provide for treatment of mature green avocados under conditions which include fumigation with methyl bromide at normal atmospheric pressure at the rate of 2 pounds per 1,000 cubic feet for 2½ hours at 70 °F. or above and include refrigeration for 7 days at fruit pulp temperature of 45 °F. or below. This treatment cannot be feasibly used, because after avocados are refrigerated for 7 days, there would be a sufficient shelf life remaining for marketing them. For these reasons avocados from Hawaii are not being treated and shipped interstate from Hawaii.[1]

Based on research conducted by the Department,[2] it has been determined that Sharwil avocados that have an attached stem and that were picked directly from trees (they had not fallen to the ground) are not a host of Trifly for at least 24 hours after having been picked. A producer of Sharwil avocados requested that the regulations be amended to allow the movement from Hawaii to any destination in the United States of Sharwil avocados without treatment under conditions consistent with such research. In response, a document published in the Federal Register on November 19, 1985, (50 FR 47551-47555) proposed to amend the regulations to allow Sharwil avocados to be moved pursuant to a certificate from Hawaii to any destination in the United States based on compliance with certain harvesting and handling provisions. As is more fully explained below under the heading "Withdrawal of Proposal of November 19, 1985", the proposal of November 19, 1985, is hereby withdrawn due to concerns raised about the lack of stringent enough monitoring requirements to ensure that the avocados were packed within 24 hours after being picked.

The producer of Sharwil avocados further requested that if the proposal of November 19 was not adopted, a rule be established to allow Sharwil avocados to move from Hawaii to Alaska under conditions consistent with the research referred to above. It does not appear that the Trifly risk raised about the November 19, 1985, proposal's lack of stringent monitoring requirements is as significant to a proposal to allow Sharwil avocados to move, under certain conditions, from Hawaii to

[1] Background information and research supporting these conclusions are available from the Technology Analysis and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[2] Documents concerning the research can be obtained from the staff referred to in footnote 1.

Alaska. Trifly could not become established in Alaska because of climatic conditions and because Trifly-host articles are not grown in Alaska. Also, Alaska is located a considerable distance from the rest of the continental United States and from places where Trifly-host articles are grown. Further, it appears that the establishment of harvesting and handling procedures in Hawaii coupled with the establishment of provisions designed to ensure that the avocados would be distributed in the United States only in Alaska would be adequate to allow Sharwil avocados to be moved from Hawaii to Alaska without presenting a significant risk of the avocados causing an infestation of Trifly in the United States.

Accordingly, it appears that at this time the regulations should be amended to allow Sharwil avocados to be moved from Hawaii to Alaska under conditions consistent with the research referred to above and under conditions designed to ensure that the avocados are distributed in the United States only in Alaska.

New Proposal

This document proposes to add provisions to allow Sharwil avocados to be moved from Hawaii to Alaska pursuant to a limited permit in a container clearly marked "To be distributed in the United States only in Alaska". This document also proposes to add provisions prohibiting the interstate movement from Alaska of such Sharwil avocados that had moved from Hawaii to Alaska. Further, this document proposes to add a new § 318.13–4g to authorize the issuance of limited permits for the movement of Sharwil avocados from Hawaii to Alaska as follows:

Section 318.13–4g Administrative instructions specifying conditions for limited permits for Sharwil avocados for movement to Alaska based on certain harvesting and handling provisions

Sharwil avocados will be eligible for a limited permit for movement from Hawaii to Alaska if the following conditions are met:

(a) The avocados have an attached stem which is at least 0.5 centimeter in length.

(b) The avocados were picked directly from trees (they had not fallen to the ground) determined by an inspector to be of the Sharwil variety (the location of the trees must be identified in a compliance agreement with the person having control of the picking operations), and were picked at a premises that the inspector determines does not produce any other avocados that are not readily distinguishable from Sharwil avocados.

(c) The avocados immediately after being picked were placed in containers containing only Sharwil avocados having an attached stem at least 0.5 centimeter in length, and had remained in such containers until taken into the packing facility referred to in paragraph (d) of this section.

