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Briefings on How To Use the Federal Register—
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

CHICAGO, IL

WHEN: July 8, at 9 a.m.
WHERE: Room 204A,
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WHEN: July 15, at 9 a.m.
WHERE: Main Auditorium, Federal Building,
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Boston, MA.
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Presidential Documents

Title 3—

The President

Proclamation 5664 of June 2, 1987

Flag Day and National Flag Week, 1987

By the President of the United States of America

A Proclamation

Each year, for a special day and a special week during June, we take time to reflect on our flag and all it means to us. We do so in June because Old Glory was born in that month; the first distinctive American flags of the Revolution flew at the Battle of Bunker Hill in June 1775, and the Continental Congress adopted the Stars and Stripes as the flag of the United States on June 14, 1777.

Even brief reflection on the meaning of the flag fills the mind and the heart with thoughts of our land and our heritage of liberty purchased at great cost by generations of Americans. Our flag was battle-born, fashioned during the struggle that won us our independence and gave bright hope to a world long oppressed. Ever since, America has seen its portrait in the folds and furls of our Star-Spangled Banner. We see freedom in the Red, White, and Blue, and we see too the sacrifice and the heroism of countless brave hearts. The poet Henry Holcomb Bennett had exactly this in mind many years ago when he penned the lines, "The colors before us fly; But more than the flag is passing by."

"More than the flag is passing by." Through the years, the number of stars on our flag has changed, and their arrangement has changed as well; but what the flag stands for will never change. During Flag Day and National Flag Week, let us remember with devotion that the flag we love and honor is the flag of freedom that flew in victory at Yorktown, the flag the United States Marines raised on Mount Suribachi, the flag Francis Scott Key saw by the dawn's early light.

Long may it wave.

To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue an annual proclamation calling for its observance and for the display of the flag of the United States on all government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate June 14, 1987, as Flag Day and the week beginning June 14 as National Flag Week, and I direct the appropriate officials of the government to display the flag of the United States on all government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also urge the American people to celebrate those days from Flag Day through Independence Day, set aside by the Congress as a time to honor America (89 Stat. 211), by having public gatherings and activities in which they can honor their country in an appropriate manner, especially by ceremonies in which all renew their dedication by publicly reciting the Pledge of Allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of June, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-12953
Filed 6-3-87; 12:24 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 564; Lemon Regulation 563, Amendment 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 375,000 cartons during the period June 7 through June 13, 1987, and increases the quantity of lemons that may be shipped during the period May 31 through June 6, 1987, to 390,000 cartons. Such action is needed to balance the supply of fresh lemons with demand for such periods, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: Regulation 564 (§ 910.864) is effective for the period June 7 through June 13, 1987, and the amendment (§ 910.863) is effective for the period May 31 through June 6, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

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

This action is consistent with the marketing policy for 1986–87. The committee met publicly on June 2, 1987, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand has improved and the market remains active. The increase in the current week's allotment was recommended due to improvement in the lemon market which resulted in inadequate allotment to meet lemon demand.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

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

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

2. Section 910.864 is added to read as follows:

§ 910.864 Lemon Regulation 564.

The quantity of lemons grown in California and Arizona which may be handled during the period June 7, 1987, through June 13, 1987, is established at 375,000 cartons.

3. Section 910.863 is revised to read as follows:

§ 910.863 Lemon Regulation 563.

The quantity of lemons grown in California and Arizona which may be handled during the period May 31, 1987, through June 6, 1987, is established at 390,000 cartons.

Dated: June 3, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–12999 Filed 6–4–87; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 912

Grapefruit Grown in the Indian River District in Florida; Termination Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This action terminates the Federal marketing order for Florida grapefruit grown in the Indian River district effective July 31, 1987, because the Secretary of Agriculture has determined that the order no longer tends to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended. Continuance of the order was favored by less than two-thirds of voting growers (by number and volume) in the regulated district who voted in a continuance referendum held from March 23—April 17, 1987.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

Marketing Order No. 912 regulates the handling of grapefruit grown in the Indian River district in Florida. The order has been in effect since 1962 and provides for weekly volume regulations for fresh domestic shipments of grapefruit. However, no volume regulations have been in effect since 1975 and the need for volume regulation is not expected in the foreseeable future. Shipments of Indian River grapefruit to export markets have increased sharply since the inception of the order in 1962, from 7.6 percent to 41 percent of total Indian River grapefruit shipments in 1985-86. This market has substantially reduced the need for supply controls. Furthermore, Florida grapefruit crops have been moderate in recent years because of four freezes since 1980.

At their November 6, 1986, meeting, the Indian River Grapefruit Committee (IRGC) unanimously supported a request to the Secretary of Agriculture to conduct a continuance referendum on Marketing Order No. 912. A continuance referendum was conducted March 23 through April 17, 1987, among growers of Indian River grapefruit grown in Florida.

The referendum order stated that the Secretary would consider termination of the order if fewer than two-thirds of the growers of Indian River grapefruit and growers of less than two-thirds of the volume of such fruit represented in the referendum favored continuance. It was further stated that in evaluating the merits of continuance versus termination, the Secretary would consider other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers.

During the referendum period, 20 percent of all Florida Indian River grapefruit growers representing 55 percent of the fresh grapefruit production voted. Of those voting, 63.2 percent by number and 63.7 percent by volume favored continuance.

The need for the support of a substantial majority is recognized in the Agricultural Marketing Agreement Act of 1937 (Act), in connection with the provisions for the adoption of new marketing orders, which require that the Secretary determine that the issuance or amendment of an order is favored by two-thirds of the growers voting or by growers representing two-thirds of the volume of production.

Given the low level of Florida Indian River grapefruit grower participation in the referendum and the failure of voting growers to substantially favor continuance, the results demonstrate a lack of substantial support for continuation of their order. In the absence of substantial industry support, marketing order operations tend to be less effective. Experience in similar circumstances indicates that it often becomes difficult for marketing order committees to obtain the requisite majority of votes necessary to approve recommendations for implementing order authorities. Moreover, a committee may experience difficulty in obtaining compliance with order requirements from all handlers in such circumstances.

Therefore, based on the foregoing considerations, Marketing Order No. 912 regulating the handling of grapefruit grown in the Indian River district in Florida and all rules, regulations and supplementary orders issued thereunder are hereby terminated, effective July 31, 1987.

The Food Security Act of 1985 requires the Secretary to notify Congress 60 days in advance of the termination of any Federal marketing order. Congress was so notified on May 26, 1987.

Therefore, pursuant to section 8c(16)(A) of the Act, it is found that Marketing Order No. 912, regulating the handling of Grapefruit Grown in the Indian River District in Florida issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) and all rules and regulations and supplementary orders heretofore issued thereunder and now effective do not tend to effectuate the declared policy of the Act.

As provided in § 912.70 of the order, on and after the effective date hereof, the members of the IRGC shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all funds and property then in its possession or under its control, including claims for any funds unpaid or property not delivered at the time of such termination. However, in order to provide for an expeditious liquidation of IRGC operations, the terms of such trustees shall expire on October 31, 1987.

List of Subjects in 7 CFR Part 912

Marketing orders, Indian River, Grapefruit.

PART 912—[REMOVED]

For the reasons set forth in the preamble, 7 CFR Part 912 is removed.

(7 U.S.C. 601-674)

Dated: June 1, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 87-12866 Filed 6-4-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-09-AD; Amdt. 39-5637]

Airworthiness Directives; Beech Models 1900 and 1900C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 85-21-07, Amendment 39-5295, applicable to Beech Models 1900 and 1900C airplanes. The revision to the AD gives owners/operators the additional option of removing the lower performance data from the POH/AFM, replacing it with the higher performance data originally published in the manual, and operating the airplane in accordance with the original performance data when a Beech performance restoration kit has been installed on the airplane. Installation of the performance restoration kit will assure airplane performance equal to or better than that originally published in the POH/AFM, and eliminate any unsafe conditions that could result when airplane performance is not equal to or better than performance data published in the POH/AFM.

DATES: Effective date: July 10, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Letter 52-85-1948 dated October 21, 1985, applicable to this AD may be obtained from Mr. Lou Gollin, Beech Aircraft Service Engineering, Department 52, P.O. Box 85, Wichita, Kansas 67201. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Blacklock, ACE-160W, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4433.

SUPPLEMENTARY INFORMATION: A Proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 85-21-07, Amendment 39-5295, requiring a revision to Beech Model 1900 and 1900C Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM) or modification by Beech Kit Part Number (P/N) 114-4013-1 S, on certain Beech Model 1900, Serial Numbers (S/N) UA-1 through UA-3, and Beech Model 1900C, S/N UB-1 through UB-60 airplanes, was published in the **Federal Register** on February 18, 1987 (52 FR 4914). The proposal resulted from a re-evaluation of Airworthiness Directive 85-21-07, Amendment 39-5295, published in the **Federal Register** on May 2, 1986 (51 FR 16294), applicable to Beech Model 1900 airplanes, which requires a revision to POH/AFM to permit the airplane to achieve the requirements of FAR 135, Appendix A, paragraph 6(B)(2). Subsequent to that publication, Beech has developed modifications which improve the one-engine inoperative climb performance of models 1900 and 1900C airplanes. Those modifications are defined by Beech Kit Part Number (P/N) 114-4013-1 S. The FAA has determined that the improvement in one-engine-inoperative climb performance for airplanes fitted with Kit P/N 114-4013-1 S is adequate to ensure that production airplanes so modified can achieve the levels of performance set forth in the basic POH/AFM P/N 114-590021-3. Accordingly, the additional operating restrictions set forth in interim addendum to POH/AFM P/N 114-590021-3 dated October 21, 1985, and made mandatory by AD 85-21-07, are not warranted for those airplanes which have been modified by the installation of Kit P/N 114-4013-1 S. Beginning with Beech Model 1900, S/N UA-4, and 1900C, S/N UB-61, UC-1, and UD-1, the basic design criteria was revised so that the components of Kit P/N 114-4013-1 S will be installed during the initial manufacturing process. For this reason, the provisions of this AD are revised to limit the applicability of airplanes to those manufactured prior to the above serial numbers. Certain of the Beech Model 1900, S/N UA-1 through UA-3, and 1900C, S/N UB-1 through UB-60, with have Kit P/N 114-4013-1 S fitted during production. In addition, Beech has plans to retrofit in-service airplanes in the field. The proposed revision therefore defines the AD as applicable only to specified serial-numbered airplanes, identifies the Kit P/N 114-4013-1 S as an alternate means of compliance, and sets forth a procedure to be followed in recording compliance with this AD for those airplanes modified by Kit P/N 114-4013-1 S in the field. The kit would relieve operators from applying the additional weight, altitude, and temperature restrictions imposed by the interim addendum.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change. The FAA has determined that this regulation only involves 63 airplanes. Beech Aircraft Corporation is furnishing and installing the kits at no cost to the operators and owners; therefore, this action will not impose an adverse economic impact on the owners.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation Safety, Aircraft, safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By revising AD 85-21-07, Amendment 39-5295, as follows:

Revise the applicability statement to read as follows:

"**BEECH:** Applies to Models 1900 (Serial Numbers UA-1 through UA-3) and 1900C (Serial Numbers UB-1 through UB-60) airplanes certificated in any category."