(d) Within 12 hours after being picked, the avocados were moved into a packing facility in which operations are conducted in accordance with the following provisions at all times Sharwil avocados not meeting the conditions of paragraph (e) of this section are in the facility:

(1) The facility is maintained free of all Trifly host material (other than Sharwil avocados meeting the conditions of paragraph (e) of this section) and there is no Trifly host material within 100 feet of the facility (a list of such host material shall be attached to a compliance agreement with the person having control of the packing operations, and is available from local offices of Plant Protection and Quarantine in Hawaii which are listed in telephone directories and from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, Maryland 20782);

(2) The facility is maintained free of Trifly;

(3) All doors and other openings to the facility are maintained under conditions determined by an inspector as adequate to prevent the entry of Trifly (this could be accomplished by such things as having each entry way equipped with self-closing double doors, and by covering the doors and other openings with screening 16 mesh or finer);

(4) Upon being moved into the facility all of the avocados are inspected by employees of the facility and all of the avocados found not to meet the conditions of paragraph (a) of this section are culled; and

(5) All culls from the avocados are removed at least daily from the premises where the facility is located.

(e) The following occurred at the packing facility referred to in paragraph (c) of this section within 24 hours after the avocados were picked: The avocados were packed in cartons determined by the Deputy Administrator to be impervious to Trifly; and the cartons were secured with tape to safeguard against opening and were clearly marked "To be distributed in the United States only in Alaska".

(f) All activities related to the harvesting and handling of the avocados (the picking of the avocados from identified trees, holding them prior to transportation to a packing facility, transporting them from the place where picked to the packing facility, and handling them in the packing facility) were conducted under the control of a person or persons operating in accordance with a valid compliance agreement between Plant Protection and Quarantine and such person or persons whereby it is agreed that all of such activities relating to the harvesting and handling of avocados for movement from Hawaii to Alaska under this section (1) will be subject to monitoring by inspectors, (2) will be conducted only during times previously approved in writing by the Plant Protection and Quarantine Officer-in-Charge (approval will be based on a determination concerning whether inspectors are available to conduct the necessary monitoring of such activities), and (3) will be conducted in compliance with the provisions of this section.

(g) There is in effect a valid compliance agreement between Plant Protection and Quarantine and the person requesting the issuance of the certificate whereby it is agreed that from the time the limited permit is issued until the avocados are moved from Hawaii all activities concerning the avocados shall be subject to monitoring by inspectors, and that the avocados will be moved from Hawaii only if they continuously remain in the marked cartons referred to in paragraph (e) of this section, and only if the cartons remain intact and secured with tape.

(h) For purposes of this section, Trifly means the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly.

As noted above, it has been determined that Sharwil avocados that have an attached stem and that were picked directly from trees (they had not fallen to the ground) are not a host of Trifly for at least 24 hours after being picked. The provisions of proposed § 318.13–4g are designed to ensure that Sharwil avocados are eligible for a limited permit only if they are packed in cartons impervious of Trifly within 24 hours after being picked and only if they are to remain protected from Trifly until they are moved from Hawaii. The marking provisions and the provisions prohibiting the interstate movement of the avocados from Alaska are designed to ensure that the avocados are distributed in the United States only in Alaska. Further, it appears that the proposed provisions would provide commercially feasible procedures for allowing the movement of Sharwil avocados from Hawaii to Alaska.

The research referred to above also concluded the Sharwil avocados are not a host of Trifly for at least 24 hours if they are picked with a stem attached, regardless of the size of the stem. The proposal to require that the stem be at least 0.5 centimeter in length appears to be necessary to help ensure that the stem would be long enough so that an avocado could be easily identified as having the stem.

As noted above, proposed paragraph (b) would require that the avocados be picked directly from trees and consequently require that they had not fallen to the ground. This is essentially for informational purposes. Except for avocados that are separated from trees as a result of accidents or extremely high winds, avocados having stems would necessarily have been picked from trees because avocados that fall from trees become detached from their stems at the time they fall. Very few Sharwil avocados are separated from trees as a result of accidents or winds. However, inspectors would monitor the picking operations as necessary to ensure that the Sharwil avocados prepared for movement to Alaska had been picked from trees.

All avocados produced in orchards in Hawaii that are not Sharwil avocados are readily distinguishable from Sharwil avocados because of distinct differences in the physical characteristics of the Sharwil avocados. Even so, the provisions of proposed paragraphs (b) and (c) concerning the identification of the Sharwil avocado trees, the determination that the premises does not produce other avocados that are not readily distinguishable from Sharwil avocados, and the holding of the Sharwil avocados in containers that only contain Sharwil avocados, are included to help ensure that only Sharwil avocados would be taken to a packing facility for packing under the proposed provisions.

The provisions of proposed paragraph (a) which specify that the containers are to only contain avocados having an attached stem at least 0.5 centimeter in length would add precautionary measures to help ensure that only avocados that are not a host of Trifly would be taken to the packing facility. The avocados are picked by cutting the stem of the fruit from a branch, and the pickers should be readily able to ensure that the avocados placed in such containers have stem at least 0.5 centimeter in length.

Also, it appears to be reasonable to require in accordance with proposed paragraph (d) that the avocados be taken to the packing facility within 12 hours after being picked. This is consistent with normal business practices and would help ensure that sufficient time would be allocated for completing the packing operations within 24 hours after the avocados are picked.

The provisions of proposed paragraph (d) concerning the packing facility and operations at the packing facility are intended to help ensure that Trifly are not present in the packing facility during packing operations. Also, the proposed requirement that there be no Trifly host material within 100 feet of the facility during packing operations, is included to help protect against the presence of Trifly near the facility by ensuring that there would be no established populations of Trifly near the facility. Although Sharwil avocados meeting the conditions of proposed paragraphs (a) and (b) are not a host of Trifly for at least 24 hours after being picked, it appears prudent as an added precautionary measure to protect against the presence of Trifly in the facility during the times uncertified Shawil avocados are in the facility.

Also, as noted above, proposed paragraph (d) contains provisions for providing notice of which articles are included as Trifly host material. Trifly host material includes many articles, including grapefruits, guavas, sweet and sour oranges, coffee berries, Surinam cherries, papayas, mangoes, lemons, and limes. A complete listing would contain a long list of articles. Accordingly, in order to provide notice of the complete listing, the complete listing would be attached to a compliance agreement with the person having control of the packing operations. The proposed regulations also explain that the complete listing is available from local offices of Plant Protection and Quarantine in Hawaii which are listed in telephone directories and from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, Maryland 20782.

The provisions of proposed paragraph (e) are necessary to prevent the avocados from becoming exposed to Trifly after 24 hours from the time of picking.

The compliance agreement provisions in proposed paragraphs (f) and (g) appear to be necessary to ensure that persons conducting operations referred to in the proposed regulations are knowledgeable with respect to such provisions and have agreed to comply with them; to ensure that the avocados do not become exposed to Trifly after the issuance of certificates; to ensure that Plant Protection and Quarantine inspectors are available and allowed to take actions as necessary to ensure that the proposed provisions would be met; and to ensure that the avocados are distributed in the United States only in Alaska.

This document also proposes to revise the provisions of § 318.13–17 concerning the cancellation of certificates, limited permits, and compliance agreements. Current § 318.13–17 states that:

> Any certificate, limited permit, or compliance agreement that has been issued in accordance with this subpart may be withdrawn or canceled by the Deputy Administrator, after notice and reasonable opportunity to present views has been accorded to the party to whom such document has been issued, if the Deputy Administrator determines that such party has failed to comply with any condition for the use of any such document imposed by this subpart.

It is proposed to revise § 318.13–17 to read as follows:

§ 318.13–17 Withdrawal of certificates, limited permits, or compliance agreements.

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

It appears that the proposed provisions would set forth due process procedures that would strengthen the Department's ability to protect against the interstate spread of Trifly and other plant pests.

Also, it is proposed to amend the definition of the terms "more" and "compliance agreement" so that these terms would be consistent with the proposed provisions set forth above.

Comments Concerning a Proposal Which was Withdrawn on June 24, 1980

In addition, it is noted that in a document published in the **Federal Register** on August 17, 1979 (44 FR 48230–48234), the Department, among other things, proposed to amend the regulations to allow certain thick-skinned varieties of avocados (that were picked mature green), including Sharwil avocados, to move from Hawaii to any place in the United States subject to certain handling procedures in accordance with the stipulations of a compliance agreement and certification. Also, in a document published in the **Federal Register** on June 24, 1980 (45 FR 42237–42242), the Department withdrew the proposed provisions relating to avocados.