Revise paragraph (d) to read as follows:

(d) The requirements of paragraphs (a), (b), and (c) do not apply to airplanes which have installed Beech Kit Part Number (P/N) 114-4013-1 S. Airplanes with this kit installed may operate in accordance with the limitations and procedures shown in Beech Model 1900/1900C Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM), P/N 114-590021-3.

Add paragraph (e):

(e) An equivalent means of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mr. Lou Gollin, Beech Aircraft Service Engineering, Department 52, P.O. Box 85, Wichita, Kansas 67201; or may examine the documents referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 10, 1987.

Issued in Kansas City, Missouri, on May 26, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-12776 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-03-AD; Amdt. 39-5635]

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 747 series airplanes, which requires the installation of a hydraulic fuse in the number 4 hydraulic system. This amendment is prompted by a report of loss of all four hydraulic systems when failure of the rear pressure bulkhead resulted in loss of the vertical stabilizer, which in turn severed the hydraulic lines. This condition, if not corrected, could result in loss of all four hydraulic systems and inability to control the airplane if the vertical stabilizer were lost or severely damaged.

EFFECTIVE DATE: July 13, 1987.

ADDRESS: The Applicable service information may be obtained from the

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

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the installation of a hydraulic fuse in the number 4 hydraulic system on Boeing Model 747 airplanes, was published in the **Federal Register** on February 25, 1987 (52 FR 5546).

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

One commenter, the Air Transport Association of America, noted that the members affected by the proposed rule had no objections to its contents.

Another commenter, the National Transportation Safety Board, supported the proposed rule, and urged the FAA to expedite the final rulemaking action.

A third commenter, The Boeing Company, objected to a statement in the preamble to the NPRM which indicated that, during a particular incident, the crew of a Boeing Model 747 airplane was unable to control the airplane after hydraulic lines for all four hydraulic systems were severed. The commenter suggested that this statement was incorrect, and that the airplane in that incident was controllable to a limited degree about all axes using differential and symmetric thrust. The FAA does not agree totally with this comment. While some very limited control was apparently available using differential thrust, it was not adequate to enable the pilot to land the airplane safely. The FAA, therefore, considers the referenced statement to be accurate.

The same commenter noted that the NPRM referred to overpressurization of the vertical stabilizer as an event leading to the loss of the major portion of the stabilizer, which in turn led to loss of all four hydraulic systems. The commenter noted that the installation of an access cover at the base of the vertical stabilizer, as required by AD 86-08-02, prevents overpressurization of the fin. While the FAA agrees with this observation, the unsafe condition addressed in this AD is the potential loss of all four hydraulic systems resulting from a single event. While AD 86-08-02 addresses one cause of such an event, it does not eliminate the unsafe condition. Installation of a hydraulic fuse will ensure that one hydraulic system will remain after such an event.

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

It is estimated that 113 airplanes of U.S. registry will be affected by this AD, that it will take approximately 27 man-hours per airplane to accomplish the required actions, that the average labor cost will be $40 per man-hour, and that it would cost $1,271 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $265,663.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-29-2063, dated December 23, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of all four hydraulic systems in the event of severe damage to or loss of the vertical stabilizer, accomplish the following:

A. Within the next 24 months after the effective date of this AD, modify the number 4 hydraulic system by installing a hydraulic fuse in accordance with Boeing Service Bulletin 747-29-2063, dated December 23, 1986, or later FAA-approved revision.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplane to a base for accomplishment of the modification required by this AD.

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

This amendment becomes effective July 13, 1987.

Issued in Seattle, Washington, on May 26, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-12777 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-50-AD; Amdt. 39-5636]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes, Fuselage Numbers 909 Through 1350

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain DC-9-80 (MD-80) series airplanes, which requires inspection and retorqueing of the torque link upper attach bolt on the main landing gear (MLG). This amendment is prompted by reports of failure of the torque link upper attach bolt. This condition, if not corrected, could result in loss of directional control of the aircraft when landing or taking off, or

damage to the aircraft upon retraction of the MLG.

EFFECTIVE DATE: June 22, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION: The FAA received reports of seven failures of main landing gear (MLG) torque link upper attach bolts, P/N 3935363, on DC–9–80 series airplanes. The failure of this bolt has been attributed to stress corrosion caused by over-torqueing of the bolt. Loss of the bolt could result in rotation of the lower strut piston and wheel assembly, resulting wheel scrubbing or, should the angle be large, directional control problems or blowout of the MLG tires. Substantial damage in the wheel well area upon retraction of the MLG may also occur.

Douglas Aircraft Company issued Telexes No. MD–80–COM–5–FWM, dated March 19, 1987, and No. MD–80–COM–7–FWM, dated March 26, 1987, to operators of Model DC–9–80 series airplanes to alert them to the reports of failures of the bolt and to recommend visual inspections as preliminary remedial action.

The FAA has reviewed and approved Douglas Aircraft Alert Service Bulletin A32–220, dated April 20, 1987, which describes inspections and modifications of torque arm attach bolt, P/N 3935363, on the DC–9 series MLG assembly, to ensure integrity of the subject bolt.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and modification to insure proper torqueing of the bolt in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under 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/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–81, –82, –83 (MD–81, –82, –83) series airplanes, Fuselage Numbers 909 through 1350, certificated in any category. Compliance required as indicated unless previously accomplished.

To ensure the integrity of the main landing gear upper torque link attach bolts, P/N 3935363, accomplish the following:

A. Within 7 days after the effective date of this AD, in accordance with the Accomplishment Instructions of Douglas Aircraft Alert Service Bulletin A32–220, dated April 20, 1987, or later FAA-approved revision, perform a visual inspection to verify the installation of the left and right main landing gear upper torque arm attach bolt, washer, and nut. If a bolt is missing, prior to further flight replace with a new or serviceable bolt, washer, and nut. If the original bolt, washer, and nut are present, repeat visual inspections of the original bolt, washer, and nut at intervals not to exceed 7 days until the requirements of paragraph B. or C., below, are accomplished.

B. Within 90 days after the effective date of this AD, in accordance with the Accomplishment Instructions of Douglas Aircraft Alert Service Bulletin A32–220, dated April 20, 1987, or later FAA-approved revision, perform an ultrasonic inspection of the attach bolt for defects. If no defects are found, loosen and retighten the original nut to a torque of 80 to 100 foot-pounds. Repeat the ultrasonic inspections at intervals not to exceed 180 days until the requirements of paragraph C., below, are accomplished. If a defect is found, prior to further flight replace with a new or serviceable bolt, washer, and nut.

C. Accomplishment of the magnetic particle inspection of the bolt in accordance with the Accomplishment Instructions of Douglas Aircraft Alert Service Bulletin A32–220, dated April 20, 1987, or later FAA-approved revision, constitutes terminating action for the repetitive inspections required by paragraphs A. and B., above, if no defects are found as a result of the magnetic particle inspection. If a defect is found, prior to further flight replace with a new or serviceable bolt, washer, and nut.

D. Installation of new or serviceable bolt, washer, and nut in accordance with the Accomplishment Instructions of Douglas Aircraft Alert Service Bulletin A32–220, dated April 20, 1987, or later FAA-approved revision, constitutes terminating action for the repetitive inspections required by this AD.

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

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective June 22, 1987.

Issued in Seattle, Washington, on May 26, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–12778 Filed 6–4–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87-ASW-8]

Designation of Transition Area; Stamford, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Stamford, TX. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Arledge Field Airport, Stamford, TX, utilizing the new Stamford nondirectional radio beacon (NDB). This amendment is necessary to ensure segregation of aircraft operating to and from the airport under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR). This action will change the airport status from VFR to IFR.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5535.

SUPPLEMENTARY INFORMATION:

History

On March 11, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Stamford, TX (52 FR 9313).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a transition area at Stamford, TX. To enhance airport usage, a new instrument approach procedure is being developed for the Arledge Field Airport, Stamford, TX, utilizing the Stamford NDB as a navigational aid. This NDB will provide new navigational guidance for aircraft utilizing the airport. The development of a new instrument approach procedure, based on this navigational aid, entails designation of a transition area at Stamford, TX, at and above 700 feet above ground level within which aircraft are provided air traffic control services. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this section is to ensure segregation of aircraft using the approach procedure under IFR and other aircraft operating under VFR. This action will change the airport status from VFR to IFR.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; 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:

Stamford, TX New

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Arledge Field Airport, (latitude 32° 54' 38" N., longitude 99° 44' 02" W.) and within 5 miles each side of the 177° bearing from the Stamford NDB, (latitude 32° 52' 07" N., longitude 99° 43' 58" W.), extending from the 6.5-mile radius area to 14 miles south of the airport; excluding that portion that coincides with the Abilene, TX, transition area.

Issued in Fort Worth, TX, on May 19, 1987.

Larry L. Craig,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-12784 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 87-ANM-17]

Revocation of Restricted Area R-3202D; Saylor Creek, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Restricted Area R-3202D located near Saylor Creek, ID. This action is necessary since the United States Air Force (USAF) no longer uses the airspace for hazardous type activities. This action restores for public use previously restricted airspace.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace 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) 267-9254.

SUPPLEMENTARY INFORMATION:

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations revoke Restricted Area R-3202D located near Saylor Creek, ID. This restricted area is also removed from the Continental Control Area. This action is necessary since the USAF is no longer using the airspace for hazardous activities. Because the purpose of the area no longer exists and because the action would simply restore the airspace to public use, I find that notice and public procedure under 5 U.S.C. 533(b) are unnecessary because these actions are minor amendments in which the public would not be particularly interested. Sections 71.151 and 73.32 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

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, 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 Parts 71 and 73

Aviation safety, Continental control area, 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 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-3202D Saylor Creek, ID [Removed]

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.

§ 73.32 [Amended]

4. Section 73.32 is amended as follows:

R-3202D Saylor Creek, ID [Removed]

Issued in Washington, DC, on May 29, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-12781 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 86-AAL-1]

Alteration and Establishment of Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter the descriptions of Federal Airways V-308 and V-319 and establish Federal Airway V-328 and Jet Route J-179 located in the State of Alaska. These actions improve flight planning, enhance traffic flow and reduce controller workload.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace 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) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On March 6, 1987, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of VOR Federal Airways V-308 and V-319 and establish VOR Federal Airway V-328 and Jet Route J-179 located in the State of Alaska (52 FR 6989). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.125 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations alter the descriptions of Federal Airways V-308 and V-319 and establish Federal Airway V-328 and Jet Route J-179 located in the State of Alaska. These actions improve flight planning, enhance traffic flow, reduce controller workload and provide additional controlled airspace.

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 75

Aviation safety, VOR Federal airways and jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) is 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.

§ 71.125 [Amended]

2. Section 71.125 is amended as follows:

V-308 [Amended]

By removing the words "From Bethel, AK, via" and substituting the words "From Quinhagak, AK, via Bethel, AK;"

V-319 [Amended]

By removing the words "From INT Sisters Island, AK, 272° and Yakutat, AK, 139° radials; 66 miles 20 MSL, 40 miles 12 AGL, via Yakutat;" and substituting the words "From Yakutat, AK, via"

V-328 [New]

From Dillingham, AK, via Quinhagak, AK; to Kipnuk, AK.