The proposed provisions concerning avocados in the document of August 17, 1979, were based on the assumption that the skin of certain thick-skinned varieties of avocados is not susceptible to infestation by Trifly if mature green because the thick skin, if intact, is impenetrable by the fruit flies (see 45 FR 42238). The following was provided as a basis for withdrawing the proposed provisions relating to avocados:

> Based on Departmental expertise, it appears that there is an unacceptable risk that fruit flies would penetrate into an avocado even prior to harvest if the avocado ripened beyond mature green or were other than thick-skinned. Considerable attention has been given concerning the establishment of a precise definition for the term mature green; however, the Department is not aware of a feasible definition at this time that would relate to risk of infestation of fruit flies. Also, for the rasons stated in the comments, the Department agrees that it would be difficult in many cases to make determinations concerning whether avocados were thick-skinned, and that mistakes could be made concerning avocados destined for movement from Hawaii to other parts of the United States. Accordingly, these comments appear to present good reasons for not adopting the proposed provisions relating to avocados.

It appears that these difficulties concerning determinations as to whether avocados are mature green or have thick skins are not revelant with respect to Sharwil avocados. The research referred to above established that Sharwil avocados that have an attached stem are not a host of Trifly for at least 24 hours after having been picked regardless of considerations concerning whether the avocados are mature green or thick-skinned. However, for informational purposes, it should be noted that the Sharwil avocados that have a stem attached would be no riper than mature green. Harvesting these avocados with stem attached assures that only Sharwil avocados at the mature green stage of ripeness are harvested.

Also, for informational purposes, it should be noted that the research referred to above established that Sharwil avocados that have an attached stem are not a host of Trifly for at least 24 hours after having been picked regardless of whether they have abrasions, cuts, or other wounds. Even so, it appears that if this new Sharwil avocado proposal is adopted as a final rule, avocados with such defects would not be shipped from Hawaii to Alaska. In order to ensure the marketability of the avocados shipped from Hawaii, it appears that almost all of the avocados with such defects would be culled out as a matter of routine practice.

The withdrawal document of June 24, 1980, also indicated that if a system were to be implemented to allow the interstate movement of untreated avocados from Hawaii, further consideration should be given concerning procedures to ensure that the avocados would be handled in accordance with the prescribed handling procedures in the field, i.e., ensuring that the avocados would be picked "mature green" and that Trifly would not infest the containers of avocados in the field prior to being taken to the packing facility. It does not appear that these concerns are relevant to this new Sharwil avocado proposal. As discussed above, the Sharwil avocados with an attached stem would necessarily have been picked at a stage no riper than mature green. Also, it does not appear to be necessary to include provisions to protect the Sharwil avocados against Trifly before they are taken to the packing facility since they would not be a host of Trifly during such time.

In addition, the withdrawal document of June 24, 1980, indicated that if a system were to be implemented to allow the interstate movement of untreated avocados from Hawaii, further consideration should be given concerning the entry of Trifly into the packing facility. This issue is less significant with respect to this new Sharwil avocado proposal, since Sharwil avocados with the stem attached are not a host of Trifly for at least 24 hours after being picked. However, as noted above, provisions to help ensure that Trifly are not present in the packing facility during packing operations are included in this Sharwil proposal. This is based on the determination that it appears prudent as an added precautionary measure to prevent the presence of Trifly in the facility during the times Sharwil avocados are in the facility.

Withdrawal of Proposal of November 19, 1985

A document published in the **Federal Register** on November 19, 1985, proposed to amend the regulations to allow Sharwil avocados to be moved pursuant to a certificate from Hawaii interstate to any place in the United States based on compliance with certain harvesting and handling provisions. As stated above, the proposal of November 19 is withdrawn.

The document of November 19 invited the submission of written comments on or before December 9, 1985. Also, a document published in the **Federal Register** on December 26, 1985, reopened the comment period until February 4, 1986. Further, in accordance with notice given by the document of December 26 public hearings were held on January 10, 1986, in Kailua-Kona, Hawaii; and on January 14, 1986, in Los Angeles, California.

Twenty-seven persons made statements at the public hearings. Also, ninety-three additional written comments were submitted in response to the proposal. Most of the comments either opposed the proposal or expressed reservations concerning the proposal.

Some of the commenters asserted that the proposal of November 19, 1985, did not contain stringent enough monitoring requirements to ensure that the avocados were packed within 24 hours after being picked. This issue needs to be given additional review before a proposal could be further considered for the movement of Sharwil avocados to all places in the United States based on harvesting and handling provisions. APHIS has decided to propose to allow Sharwil avocados to be moved only to Alaska at the present time. If this proposal is adopted and the Department finds after a year's experience that the commenters' concerns are unfounded, it intends to propose rulemaking allowing the movement of Sharwil avocados to the entire United States, subject to appropriate harvesting and handling provisions.

The harvesting and handling provisions set forth in the proposal of November 19, 1985, are essentially the same as those set forth in this document concerning the movement of Sharwil avocados from Hawaii to Alaska. However, as explained above, it appears that the harvesting and handling provisions are appropriate for allowing the movement of Sharwil avocados from Hawaii to Alaska when coupled with the location of Alaska and the special restrictions designed to

ensure that the avocados are distributed in the United States only in Alaska.

Executive Order 12291 and Regulatory Flexibility Act

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

During each growing season for more than the past decade, Sharwil avocados were allowed administratively to move from Hawaii to Alaska for general distribution in Alaska. During that time fewer than 100,000 Sharwil avocados moved annually from Hawaii to Alaska. Accordingly, the adoption of the proposed rule as a final rule would merely continue to allow Sharwil avocados to move from Hawaii to Alaska. There is no reason to believe that the number of Sharwil avocados moved from Hawaii to Alaska would be significantly different if the proposed rule is adopted as a final rule. Further, it appears that the amount of avocados that would be moved interstate from Hawaii would constitute less than one percent of the total United States avocado production.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

List of Subjects in 7 CFR Part 318

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Hawaii, Avocados.

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

Accordingly, it is proposed to amend 7 CFR Part 318 as follows:

1. The authority citation for 7 CFR Part 318 would be revised to read as set forth below and the authority citations following all the sections in Part 318 are removed:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 318.13–1, paragraphs (i) and (l) would be revised to read as follows:

§ 318.13–1 Definitions.

* * * * *

(i) *Moved (move and movement).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved, directly or indirectly, from Hawaii into or through the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States (or from or into or through other places as specified in this part). Local, intrastate movement is in no way affected by the regulations in this subpart. ("Move" and "movement" shall be construed accordingly.)

* * * * *

(l) *Compliance agreement.* Any agreement to comply with stipulated conditions as prescribed under § 318.13–3(b), § 318.13–4(b), or § 318.13–4(g), executed by any person to facilitate the interstate movement of regulated articles under this subpart.

* * * * *

3. In § 318.13–2, the text of paragraph (a) would be redesignated as paragraph (a) (1) and a new paragraph (a) (2) would be added to read as follows:

§ 318.13–2 Regulated articles.

(a) *Prohibited movement* (1) * * *

(2) Avocados which have been moved to Alaska pursuant to § 318.13–4 are prohibited movement from Alaska into or through other places in the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

* * * * *

4. In § 318.13–3, the text of paragraph (b) is redesignated as paragraph (b) (1) and a new paragraph (b) (2) is added to read as follows:

§ 318.13–3 Conditions of movement.

* * * * *

(b) *To restricted destinations.* (1) * * *

(2) *Sharwil avocados for movement to Alaska.* Sharwil avocados may be moved interstate from Hawaii to Alaska if in a container clearly marked "To be distributed in the United States only in Alaska", and if accompanied by a limited permit issued in accordance with § 318.13–4(c).

* * * * *

5. In § 318.13–4, paragraph (c) would be amended by adding a new sentence to the end of the paragraph to read as follows:

§ 318.13–4 Conditions governing the issuance of certificates or limited permits.

* * * * *

(c) * * * Limited permits may be issued by an inspector for the movement of noncertified Sharwil avocados for movement for Hawaii to Alaska if the provisions of § 318.13–4g are met.

* * * * *

6. A new § 318.13–4g would be added to read as follows:

§ 318.13–4g Administrative instructions specifying conditions for limited permits for Sharwil avocados for movement to Alaska based on certain harvesting and handling provisions.

Sharwil avocados will be eligible for a limited permit for movement from Hawaii to Alaska if the following conditions are met:

(a) The avocados have an attached stem which is at least 0.5 centimeter in length.

(b) The avocados were picked directly from trees (they had not fallen to the ground) determined by an inspector to be of the Sharwil variety (the location of the trees must be identified in a compliance agreement with the person having control of the picking operations), and were picked at a premises that the inspector determines does not produce any other avocados that are not readily distinguishable from Sharwil avocados.

(c) The avocados immediately after being picked were placed in containers containing only Sharwil avocados having an attached stem at least 0.5 centimeter in length, and had remained in such containers until taken into the packing facility referred to in paragraph (d) of this section.