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J-179 [New]

From Sparrevohn, AK, via Aniak, AK, NDB; to St. Mary's, AK, NDB

Issued in Washington, DC, on May 28, 1987.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87-12785 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 86-ASO-24]

Alteration of VOR Federal Airways, Compulsory Reporting Points, and Jet Routes; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter 9 Federal airways, 6 jet routes and associated compulsory reporting points in the vicinity of Augusta, GA. This action is due to the relocation and renaming of the Augusta very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Colliers VORTAC with which these airways and jet routes are aligned. The relocation site is approximately 12 nautical miles north of Augusta.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace 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) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On March 20, 1987, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter VOR Federal Airways V-18, V-56, V-155, V-179, V-185, V-311, V-323, V-417 and V-454 and Jet Routes J4, J-14, J-52, J-53, J-85 and J-99 and associated compulsory reporting points (52 FR 8921). Portions of all of these jet routes and airways are currently aligned with the Augusta, GA, VORTAC which has been relocated. The VORTAC has been moved northward approximately 10 miles and renamed "Colliers" VORTAC. Additionally, Colliers VORTAC would become a compulsory reporting point on the affected airways and routes. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and in V-417 a dogleg was eliminated between Collier, SC, and Allendale, SC, these amendments are the same as those proposed in the notice. Sections 71.123, 71.203, 71.207 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400. 6C dated January 2, 1987.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations alter 9 VOR Federal airways, 6 jet routes and associated compulsory reporting points in the vicinity of Augusta, GA. These actions are due to the relocation and renaming of the Augusta VORTAC navigational aid with which these airways and jet routes are aligned. The relocation site is approximately 12 nautical miles north of Augusta.

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 75

Aviation safety, VOR Federal airways, Compulsory reporting points, Jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 ad 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) 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.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-18 [Amended]

By removing the words "INT Atlanta 089° and Augusta, GA, 278° radials; Augusta; INT Augusta 103° and Charleston, SC, 296° radials; Charleston," and by substituting the words "Colliers, SC; Charleston, SC,"

V-56 [Amended]

By removing the words "Augusta, GA;" and by substituting the words "Colliers, SC;"

V-155 [Amended]

By removing the words "via Augusta, GA;" and by substituting the words "INT Columbus 068° and Colliers, SC, 243° radials; Colliers;"

V-179 [Amended]

By removing the words "Augusta, GA, 263° radials" and by substituting the words "Athens, GA, 221° radials"

V-185 [Amended]

By removing the words "Augusta, GA;" and by substituting the words "Colliers, SC;"

V-311 [Amended]

By removing "153°" and by substituting "154°" and also by removing "296°" and by substituting "295°"

V-323 [Amended]

By removing the words "Augusta, GA, 263° radials" and by substituting the words "Athens, GA, 221° radials"

V-417 [Amended]

By removing the words "Athens; INT Athens 109° and Augusta, GA, 294° radials; Augusta; INT Augusta 148° and Allendale, SC, 273° radials; Allendale;" and by substituting the words "Athens; Colliers, SC; Allendale, SC;"

V-454 [Amended]

By removing "240°" and by substituting "241°"

§ 71.203 [Amended]

3. Section 71.203 is amended as follows:

Augusta, GA [Remove]
Colliers, GA [New]

§ 71.207 [Amended]

4. Section 71.207 is amended as follows:

Augusta, GA [Remove]
Colliers, GA [New]

PART 75—[AMENDED]

5. The authority citation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

6. Section 75.100 is amended as follows:

J-4 [Amended]

By removing the words "INT Montgomery 051° and Augusta, GA, 273° radials; Augusta;" and by substituting

the words "INT Montgomery 051° and Colliers, SC, 268° radials; Colliers;"

J-14 [Amended]

By removing the words "INT Atlanta, GA, 092° and Spartanburg, SC, 234° radials;" and by substituting the words "INT Atlanta 087° and Spartanburg, SC, 234° radials;"

J-52 [Amended]

By removing the words "Augusta, GA;" and by substituting the words "Colliers, SC;"

J-53 [Amended]

By removing the words "Augusta, GA;" and by substituting the words "Colliers, SC;"

J-85 [Amended]

By removing the words "Augusta, GA;" and by substituting the words "Colliers, SC;"

J-99 [Revised]

From Colliers, SC, via Knoxville, TN; to Louisville, KY.

Issued in Washington, DC, on May 28, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-12786 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 86-ASO-3]

Alteration of Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the times of designation for Restricted Areas R-2102A, B and C, Fort McClellan, AL; R-2104A and C, Huntsville, AL; R-2901A, B, C, D, E, F, G, H, and I, Avon Park, FL; R-2906 Rodman, FL; R2907A and B, Lake George, FL; R-2908 Pensacola, FL; R-2910 Pinecastle, FL; and R-7104 Vieques Island, PR. Based on a review of annual Restricted Area Utilization Reports submitted by the using agencies, the FAA has determined that revised times of designation are warranted. This action reduces the times of designation for the above restricted areas from continuous to specific times so as to provide for better real time management of the nation's airspace, reflect more accurately the actual usage of the airspace, and return unused airspace for public use.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace 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) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On November 13, 1986, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to reduce the times of designation for Restricted Areas R-2102A, B and C, Fort McClellan, AL; R-2104A and C, Huntsville, AL; R-2901A, B, C, D, E, F, G, H, and I, Avon Park, FL; R-2906 Rodman, FL; R-2907A and B, Lake George, FL; R-2908 Pensacola, FL; R-2910 Pinecastle FL; and R-7104 Vieques Island, PR (51 FR 41116). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 73.21, 73.29 and 73.71 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations reduces the times of designation of the above restricted areas to provide for better real time airspace management, reflect more accurately the actual usage of the airspace and return unused airspace for public use.

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

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—[Amended]

1. 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.

§ 73.21 [Amended]

2. Section 73.21 is amended as follows:

R-2102A, B and C Fort McClellan, AL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0600-2200 local time, daily; other times by NOTAM 6 hours in advance.

R-2104A and C Huntsville, AL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0600-2000 local time, Monday-Saturday; other times by NOTAM 6 hours in advance.

§ 73.29 [Amended]

3. Section 73.29 is amended as follows:

R-2901A, B, C, D, E, F, G, H, and I, Avon Park, FL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0600-2400 local time, Monday-Friday; 0800-1800 local time, Saturday-Sunday; other times by NOTAM 6 hours in advance.

R-2906 Rodman, FL [Amended]

By removing the present time of designation ans substituting the following:

Time of designation. Intermittent, 0500-0100 local time, daily; other times by NOTAM 6 hours in advance.

R-2907A and B Lake George, FL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0500-0100 local time, daily; other times by NOTAM 6 hours in advance.

R-2910 Pinecastle, FL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, sunrise-sunset, daily; other times by NOTAM 24 hours in advance.

R-2908 Pensacola, FL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0500–0100 local time, daily; other times by NOTAM 6 hours in advance.

§ 73.71 [Amended]

4. Section 73.71 is amended as follows:

R–7104 Vieques Island, PR [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0600–2300 local time, daily; other times by NOTAM 24 hours in advance.

Issued in Washington, DC on May 28, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–12782 Filed 6–4–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 86–ASO–16]

Alteration of Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the times of designation for Restricted Areas R–3002A, B, C, D, E, and F, Fort Benning, GA; R–4404A, B and C, Macon, MS; R–5314A, B, C, D, E, F, G, H and J, Dare County, NC. Based on a review of the annual Restricted Area Utilization Reports submitted by the using agencies, the FAA has determined that revised times of designation are warranted. This action reduces the times of designation for the above restricted areas from continuous to specific times so as to provide for better real time management of the nation's airspace, reflect more accurately the actual usage of the airspace, and return unused airspace for public use.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace 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) 267–9253.

SUPPLEMENTARY INFORMATION:

History

On November 13, 1986, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to reduce the times of designation for Restricted Areas R–3002A, B, C, D, E, and F, Fort Benning, GA; R–4404A, B and C, Macon, MS; and R–5314A, B, C, D, E, F, G, H, and J, Dare County, NC, from continuous to specific times (51 FR 41114). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received, however, the U.S. Air Force submitted a letter identifying an error in a portion of the times of use for R–5314A, B, C, D, E, F, G, H, and J, Dare County, NC. In the NPRM, the items specified for Saturday and Sunday activation of those restricted areas were erroneously published as 0800–1800 local time. The correct and intended times of use for Saturday and Sunday operation of R–5314A, B, C, D, E, F, G, H, and J, should have been listed as 0700–1800 local time, based on the FAA's review of annual utilization reports for those areas and negotiations with the U.S. Air Force. Except for the above correction and editorial changes, this amendment is the same as that proposed in the notice. Sections 73.40, 73.44 and 73.53 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 73 of the Federal Aviation Regualtions reduces the times of designation for the above restricted areas to provide for better real time management of airspace, reflect more accurately the actual use of the airspace, and return unused airspace for public use.

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

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—[AMENDED]

1. 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.

§ 73.30 [Amended]

2. Section 73.30 is amended as follows:

R–3002A, B and D Fort Benning, GA [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0600–0200 local time, daily; other times by NOTAM 6 hours in advance.

R–3002C, E, and F Fort Benning, GA [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent by NOTAM 6 hours in advance.

§ 73.44 [Amended]

3. Section 73.44 is amended as follows:

R–4404A, B and D Macon, MS [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0700–1800 local time, daily; other times by NOTAM 24 hours in advance.

§ 73.53 [Amended]

4. Section 73.53 is amended as follows:

R–5314A, B, C, D, E, F, G, H and J Dare County, NC [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0600–2400 local time, Monday–Friday; 0700–1800 local time Saturday–Sunday; other times by NOTAM 6 hours in advance.

Issued in Washington, DC, on May 28, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–12783 Filed 6–4–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 86–AWP–41]

Alteration of Jet Routes, Filmore, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Jet Routes J–1 and J–7 located in the vicinity of Fillmore, CA. The alignments are necessary to improve the traffic flow into Los Angeles International Airport to enhance the current profile descent to Runways 24/25. This action decreases en route and terminal delays, decreases controller workload and simplifies overall air traffic control operations in that sector.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace 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) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On March 20, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J–1 and J–7 located in the vicinity of Fillmore, CA (52 FR 8922). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J–1 and J–7 located in the vicinity of Fillmore, CA. The alignments are necessary to improve the traffic flow into Los Angeles International Airport to enhance the current profile descent to Runways 24/25. This action decreases en route and terminal delays, decreases controller workload and simplifies overall air traffic control operations in that sector.

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

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

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

1. The authority citiation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–1 [Amended]

By removing the words INT of the Los Angeles 319° and the Avenal, CA, 145° radials; Avenal;" and by substituting the words "Fillmore, CA; Avenal, CA;"

J–7 [Amended]

By removing the words "via INT Los Angeles 319° and Avenal, CA, 145° radials; INT Avenal 145°" and by substituting the words "via Fillmore, CA; INT Fillmore 325°".