(d) Within 12 hours after being picked, the avocados were moved into a packing facility in which operations are conducted in accordance with the following provisions at all times Sharwil avocados not meeting the conditions of paragraph (e) of this section are in the facility:

(1) The facility is maintained free of all Trifly host material (other than Sharwil avocados meeting the conditions of paragraph (e) of this

section) and there is no Trifly host material within 100 feet of the facility (a list of such host material shall be attached to a compliance agreement with the person having control of the packing operations, and is available from local offices of Plant Protection and Quarantine in Hawaii which are listed in telephone directories and from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, Maryland 20782);

(2) The facility is maintained free of Trifly;

(3) All doors and other openings to the facility are maintained under conditions determined by an inspector as adequate to prevent the entry of Trifly (this could be accomplished by such things as having each entry way equipped with self-closing double doors, and by covering the doors and other openings with screening 16 mesh or finer);

(4) Upon being moved into the facility all of the avocados are inspected by employees of the facility and all of the avocados found not to meet the conditions of paragraph (a) of this section are culled; and

(5) All culls from the avocados are removed at least daily from the premises where the facility is located.

(e) The following occurred at the packing facility referred to in paragraph (c) of this section within 24 hours after the avocados were picked: the avocados were packed in cartons determined by the Deputy Administrator to be impervious to Trifly; and the cartons were secured with tape to safeguard against opening and were clearly marked "To be distributed in the United States only in Alaska".

(f) All activities related to the harvesting and handling of the avocados (the picking of the avocados from identified trees, holding them prior to transportation to a packing facility, transporting them from the place where picked to the packing facility, and handling them in the packing facility) were conducted under the control of a person or persons operating in accordance with a valid compliance agreement between Plant Protection and Quarantine and such person or persons whereby it is agreed that all of such activities relating to the harvesting and handling of avocados for movement from Hawaii to Alaska under this section (1) will be subject to monitoring by inspectors, (2) will be conducted only during times previously approved in writing by the Plant Protection and Quarantine Officer-in-Charge (approval will be based on a determination concerning whether inspectors are available to conduct the necessary monitoring of such activities), and (3) will be conducted in compliance with the provisions of this section.

(g) There is in effect a valid compliance agreement between Plant Protection and Quarantine and the person requesting the issuance of the limited permit whereby it is agreed that from the time the limited permit is issued until the avocados are moved interstate from Hawaii all activities concerning the avocados shall be subject to monitoring by inspectors, and that the avocados will be moved interstate from Hawaii only if they continuously remained in the marked cartons referred to in paragraph (d) of this section, and only if the cartons remain intact and secured with tape.

(h) For purposes of this section, Trifly means the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly.

7. Section 318.13–17 would be revised to read as follows:

§ 318.13–17 Withdrawal of certificates, limited permits, or compliance agreements.

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

Done at Washington, DC, this 8th day of December 1986.

W.F. Helms,

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

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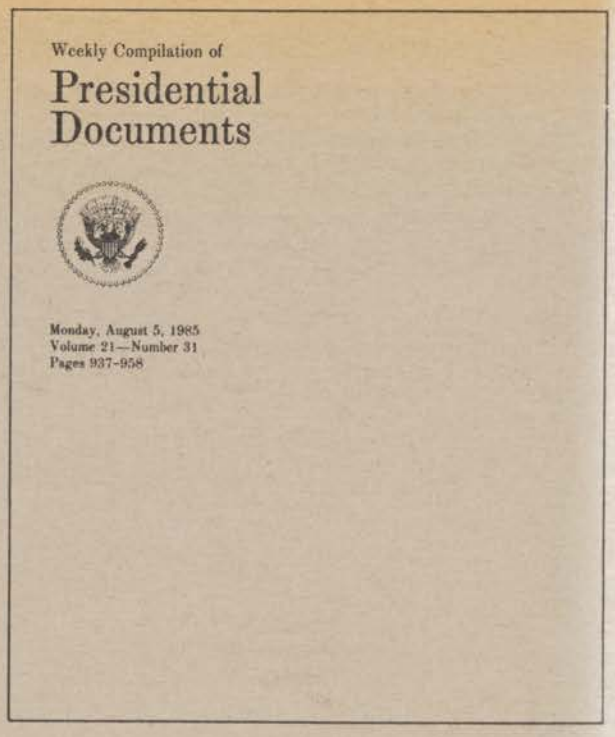

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