Issued in Washington, DC, on May 28, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–12779 Filed 6–4–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 86–ANM–27]

Alteration of Jet Route J–67–OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J–67 located in the vicinity of Portland, OR. Currently J–67 begins at Lakeview, OR, and this amendment extends J–67 southward to Linden, CA. This action supports a preferential route that enhances and improves traffic flow between California and Oregon.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace 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) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On February 10, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Route J–67 by extending it from Lakeview, OR, to Linden, CA (52 FR 4153). The jet route extension is part of a plan to improve traffic flow in the California/Oregon area by designating this extension as a preferential route. This action aids flight planning and enhances traffic management between these two states. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the description of Jet Route J–67 located in the vicinity of Portland, OR. Currently J–67 begins at Lakeview, OR, and this amendment extends J–67 southward to Linden, CA. This action supports a preferential route that enhances and improves traffic flow between California and Oregon.

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

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

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

1. The authority citation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-67 [Revised]

From Linden, CA, via Lakeview, OR, to Portland, OR.

Issued in Washington, DC, on May 28, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-12780 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239, and 240

[Release Nos. 33-6714, IC-15752]

Elimination of Certain Pricing Amendments and Revision of Prospectus Filing Procedures

AGENCY: Securities and Exchange Commission.

ACTION: Final Rule.

SUMMARY: The Securities and Exchange Commission ("Commission") today announced adoption of a new rule and amendments to existing rules intended to simplify the filing requirements applicable to a registration statement at the time of effectiveness. New Rule 430A allows registrants, if specified conditions are satisfied, to omit information concerning the public offering price, price-related information and the underwriting syndicate from a prospectus contained in a registration statement at the time that it is declared effective. The information omitted in reliance upon Rule 430A would be included either in the final prospectus and deemed to be part of the registration statement or in a post-effective amendment to the registration statement. In addition, the Commission has adopted related amendments to Rules 424(b) and 497 to require more immediate filing of a prospectus where Rule 430A has been used. Finally, the Commission has adopted other changes to Rule 424 to provide for a similarly shortened filing period for certain other prospectuses, to eliminate unnecessary filings, and to classify prospectuses according to the nature of the information being modified or added.

EFFECTIVE DATE: July 6, 1987. The amendments to § 230.424 (Rule 424) are effective with respect to all registration statements July 6, 1987. All other amendments are effective July 6, 1987 for registration statements filed or amended on or after that date.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, Alexander G. Shtofman, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, or for questions regarding applicability to investment companies, Robert Plaze, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. After the effective date, contact Mauri L. Osheroff, Deputy Chief Counsel, or Abigail Arms, at (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance or, with respect to investment companies, Robert Plaze, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of Rule 430A, related amendments to Items 501, 502, 512 and 601 of Regulations S-K[1] and related amendments to Rules 423,[2] 424,[3] 481,[4] 482,[5] and 497 [6] of Regulation C.[7] Technical amendments have been made to other rules, regulations and forms to conform references to Rule 424 and to adapt requirements to amend Rule 424.

I. Executive Summary

In October 1986, the Commission proposed a new rule and related amendments intended to simplify and reduce registrants' filing obligations under the federal securities laws, while permitting more immediate identification of and access to information filed with the Commission.[8] The Commission is adopting, with modifications, the new Rule, Rule 430A, under the Securities Act of 1933 (the "Securities Act") [9] to eliminate the need for pre-effective amendments to most registration statements filed solely to provide pricing information, price-related information, the names of the underwriting syndicate and respective amounts underwritten, underwriter compensation, material relationships with underwriters and dealer allowances. As adopted, the Rule is available to any registrant that is offering securities for cash pursuant to a registration statement that is declared effective. The Rule 430A information [10] will be disclosed in a prospectus filed under Rule 424 or 497 [11] and deemed to be part of the registration statement as of the time it was declared effective. A post-effective amendment will be necessary, however, where the final prospectus is not filed within five business days after the effectiveness of the registration statement or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

Rule 430A does not change registrants' disclosure obligations to investors. The Rule does not change the information required to be disclosed in either a preliminary prospectus used before effectiveness of the registration statement or a prospectus meeting the requirements of Section 10(a) of the Act (the latter being a "final prospectus").[12]

The Commission has adopted, with modifications, a number of amendments to Rule 424. One of these requires that the prospectus that contains the Rule 430A information be filed not later than the second business day following the earlier of the date of the determination of the public offering price or the date the prospectus containing the Rule 430A information is first used in connection

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[1] 17 CFR 229.501; 17 CFR 229.502; 17 CFR 229.512; 17 CFR 229.601.

[2] 17 CFR 230.423.

[3] 17 CFR 230.424.

[4] 17 CFR 230.481.

[5] 17 CFR 230.482.

[6] 17 CFR 230.497.

[7] 17 CFR 230.400 *et seq.*

[8] Release No. 33-6672 (October 27, 1986) [51 FR 39868]. The proposals generated 17 comment letters. The letters of comment, as well as a copy of the summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room [File No. S7-28-86].

[9] 15 U.S.C. 77a *et seq.* (1982).

[10] In this Release, the information omitted from the form of prospectus contained in a registration statement at effectiveness in reliance upon Rule 430A is sometimes referred to as "Rule 430A information."

[11] Rule 424 governs the filing of prospectuses under the Securities Act. Rule 497 governs the filing of prospectuses by investment companies registered under the Investment Company Act of 1040 (15 U.S.C. 80a-1 *et seq.*). In Securities Act Release No. 33-6660 (Sept. 17, 1986) [51 FR 43384 (Sept. 26, 1986) the Commission proposed to make Rule 497 the exclusive prospectus filing rule for investment companies. If that proposal is adopted, Rule 424 would no longer be available to investment companies.

[12] 15 U.S.C. 77ja.

In the usual case, a prospectus that omits the Rule 430A information may be used after effectiveness and prior to determination of the public offering price. *See* Part II.A.12 *infra*, "Use of Prospectus After Effectiveness."

with the public offering or sales or transmitted by a means reasonably calculated to result in filing with the Commission on that date. A comparable amendment to Rule 497 provides the same shortened filing period for investment companies relying on Rule 430A. Other changes to Rule 424 shorten the filing period for certain other prospectuses used after effectiveness pursuant to Rule 415,[13] eliminate unnecessary filings and classify Rule 424 prospectuses more systematically.

II. Final Rule and Amendments

A. Rule 430A.

1. Introduction

Rule 430A contemplates that, subject to the satisfaction of specified conditions, a prospectus contained in a registration statement at the time it is declared effective may omit information concerning the public offering price, price-related information and the underwriting syndicate. This information ordinarily is filed in a pre-effective "pricing" amendment to the registration statement.

The elimination of the requirement that such information be filed prior to effectiveness is intended to simplify and reduce filing obligations without reducing investor protection.[14] The change should minimize the risk of disruption of a registrant's marketing schedule caused by the need to file a pricing amendment and wait until the registration statement is declared effective by the Commission or its staff pursuant to delegated authority.[15] At the same time, Rule 430A and the related amendments should not affect the adequacy and timeliness of disclosure of information to investors or investor rights of action under the federal securities laws. There is no change in the information required to be provided to the public by means of either the preliminary prospectus[16] or the final prospectus.

2. Information That May Be Omitted Under Rule 430A[17]

Rule 430A permits a registration statement to be declared effective that contains a prospectus that omits information on the public offering price (including interest and dividend rates on the securities being offered), underwriting syndicate (including material relationships with any underwriter not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other items dependent upon the public offering price, delivery dates, and terms of the securities dependent upon the offering date.[18] This range of information substantially parallels that in Rule 430.

Questions have been raised about whether "information with respect to . . . the underwriting syndicate", which may be excluded pursuant to Rule 430A, also was intended to address information concerning the managing underwriter(s). The identity of the management underwriter(s) is known prior to effectiveness and Rule 430 does not allow such information to be omitted from a preliminary prospectus. Nor may the information concerning managing underwriters be omitted in reliance upon Rule 430A, which was not intended to change the disclosure required in the preliminary prospectus.

In contrast, Rule 430A specifically permits a registrant to omit the names of other underwriting syndicate members and related information.[19] Prior to the registrant requesting acceleration of effectiveness, the registration statement should include all of the other required information on the plan of distribution[20] but need not include the names of the syndicate members other than the managing underwriter(s), material relationships with any underwriter not named therein, the amounts underwritten and the discounts and commissions.[21] If, however, a registrant chooses to include the names of syndicate members, information concerning material relationships between such named underwriters and the registrant must also be included.

With respect to underwriter compensation, the registration statement should continue to disclose any compensation that is not easily reducible to a dollar per unit basis, such as options or warrants to purchase equity securities, fees for other services to be provided, and right of first refusal on future financings.[22] The underwriting agreement or the final form thereof should continue to be filed as part of the registration statement prior to effectiveness.[23]

Finally, a registrant requesting acceleration of effectiveness of a registration statement for other than a delayed offering pursuant to Rule 415 must have a present intent to offer. The registrant thus must provide all required information other than that omitted in reliance upon Rule 430A, including the information regarding distribution of the preliminary prospectus called for pursuant to Rule 418(a)(7).[24]

3. Eligibility and Conditions for Use of Rule 430A[25]

As proposed, Rule 430A is available to any registrant[26] but is limited to offerings of securities for cash.[27] Thus,

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[13] 17 CFR 230.415.

[14] The information will be disclosed in a prospectus filed under Rule 424 or 497. A post-effective amendment will be necessary, however, where the final prospectus is not filed within five business days after the effectiveness of the registration statement or a post-effective amendment thereto. *See* Part II.A.11 *infra*, "Relationship to Rule 415."

[15] *See* section 8(a) of the Securities Act [15 U.S.C. 77h(a)] and 17 CFR 200.30–1(a).

[16] *See* Rule 430 [17 CFR 230.430], which specifies the requirements for a preliminary prospectus for purposes of section 5(b)(1) of the Securities Act [15 U.S.C. 77e(b)(1)], and the discussion of Rule 430A(b) in Part II.A.12 *infra*, "Use of Prospectus After Effectiveness," addressing the use of prospectuses after effectiveness when Rule 430A is utilized.

[17] *See* Rule 430A(a).

[18] Terms of the securities dependent upon the offering date include information such as amounts and dates of sinking fund or similar payments, interest or dividend payments, record dates, date from which interest or dividends will accure and redemption dates.

[19] The underwriters, respective amounts underwritten and material relationships with the registrant may be known at the time of effectiveness and disclosure would be required under Item 508(a) of Regulation S–K without a specific exclusion. 17 CFR 229.508(a).

[20] *See* Item 508 of Regulations S–K [17 CFR 229.508].

[21] Rule 430A does not affect the requirement of Rule 415(a)(4)(iv) [17 CFR 230.415(a)(4)(iv)] that the underwriter(s) for an at the market offering of equity securities by or on behalf of the registrant must be named in the prospectus which is part of the registration statement.

[22] *See* Item 508(e) of Regulation S–K [17 CFR 229.508(e)], which requires disclosure of all items that would be deemed by the National Association of Securities Dealers to constitute underwriting compensation for purposes of the Association's Rules of Fair Practice.

[23] *See* part II.A.8 *infra*, "Exhibits."

[24] 17 CFR 230.418(a)(7).

[25] In addition to the criteria for use of the Rule discussed in this section, the Rule contains two further conditions: (1) That the registration statement contain the new undertakings specified in Item 512(j) of Regulation S–K (*see* Rule 430A(a)(2)); and (2) that the information omitted from the prospectus filed as part of the effective registration statement be in the prospectus filed with the Commission under Rule 424(b), Rule 497(h), or in an effective post-effective amendment (*See* Rule 430A(a)(3)). These conditions are discussed *infra* in Parts II.A.10, "Section 11 Liability Issues", II.A.11, "Relationship to Rule 415," and II.B, "Amendments to Rule 424."

[26] *See* Part II.A.7 *infra*, "Bona Fide Estimate Based on Offering Price," concerning non-reporting companies whose public offering price does not fall within the bona fide estimate of the range of the maximum offering price contained in the registration statement.

[27] *See* Rule 430A(a)(1). This requirement should be interpreted in the same manner as the "for cash" requirement for certain primary offerings of securities on Form S–3 [17 CFR 239.13]. *See* General Instruction I.B.1 thereof. For example, notes evidencing promises to pay installments in cash are considered to be cash within the meaning of the proposed Rule.

the Rule is not applicable to a registration statement covering securities to be issued in connection with a business combination, whether effective by a merger or exchange offer, recapitalization, reorganization or other similar transaction.

Rule 430A also is limited to registration statements that are declared effective—*i.e.*, where effectiveness is accelerated by the Commission or its staff acting pursuant to delegated authority, rather than by lapse of time pursuant to section 8(a) of the Securities Act. Accordingly, the Rule is not available for filings that lack a Rule 473 delaying amendment.[28] To permit otherwise would provide a mechanism to avoid the review process. While certain types of filings always become effective automatically and are not permitted to use delaying amendments,[29] the Commission believes these filings need not come within the scope of Rule 430A because such filings characteristically do not contain market-sensitive pricing information determined shortly before commencement of the offering.

4. Pre-effective Amendments: Recirculation

Rule 430A does not alter traditional considerations regarding the need, in light of events or facts that are known prior to effectiveness, to file a pre-effective amendment to assure that the registration statement is not misleading when declared effective.[30] Registrants also should consider whether material changes from the disclosure contained in the latest prospectus distributed to underwriters, dealers and others,[31] either before or after effectiveness,[32] necessitate recirculation of an amended prospectus.[33] Changes that previously were not required to be provided in a pre-effective amendment to the registration statement but were permitted to be made in a prospectus filed after effectiveness can continue to be made in the final prospectus.[34]

5. Post-effective Amendments

Rule 430A also does not alter traditional considerations regarding whether events or facts require post-effective amendment of the registration statement. A registrant that has relied on Rule 430A and files a correcting or updating post-effective amendment to the registration statement may either include the Rule 430A information in the amendment, or omit it from the amendment but include it in a prospectus filed within five business days after the amendment is declared effective. The same alternatives are available when a post-effective amendment is required to be filed because the prospectus containing the Rule 430A information was not filed within five business days after effectiveness of the registration statement.[35] In either case, whether a post-effective amendment contains the Rule 430A information or is used to recommence the five business day period during which the Rule 430A information may be filed in a Rule 424 or Rule 497 prospectus in reliance upon Rule 430A, the amendment must contain a prospectus that is current in all respects.

6. Age of Financial Statements

Rule 430A does not change requirements concerning the age of financial statements contained in a registration statement at the time of effectiveness.[36] Accordingly, use of the Rule does not eliminate the need to file a post-effective amendment if the financial statements are required to be updated at the time of effectiveness, and a registrant whose financial statements are not current should not request acceleration of effectiveness.[37] If a registrant does not file a Rule 424 or Rule 497 prospectus to provide the Rule 430A information within five days of effectiveness, a post-effective amendment filed either to include the Rule 430A information or to recommence the five business day period for Rule 430A[38] must be current in all respects. Thus, to assure the currency of financial information, such a post-effective amendment must contain updated financial statements if the previously filed financial statements are no longer current.[39]

7. Bona Fide Estimate Based on Offering Price

Rule 430A does not change procedures requiring disclosure in the preliminary prospectus of information based on a bona fide estimate of the public offering price. For example, pro forma financial information on such matters as the ratio of earnings to fixed charges[40] should be set forth, accompanied by a clear statement that the information is based on an assumed public offering price and that the pro forma information will vary in a specified manner as the assumed price changes. Disclosure also should continue to be provided on the estimated dollar amount and allocation of proceeds to be received from the offering[41] and on dilution,[42] if applicable.

A registration statement for a registrant not subject to the reporting provisions of the Exchange Act immediately prior to the filing of the registration statement must contain a bona fide estimate of the range of the

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[28] 17 CFR 230.473.

[29] The registration statements are: (1) Forms S-3 and F-3 [17 CFR 239.33] for dividend or interest reinvestment plans; (2) Forms S-4 [17 CFR 239.25] for bank or savings and loan holding company formations; and (3) Forms S-8 [17 CFR 239.16b], which are used for employee benefit plans. *See also* Part II.A.9 *infra*, "Applicability of Rule 430A to Investment Companies," with respect to automatically effective investment company registration statements.

[30] For example, a change in the estimated public offering price may materially affect disclosure on the use of proceeds and, if applicable, the adequancy of the proceeds to accomplish one or more stated purposes. *See* Items 504 and 101(a)(2)(iii)(A)(1) of Regulation S-K [17 CFR 229.504; 17 CFR 229.101(a)(2)(iii)(A)(1)], respectively. Other areas of disclosure that may require updating include the business and plan of operation, management's discussion and analysis of financial condition and results of operations, and certain pro forma financial information. *See* Items 101, 303 and 503(d)(9) of Regulation S-K [17 CFR 229.101; 17 CFR 229.303; 17 CFR 229.503(d)(9)], respectively.

[31] *See* Rule 15c2-8 under the Securities Exchange Act of 1934 as amended ("the Exchange Act") [17 CFR 240.15c2-8], 15 U.S.C. 78a-kk.

[32] *See* Rule 430A(c) and Part II.A.12 *infra*, "Use of Prospectus After Effectiveness."

[33] Pursuant to Rule 460 [17 CFR 230.460], the adequacy and availability of information to the public, including information regarding distribution of the preliminary prospectus provided pursuant to Rule 418(a)(7), may be considered in acting upon requests for acceleration of the effectiveness of a registration statement.

[34] Information concerning the amount of securities to be offered is not information that may be omitted pursuant to Rule 430A and changes in such information should be reflected in a pre-effective amendment. If a registrant requests effectiveness in the good faith belief that Rule 430A is available, but determines, after effectiveness, that the amount of securities to be offered must be changed, and increase in amount would require a new registration statement to register the additional securities; a decrease in amount generally would require a post-effective amendment.

[35] *See* Rule 430A(a)(3) and discussion in Part II.A.10 *infra*, "Section 11 Liability Issues."

[36] *See* Rule 3-12 of Regulation S-X [17 CFR 210.3-12].

[37] A registrant requesting acceleration of the effective date shortly before the date as of which financial statement disclosures would be required to be updated should consider whether such statements will fail to reflect any facts or events that have had or may have a material effect on the Company's financial condition not otherwise disclosed in the registration statement. *See* Item 303 of Regulation S-K.

[38] *See* Part II.A.11 *infra*, "Relationship to Rule 415." *See also* Part II.A.5 *supra*, "Post-effective Amendments."

[39] The financial statements would have to be current as of the date of effectivensss of such post-effective amendment.

[40] *See* Item 503(d)(9) of Regulation S-K.

[41] *See* Item 504 of Regulation S-K.

[42] *See* Item 506 of Regulation S-K [17 CFR 299.506].

maximum offering price.[43] If such a registrant requests acceleration of effectiveness in reliance upon Rule 430A and subsequently determines that the public offering price will not fall within the bona fide estimate of the range of the maximum offering price set forth in the prospectus included in the registration statement at the effective date, because changes in such information are of the type that necessitate post-effective amendments, the registrant must file a post-effective amendment to include the Rule 430A information (and update other information) or to update the estimate (and other information).[44]

8. Exhibits

The Rule does not change the filing requirements applicable to exhibits.[45] A registrant choosing not to file a pricing amendment must file all required exhibits with the initial registration statement or a pre-effective amendment. Thus, any required opinion, report or other document prepared by an accountant, other expert or counsel and applicable consents must be filed as part of the registration statement prior to effectiveness.[46] While the public offering price may not be determined until shortly after the registration statement is declared effective, in most cases requisite opinions, consents and reports, including legality opinions, can be issued prior to the specific pricing. Where issuance is not possible prior to effectiveness, the Commission has determined, after consideration of alternative approaches, that the Rule ordinarily will be unavailable.[47]

Certain exhibits, unlike opinions and consents, are not required to be filed in executed form at the time of effectiveness (*e.g.*, trust indentures and underwriting agreements). The filing requirement may be satisfied by submission of the final form of the document to be used; the form must be complete, except that prices, signatures and similar matters may be omitted.[48]

A technical amendment to Instruction 1 to Item 601 of Regulation S–K has been adopted substantially as proposed to provide that information on price and similar matters omitted from an exhibit that is not refiled to provide the information may be provided in a prospectus filed with the Commission pursuant to Rule 424(b) after effectiveness of the registration statement, rather than being included in an amendment to the registration statement.[49] The prior requirement to state in any amendment to the registration statement the basis provided by this Instruction for not refiling such exhibit has been deleted because it is not essential.

9. Applicability of Rule 430A to Investment Companies

As explained in the proposing release, Rule 430A will be used primarily by closed-end investment companies because the pricing amendment typically is not the last event, or is only part of the last event, preceding effectiveness of the registration statements of other investment companies under the Investment Company Act of 1940. One commentator urged the Commission to expand the availability of Rule 430A to unit investment trust whose registration statements become effective automatically under Rule 487.[50] The Commission asked for comment on similar possibilities for streamlining unit investment trust filing procedures in connection with the reproposal of Form N–7.[51] and will consider this comment, as well as others received, in connection with the adoption of Form N–7.[52]

10. Section 11 Liability Issues

Section 11 of the Securities Act[53] imposes liability on the issuer, directors, signers, experts and other designated persons for material misstatements in or omissions from a registration statement at the time of effectiveness. Rule 430A as adopted does not alter such liability. Accordingly, paragraph (b) of Rule 430A provides that information omitted from a prospectus filed as part of a registration statement at the time of effectiveness in reliance upon paragraph (a), and subsequently filed in a prospectus pursuant to Rule 424(b) or 497(h),[54] is deemed to be part of the registration statement at the time of effectiveness. Further, one condition to the use of the Rule is inclusion in the registration statement of the new undertaking specified by paragraph (j)(1) to Item 512 of Regulation S–K. The effect of paragraph (b) of the Rule and the Item 512(j)(1) undertaking is to maintain section 11 liability on the information omitted from the prospectus contained in the effective registration statement in reliance on paragraph (a) of Rule 430A and subsequently filed with the Commission.[55] In addition, paragraph (a) of Rule 430A specifies that the information that may be omitted pursuant to the Rule need not be contained in the prospectus in a registration statement at effectiveness in order for the registration statement to meet the requirements of section 7 of the Securities Act for the purposes of section 5[56] thereof. Thus, the fact that such information is not physically contained in the registration statement at the time of effectiveness would not result in liability under these provisions of the Securities Act.

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[43] *See* Item 501(c)(6) of Regulation S–K [17 CFR 229.501(c)(6)].

[44] If the estimate is updated by a post-effective amendment that is current in all respects, Rule 430A may continue to be utilized. *See* Rule 430A(a)(3) and Part II.A.5 *supra*, "Post-effective Amendments."

[45] *See* Item 601 of Regulation S–K.

[46] *See* section 7 and Schedule A(29) of the Securities Act [15 U.S.C. 77g and 77aa Schedule A(29), respectively]; Item 601(b)(5), (6), (7), (8), and (24) of Regulation S–K [17 CFR 229.601(b)(5), (6), (7) (8), and (24)]; and Rules 436–439 [17 CFR 230.436–439]. An amendment to a registration statement that is filed solely for the purpose of adding exhibits and does not change the prospectus need include only the cover page to the registration statement, the exhibit index, the new or revised exhibits and the signature page.

[47] This position, however, is not intended to change the current practice with respect to delayed offerings under Rule 415(a) (1) (x) [17 CFR 230.415(a)(1)(x)]. Although certain qualified legality opinions may be filed as an exhibit to such a registration statement that is declared effective, after pricing and prior to sales an unqualified opinion (and consent) must be filed on Form 8–K [17 CFR 249.308] and thus incorporated by reference into the registration statement or must be contained in a post-effective amendment.

[48] Such exhibits may not be incorporated by reference into any subsequent filing made with the Commission. The completed exhibit, however, even if not part of the registration statement as declared effective, still may be incorporated by reference into other Commission documents if it is previously filed, *e.g.*, as part of a cost-effective amendment or Form 8–K. *See* Instruction 1 to Item 601 of Regulation S–K. These procedures are not affected by Rule 430A.

[49] Although the proposed Instruction only provided for information in a prospectus filed pursuant to Rule 424(b)(1) and (4), the Instruction as adopted allows such information to be contained in any prospectus filed pursuant to Rule 424(b) [17 CFR 230.424(b)].

[50] 17 CFR 230.487. *See* Part II.A.3 *supra*, "Eligibility and Conditions for Use of Rule 430A," concerning the requirement that Rule 430A is only available for registration statements that are declared effective.

[51] Investment Company Act Rel. No. 15612 (March 9, 1987) [52 FR 8286 (March 17, 1987)].

[52] The Commission has, however, adopted paragraph (h) of Rule 497 with modifications to conform to the timing changes made to Rule 424 for the filing of prospectuses containing Rule 430A information. *See* Part II.B *infra*, "Amendments to Rule 424." To accommodate the adoption of Rule 430A, the Commission has also adopted technical amendments to Rules 481 [*see* part II.A.15 *infra*, "Item 502 of Regulation S–K and Rule 481"] and Rule 482.

[53] 15 U.S.C. 77k.

[54] *See* Part II.B.1 *infra*, "Types of Prospectuses to be Filed and Classification of Prospectuses," and Part II.A.9 *supra*, "Applicability of Rule 430A to Investment Companies."

[55] As other changes in the prospectus would not be deemed to be part of the registration statement, such changes would not be taken into account in determining the adequacy of the registration statement for section 11 liability purposes.

[56] 15 U.S.C. 77e.

Because of the close proximity in time between effectiveness of the registration statement, the filing of the final prospectus under Rule 424 or 497 and the initial bona fide offering of the securities (as used in sections 4(3) and 13 of the Securities Act),[57] the Commission has determined that it is not necessary for paragraph (j) of Item 512 to contain any undertaking updating the registration statement for statute of limitations and section 11 reliance purposes. However, in the event the Rule 424 or 497 filing is not made within the specified five business day period, Rule 430A requires the filing of a post-effective amendment. Since there is no prescribed time period by which the post-effective amendment must be filed, the Commission has determined after consideration of comments solicited to require an undertaking updating the registration statement for liability and statute of limitations purposes upon the effectiveness of any post-effective amendment containing a prospectus. Accordingly, registrants that intend to utilize Rule 430A as adopted must provide the new undertaking required by Item 512(j)(2) of Regulation S–K.

Section 11 liability continues to extend to exhibits, including opinions of counsel and consents of counsel and accountants, which must be filed as part of the registration statement at the time of effectiveness, as discussed above.[58] In addition, underwriter liability under section 11 is not affected by the omission of underwriters' names from the registration statement; anyone with the status of an underwriter is potentially liable under section 11 whether or not named in the registration statement.[59]

11. Relationship to Rule 415

The new Rule does not affect the existing eligibility requirements for filing a registration statement for a continuous or delayed offering under Rule 415. Accordingly, the securities being offered pursuant to a registration statement declared effective as permitted by Rule 430A must be priced before or shortly after the registration statement is declared effective, and the offering must commence promptly, unless a post-effective amendment is filed or the registration statement meets the criteria for a delayed offering under Rule 415.[60] Paragraph (a)(3) of the Rule as adopted requires that the Rule 430A information be contained in a post-effective amendment (which must be declared effective before sales are made) if a prospectus containing that information is not filed within five business days after effectiveness of the registration statement or of a post-effective amendment containing a form of prospectus or transmitted by a means reasonably calculated to result in filing with the Commission by that date.[61] The five business day period is not intended as a definition of what constitutes a delayed offering for purposes of Rule 415, but serves to ensure that delays in pricing and marketing securities will not result in offerings inconsistent with the Rule 415 criteria.

Securities offerings that meet the criteria for delayed offerings under Rule 415 do not have to rely upon Rule 430A. Such registration statements may become effective without price, underwriting syndicate and other information, because the information is not known at the time of effectiveness.

However, in order to provide additional market flexibility and to avoid an artificial election between the two rules prior to effectiveness, a registrant eligible to engage in a delayed offering pursuant to Rule 415 may retain the option to proceed under either rule as long as it includes the undertakings called for by both Items 512(a)[62] and 512(j) of Regulation S–K. Such a registrant may choose to include both sets of undertakings (at the time of initial filing or in a pre-effective amendment) either if it plans to offer one tranche of securities immediately and the remainder on a delayed basis, or if it is uncertain at the time it files whether or not the securities will be offered on a delayed basis.[63] At the time it requests acceleration of effectiveness, a registrant that has no present intent to make the first offering of securities under the registration statement promptly, and therefore will be making the offering on a delayed basis rather than in reliance on Rule 430A, should so state in its request for acceleration. It may then continue to omit, in addition to Rule 430A information, other information not known at the time of effectiveness. When the delayed offering is ultimately made, the prospectus containing the required information will be filed pursuant to Rule 424(b)(2) or (5).

On the other hand, a registrant requesting acceleration that plans to offer securities promptly must provide all required information, except that which may be omitted in reliance on Rule 430A. In the event that both sets of undertakings are included and only Rule 430A information is omitted at the time of effectiveness, the registrant will be presumed to be relying upon Rule 430A for the first offering under the registration statement and will file the prospectus containing the Rule 430A information pursuant to Rule 424(b)(1) or (4) within five business days of effectiveness.[64] Nonetheless, registrants eligible to engage in delayed offerings need not file a post-effective amendment to provide the Rule 430A information if the Rule 424(b) prospectus is not filed within five business days; instead, the information may be included in a prospectus filed pursuant to Rule 424(b)(2) or (5).[65] The Item 512(a) undertakings will apply in this fact situation.

This approach will alleviate continuing interpretive and administrative questions concerning whether a registration statement otherwise eligible to be filed as a delayed offering under Rule 415 is a "convenience shelf," *i.e.*, a registration statement for which the offering of some or all the securities is intended at the time of effectiveness to commence promptly. The Commission has stated previously that the securities to be offered promptly cannot be considered part of a delayed offering; therefore, a pricing amendment has been required for such filings.[66] Under Rule 430A, such filings will be able to be declared effective without pricing amendments, provided the terms and conditions of the Rule are met.

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[57] 15 U.S.C. 77d(3) and 77m, respectively.

[58] *See* Part II.A 6 *supra*, "Exhibits".

[59] *See generally* section 11(a)(5), (b)(3), (d), (e) and (f) of the Securities Act [15 U.S.C. 77k (a)(5), (b)(3), (d), (e), and (f).

[60] Such criteria are set forth in Rule 415(a)(1)[17 CFR 230.415(a)(1)]; *see* particularly Rule 415 (a)(1)(x) [17 CFR 230.415(a)(1)((x)].

[61] The business day after the date the registration statement is declared effective, regardless of the time of day effectiveness occurs, is considered the first business day. The prospectus containing the Rule 430A information must be filed by the Commission's close of business on the fifth business day following effectiveness. *See* Rule 110 [17 CFR 230.110].

[62] 17 CFR 229.512(a).

[63] The registrant need not file a pre-effective amendment to remove the Rule 415 undertaking or the checking of the "Rule 415 box" on the cover page in the event that it decides to offer all of the securities promptly.

[64] *See* discussion in Part II.B.1 *infra*, "Types of Prospectuses Required to be Filed and Classification of Prospectuses."

[65] In contrast, registrants making continuous offerings under Rule 415, which are required to commence promptly, may make use of Rule 430A to omit information that would otherwise be required, but a post-effective amendment must be filed if the Rule 424(b) prospectus is not filed within 5 business days. *See* Rule 415(a)(1)(ix) [17 CFR 230.415(a)(1)(ix)].

[66] *See* Securities Act Release No. 6499 (November 17, 1983) [48 FR 52889].

12. Use of Prospectus After Effectiveness

As proposed, then-paragraph (b) of Rule 403A provided that the rule would not "limit the information required to be contained in a form of prospectus meeting the requirements of section 10 [67] of the Act for purposes of section 5(b) thereof used after effectiveness of the registration statement." One commentator believed that an unintended consequence of proposed paragraph (b), when read in conjunction with Rule 430 (which relates only to preliminary prospectuses used prior to the effective date), would have been to prohibit the use of any form of prospectus after the effective date and prior to pricing. As adopted, this paragraph, redesignated paragraph (c) of Rule 430A, has been clarified to reflect that a prospectus that omits Rule 430A information may be used after effectiveness and prior to pricing.[68] However, use of such a prospectus is not permitted for purposes of satisfying the requirements of section 5(b)(2) in connection with delivery of a security for sale or for delivery after a sale or the requirements of section 2(10)(a) in connection with delivery of other written communications (*e.g.*, confirmations) to investors.[69]

Such pre-pricing prospectus must be clearly marked on the cover page to indicate that it is subject to completion or amendment. In lieu of requiring registrants to reprint or sticker to so indicate, the Commission has amended the statement required by Item 501(c)(8) of Regulation S–K and Rule 481(b)(2) so that it may be used after effectiveness and prior to pricing.[70] Rule 423 has also been amended so that a prospectus used after effectiveness and prior to pricing would not have to be re-dated.

13. Formula Pricing

Previously, companies that intended to price an offering according to a formula related to the market price filed alternative prospectus cover pages as part of the registration statement. One cover page described the formula and was used to meet the requirements of paragraph (16) of Schedule A of the Securities Act and Item 501 of Regulation S–K.[71] The other, used in the final prospectus, omitted the formula cover page and included the pricing table that was completed after the securities were priced. The adoption of Rule 430A makes these procedures no longer necessary.

14. Competitive Bidding

The Commission has not changed the procedures applicable to securities to be offered by competitive bidding. Therefore, companies that offer and sell securities by that procedure may not use Rule 430A.[72] Such companies should continue to comply with the current rules and staff interpretations applicable to competitive bidding.[73]

15. Item 502 of Regulation S–K and Rule 481 (Pre-Pricing Stabilization)

Where the registrant or any underwriter knows or has reason to believe that the price of any security may be stabilized to facilitate the offering of registered securities, the prospectus must include the stabilization legend prescribed by Item 502(d)(1) [74] of Regulation S–K or Rule 481(d)(1).[75] Item 502(d)(2) [76] and Rule 481(d)(2) [77] further provide that if such stabilizing began prior to the effective date, the prospectus must set forth the amount of securities bought, the prices at which they were bought and the period within which they were bought. Except where formula pricing was used, previously the offering price was normally determined after the close of the market on the day before the effective date and, accordingly, the effect of Item 502(d)(2) and Rule 481(d)(2) was to require disclosure regarding stabilizing transactions effected prior to pricing.

Where Rule 430A is used, stabilizing transactions may be effected after the effective date but prior to determination of the initial public offering price. To assure that investors receive substantially the same disclosure regarding pre-pricing stabilizing as was previously required, the Commission has amended item 502(d)(2) and Rule 481(d)(2) to provide that, where Rule 430A is used, the prospectus filed pursuant to Rule 424 or Rule 497 (or a post-effective amendment if a Rule 424 or Rule 497 prospectus is not filed) must include information as to stabilizing transactions effected prior to the determination of the initial public offering price.

B. Amendments to Rule 424 [78]

1. Types of Prospectuses Required to be Filed and Classification of Prospectuses

Because the previous requirement of Rule 424 to file with the Commission prospectuses in the exact form furnished to investors [79] resulted in nonessential filings, the Commission has removed the word "exact" and restricted the filing requirement to prospectuses that contain substantive modifications of additions.[80] The term "substantive" refers to additions or modifications that supplement, update or correct the content and substance of the information contained in a prospectus, excluding such matters as those typographical, grammatical, format and clarifying changes that do not affect investors' understanding of the information.[81]

In addition, to facilitate access to and use of the information, the prospectuses are classified according to the nature of the information being added or modified. Because of the new classification scheme, restructured from the proposal, the distinction between the first prospectus filed after effectiveness

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[67] 15 U.S.C. 77j.

[68] *See* Part II.A.4 *Supra*, "Pre-Effective Amendments; Recirculation," discussing material changes from the disclosure contained in the lastest prospectus distributed.

[69] 15 U.S.C. 77e(b)(2); 15 U.S.C. 77b(10)(a).

[70] 17 CFR 229.501(c)(8); 17 CFR 230.481(b)(2).

[71] 15 U.S.C. 77aa Schedule A(16) and 17 CFR 229.501, respectively. *See* Instruction 2 to Item 501 of Regulation S–K.

[72] *See* Rule 430A(d).

[73] Rule 445 [17 CFR 230.445] requires the filing of a post-effective amendment to reflect the results of the competitive amendment to reflect the results of the competitive bidding. The post-effective amendment to the registration statement becomes effective automatically at the time it is filed unless the registrant has been notified that proceedings under section 8 of the Securities Act [15 U.S.C. 77h] have been commenced. The staff, however, will permit registrants to file prospectuses pursuant to Rule 424(b) [17 CFR 230.424(b)] to reflect the results of the competitive bidding for securities offered on a delayed or continuous basis under Rule 415.

[74] 17 CFR 229.502(d)(1).

[75] 17 CFR 230.481(d)(1).

[76] 17 CFR 229.502(d)(2).

[77] 17 CFR 230.481(d)(2).

[78] *See* Part II.A.9 *supra*, "Applicability of Rule 430A to Investment Companies," for a discussion of the more limited changes to Rule 497, the rule applicable to filing of investment company prospectuses.

[79] Temporary Rule 499(c)(7) [17 CFR 230.499(c)(7)] permits registrants participating in the Edgar pilot to file Rule 424 prospectuses electronically, rather than in the exact form furnished to investors; the filing contains a narrative explanation of variations in form.

[80] The changes to Rule 424 only affect the filing requirements, not the legal determination as to whether information must be provided to investors, and if so, whether such information may be provided in a prospectus or prospectus supplement without being included in a post-effective amendment. *See, e.g.*, Item 512(a) of Regulation S–K, which specifies certain filings that must be made by post-effective amendment.

The prospectus need not be filed in the exact format in which it is used. Thus, registrants may use available methods to have the prospectus transmitted to Washington and filed by an agent. For example, the prospectus could be telecopied to a service bureau in Washington for filing.

[81] As a result of this change to Rule 424, most registrants that choose to follow traditional procedures and therefore file pricing amendments will not also have to file a Rule 424(b) prospectus, as that prospectus ordinarily would not contain substantive changes from the prospectus contained in the pricing amendment.

and subsequently filed prospectuses has been eliminated. Accordingly, paragraphs (b) and (c) of Rule 424, which maintained such a distinction and specified different times for filing, have been merged.

New paragraphs (b) (1) and (2) apply to prospectuses disclosing "transaction-specific" information, *i.e.*, information relating primarily to the securities offering. If a registrant relies upon Rule 430A, a prospectus used after effectiveness of the registration statement will ordinarily be filed under Rule 424(b)(1).[82] Prospectuses filed under that paragraph will disclose the price, price-related information and underwriter-related information that was omitted from the registration statement at the time of effectiveness.[83]

Any prospectus that discloses transaction-specific information about the offering of securities on a delayed shelf basis under Rule 415(a)(1) (vii), (viii), and (x) ordinarily will be filed under new paragraph (b)(2).[84]

The transaction information will include the price, specific description of the securities, and specific method of distribution. Typically, such a prospectus will be filed every time another series or "tranche" of securities is offered.

Prospectuses reflecting other substantive changes or additions not covered in the first two categories will be filed under new paragraph (b)(3).[85] Finally, prospectuses reflecting information that falls within more than one paragraph of proposed Rule 424(b) will be filed under new paragraph (b)(4) or (5), as applicable.[86] In order to make the classification system useful, paragraph (e) of Rule 424 has been amended to require that the filing specify the applicable paragraph or subparagraph (*i.e.*, "(a)," "(d)" or "(b)(1)"–"(b)(5)") pursuant to which it is being made.[87] The rule as adopted has been reformatted from the proposal in order to simplify these designations.

2. Filing Period

The Commission has shortened the time within which certain prospectuses used after effectiveness of the registration statement must be filed. Such filings warrant a short time period in order that the information may be promptly available to the investing public and the Commission.

Under the proposed amendments, the filing date would have been tied to the first use after effectiveness of the prospectus that contains modified or additional information. Commentators expressed concern that the proposed requirements to file on the date of first use removed too much of the flexibility intended by the proposal, particularly as they would have applied to delayed offerings under Rule 415 that occur late in the business day. The Commission appreciates this desire for flexibility. Nonetheless, it is important for this highly significant information to be on file with the Commission in a timely fashion.

The amendments as adopted balance both concerns, requiring that a prospectus disclosing transaction-specific information specified in either paragraph (b)(1) or (2) be filed not later than the second business day following the earlier of the date of the determination of the offering price or the date that it is first used after effectiveness in connection with the public offering or sales or transmitted by a means reasonably calculated to result in filing with the Commission by that date.[88] The concept of "first use" is not limited to provision of the prospectus to purchasers with their confirmations. Rather, it refers to availability of the prospectus to the managing underwriter, syndicate members or offerees.

In recognition of the possiblity that the Rule 424 filing may not reach the Commission for filing due to circumstances beyond the registrant's control, paragraphs (b)(1) and (b)(2) of Rule 424 provide for transmission by a means reasonably calculated to result in filing with the Commission by the second business day deadline.[89] In order to meet the requirements of Rule 430A, however, it will be necessary for a registrant to ascertain promptly whether a form of prospectus that contains Rule 430A information that has been transmitted for filing under Rule 424(b) or Rule 497(h) actually was received by the Commission. Further, in the event that it was not received, Rule 430A requires that the registrant promptly file such prospectus.

As prospectuses filed under paragraphs (b)(4) and (b)(5) also will contain information subject to the timing requirement provided for in paragraphs (b) (1), and (2), respectively, they are required to be filed no later than the second business day following the date of the earlier of pricing or first use. Paragraphs (b) (4) and (5) also provide for transmission by a means reasonably calculated to result in filing with the Commission by that date.

Unlike prospectuses filed pursuant to paragraphs (b) (1) and (2), prospectuses filed under paragraph (b)(3), which only reflect other substantive changes, will have to be filed no later than the fifth business day after first use; like prospectuses filed pursuant to paragraphs (b) (1) and (2), they may be transmitted by a means reasonably calculated to result in filing with the Commission by that date.[90] In the usual case, mailing of Rule 424(b)(3) prospectuses on the date of first use would suffice even if overnight mail service or similar means were not used.

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[82] As discussed in Part II.A.II *supra*, "Relationship to Rule 415." Rule 430A(a)(3) requires that a post-effective amendment be filed if the prospectus is not filed within five business days after effectiveness.

[83] This prospectus also will include updated information required by various items of Regulation S-K to be provided "as of the latest practicable date" (*see, e.g.*, Item 201(a)(1)(v) [17 CFR 229.201(a)(1)(v)] and Instruction 2 to Item 501 of Regulation S-K).

[84] The prospectuses required to be filed pursuant to paragraph (b)(2) have been limited to those concerning primary offerings on a delayed basis under Rule 415(a)(1)(vii), (viii) and (x) [17 CFR 230.415(a)(1) (vii), (viii) and (x)]. Accordingly, prospectuses relating to all other offerings pursuant to Rule 415, including secondary offerings made on a delayed basis, are to be filed under paragraph (b)(3) unless they contain information omitted pursuant to Rule 430A.

[85] A prospectus containing Rule 430A information with respect to a continuous offering under Rule 415 would be filed pursuant to new paragraph (b)(1); subsequent prospectuses relating to such offerings would be filed pursuant to new paragraph (b)(3). *See* n.65 *supra*.

[86] These two categories represent a combination of (1) and (3), and (2) and (3), respectively. No combination of (1) and (2) is needed. Category (4) would be used when a prospectus includes both information previously omitted pursuant to Rule 430A and other substantive changes that customarily are permitted to be made in a Rule 424 filing. As noted in n.80 *supra*, the proposed revisions to Rule 424 are not intended to alter traditional considerations determining when information must be included in a post-effective amendment. Accordingly, if a registrant relying on Rule 430A determines after effectiveness that the prospectus will contain information required to be set forth in a post-effective amendment, filing a Rule 424(b) prospectus under category (4) would not substitute for a post-effective amendment. *See* n.55 *supra*.

[87] [17 CFR 230.414(e)]. For example, a prospectus filed pursuant to paragraph (b)(1) of Rule 424 should be designated "424(b)(1)."

[88] *See* Rule 456 [17 CFR 230.456].

[89] The means that may be used is dependent upon the date of transmission; a means ulitized on the first business day following the date of pricing or first use may not suffice if used on the second business day. Unlike prior-Rule 424(c), in the usual case first class mail would not result in compliance.

[90] In the proposing Release, the Commission requested comment as to whether prospectuses that do no more than reflect a change in the "price and certain other narrowly specified terms" of the security should be provided a longer filing period than the proposed two business day period. Extension of the Rule 424(b)(3) filing period to five business days sufficiently responds to these concerns.

3. Filing Format

In the usual case, revised Rule 424(c) explicitly permits the filing of a prospectus supplement or "sticker" only, rather than requiring that a registrant using a supplement refile the entire prospectus with the supplement attached.[91] The prospectus supplement distributed to investors, however, ordinarily is still required to be attached to the prospectus to which the supplement relates.[92] The Rule requires that a supplement smaller than a prospectus page filed separately be attached to a sheet of 8½"×11" paper for ease in processing.

A related amendment requires that the first page of each prospectus supplement include a cross reference to the date(s) of the related prospectus and/or prospectus supplement(s). This will permit the Commission and persons obtaining this information to determine which documents comprise the complete prospectus.[93]

4. Amendments to Rule 424(a) [94]

The Commission has amended paragraph (a) of Rule 424 to eliminate the filing requirement for prospectuses used prior to effectiveness containing non-substantive changes from a previously filed prospectus. This change conforms Rule 424(a) to new Rule 424(b).

III. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with proposed Rule 430A and the amendments to Rules 424 and 497 and Items 512 and 601 of Regulation S–K, the Commission requested commentators to provide views and data as to the costs and benefits associated with the rules to eliminate pricing amendments and non-substantive Rule 424 filings, to permit the filing of a supplement without the rest of the prospectus, and to require more immediate filing of the prospectus. In this regard, the Commission noted that the amendments would reduce the filing burden borne by registrants, and associated costs such as printing and travel expenses, but that the reduction of these expenses might be offset in part by an increase in the costs associated with filing a Rule 424(b) or Rule 497(h) prospectus at an earlier time. In response to commentator concerns that the offset might reduce the cost savings from Rule 430A rather substantially, the time for filing was lengthened.

IV. Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis concerns new Rule 430A and amendments to Rules 424 and 497 of Regulation C and Items 512 and 601 of Regulation S–K and has been prepared by the Commission in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis is contained in the proposing release.

Objectives of the New Rule and Amendments

The objectives of Rule 430A and the related amendments to Items 512 and 601 of Regulation S–K are to simplify and to reduce filing procedures and to minimize possible disruptions to a registrant's marketing schedule as the result of having to file a pre-effective pricing amendment. The amendments to Rules 424 and 497 governing the prospectus classification system, filing format and time requirements are intended to provide a more useful and effective system for filing post-effective prospectuses. The changes achieve these purposes without affecting the adequacy of disclosure of information to investors or investor protection under the federal securities laws.

Public Comment

No commentators responded to the Commission's request for comments on the Initial Regulatory Flexibility Analysis.

Significant Alternatives

Pursuant to section 604 of the Regulatory Flexibility Act, the following types of alternatives were considered:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation or simplification of compliance and reporting requirements under the rules for such small entities;

(3) The use of performance rather than design standards; and

(4) An exemption from coverage of the rules, or any part thereof, for small entities.

Specifically, the Commission considered whether or not Rule 430A should be available to registrants not subject to the reporting provisions of sections 13(a) or 15(d) of the Exchange Act immediately prior to filing a registration statement. The Commission decided to extend the rule to such registrants, thus enabling small issuers to take advantage of the benefits of Rule 430A.

With respect to the amendments to Rule 424 the Commission considered used after effectiveness by small issuers to file such prospectuses any earlier than currently required. The Commission does not believe, however, that such alternative proposals would be consistent with the Commission's mandate of investor protection. Similarly, the Commission does not consider the use of performance standards to be a significant alternative because such standards would be inconsistent with the Commission's statutory mandate.

V. Statutory Basis

Rule 430A is being adopted by the Commission and Rules 423, 424, 481, 482 and 497 and Items 501, 502, 512 and 601 of Regulation S–K are being amended by the Commission pursuant to Sections 7, 10 and 19(a) of the Securities Act.

List of Subjects in 17 CFR Parts 229, 230, 239, and 240.

Reporting and recordkeeping requirements, Securities.

VI. Text of Rules

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 68 Stat.

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[91] Rule 424(c), however, requires registrants filing the Rule 430A information pursuant to Rule 424(b)(1) or (4) to file either a complete prospectus containing the information or a supplement that is attached to the prospectus. Any subsequently filed prospectus supplement need not be attached to the prospectus.

[92] The Commission staff previously has permitted registrants to send prospectus supplements not attached to the prospectus (often called an "appendix" in the employee benefit plan context) to participants if an employee benefit plan or dividend or interest reinvestment plan, provided that the supplement is understandable without reference to the prospectus and that the participants have previously received a complete copy of the prospectus to which the supplement relates and are advised that they may receive another copy on request. *See* Securities Act Release No. 6281 (January 15, 1981) [46 FR 8446] and, *e.g.*, letter re Illinois Power Company [available October 11, 1982]. This will continue to be permitted.

[93] The cross reference would not necessarily refer to all previous supplements filed in connection with the prospectus, but only to those supplements that constitute part of the statutory prospectus with respect to the securities currently being offered.

[94] 17 CFR 230.424(a).

1503; secs. 8, 9, 10, 11, 18, 69 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78*l*(d), 78w(a). * * *

§ 229.10 [Amended]

2. In § 229.10, paragraph (c)(1)(iii) is amended by removing the reference to "Rule 424(c)" and replacing it with a reference to "Rule 424(b)" and by removing the accompanying citation "(§ 230.424(c) of this chapter)" and replacing it with "(§ 230.424(b) of this chapter)".

3. In § 229.501, paragraph (c)(8) is revised to read as follows:

§ 229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.

* * * * *

(c) * * *

(8) In the case of any prospectus to be used before the effective date of the registration statement (or, in the case of any prospectus that omits information as permitted by Rule 430A under the Securities Act [§ 230.430A of this chapter], prior to the determination of the initial public offering price), in red ink, the caption "Subject to Completion," the date of its issuance, and the following statement printed in type as large as that generally used in the body of the prospectus:

Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any State.

* * * * *

4. By revising paragraph (d)(2) of § 229.502 to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

* * * * *

(d) * * *

(2) If the stabilizing began prior to the effective date of the registration statement, set forth the amount of securities bought, the prices at which they were bought and the period within which they were bought. In the event that Rule 430A under the Securities Act [§ 230.430A of this chapter] is used, the prospectus is filed pursuant to Rule 424(b) [§ 230.424(b) of this chapter] or included in a post-effective amendment must include information as to stabilizing transactions effected prior to the determination of the public offering price set forth in such prospectus.

* * * * *

5. By adding new paragraph (j) of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(j) Include the following in a registration statement permitted by Rule 430A under the Securities Act of 1933 [§ 230.430A of this chapter]:

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of a registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of the registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

6. By revising Instruction 1 to § 229.601 to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

Instructions to Item 601. 1. If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed only (A) to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to Rule 424(b) under the Securities Act [§ 230.424(b) of this chapter], or (B) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the registrant need not refile such exhibit as so amended. Any such incomplete exhibit may not, however, be incorporated by reference in any subsequent filing under any Act administered by the Commission.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation of Part 230 continues to read, in part, as follows:

Authority: Secs. 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81 and 85, as amended (15 U.S.C. 77f, 77h, 77i, 77s);

2. The introductory phrase in the first sentence of § 230.423 is amended to read as follows:

§ 230.423 Date of prospectus.

Except for a form of prospectus used after the effective date of the registration statement and before the determination of the offering price as permitted by Rule 430A(c) under the Securities Act (§ 230.430A(c) of this chapter) or before the opening of bids as permitted by Rule 445(c) under the Securities Act (§ 230.445(c) of this chapter), each * * *

* * * * *

3. By revising paragraphs (a), (b), (c), and (e), and adding a "Note" after paragraph (c) of § 230.424 to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

(a) Five copies of every form of prospectus sent or given to any person prior to the effective date of the registration statement which varies from the form or forms of prospectus included in the registration statement as filed pursuant to § 230.402(a) of this chapter shall be filed as a part of the registration statement not later than the date such form of prospectus is first sent or given to any person: *Provided, however,* that only a form of prospectus that contains substantive changes from or additions to a prospectus previously filed with the Commission as part of a registration statement need be filed pursuant to this paragraph (a); *Provided, further,* that an investment company advertisement which is deemed to be a prospectus pursuant to § 230.482 of this chapter and which is required to be filed pursuant to this paragraph shall not be filed as part of the registration statement.

(b) Ten copies of each form of prospectus purporting to comply with section 10 of the Securities Act [15 U.S.C. 77j] shall be filed with the Commission in the form in which it is used after the effectiveness of the registration statement and identified as required by paragraph (e); *Provided, however,* that only a form of prospectus that contains substantive changes from or additions to a previously filed prospectus is required to be filed; *Provided, further,* that this paragraph (b) shall not apply in respect of a form of prospectus contained in a registration statement and relating solely to securities offered at competitive bidding, which prospectus is intended for use prior to the opening of bids. The ten copies shall be filed or transmitted for filing as follows:

(1) A form of prospectus that discloses information previously omitted from the prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the Securities Act [§ 230.430A of this chapter] shall be filed with the commission no later than the second business day following the earlier of the date of determination of the offering price or the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

(2) A form of prospectus used in connection with a primary offering of securities on a delayed basis pursuant to Rule 415(a)(1)(vii), (viii) or (x) under the Securities Act [§ 230.415(a)(1)(vii), (viii) or (x) of this chapter] that discloses the public offering price, description of securities, specific method of distribution or similar matters shall be filed with the Commission no later than the second business day following the earlier of the date of the determination of the offering price or the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

(3) A form of prospectus that reflects facts or events other than those covered in paragraphs (b)(1) and (2) of this rule that constitute a substantive change from or addition to the information set forth in the last form of prospectus filed with the Commission under this rule or as part of a registration statement under the Securities Act shall be filed with the Commission no later than the fifth business day after the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

(4) A form of prospectus that discloses information, facts or events covered in both paragraphs (b)(1) and (3) shall be filed with the Commission no later than the second business day following the earlier of the date of the determination of the offering price or the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

(5) A form of prospectus that discloses information, facts or events covered in both paragraphs (b)(2) and (3) shall be filed with the Commission no later than the second business day following the earlier of the date of the determination of the offering price or the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

(c) If a form of prospectus, other than one filed pursuant to paragraph (b)(1) or (b)(4) of this Rule, consists of a prospectus supplement attached to a form of prospectus that (1) previously has been filed or (2) was not required to be filed pursuant to paragraph (b) because it did no contain substantive changes from a prospectus that previously was filed, only the prospectus supplement need be filed under paragraph (b) of this rule, provided that the first page of each prospectus supplement includes a cross reference to the date(s) of the related prospectus and any prospectus supplements thereto that together constitute the prospectus required to be delivered by Section 5(b) of the Securities Act [15 U.S.C. 77e(b)] with respect to the securities currently being offered or sold. The cross reference may be set forth in longhand, provided it is legible.

Note.—Any prospectus supplement being filed separately that is smaller than a prospectus page should be attached to an 8½" × 11" sheet of paper.

(d) * * *

(e) Each copy of a form of prospectus filed under this rule shall contain in the upper right corner of the cover page the paragraph of this rule, including the subparagraph if applicable, under which the filing is made, and the file number of the registration statement to which the prospectus relates. The information required by this paragraph may be set forth in longhand, provided it is legible.

4. By adding new § 230.439A to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

(a) The form of prospectus filed as part of a registration statement that is declared effective may omit information with respect to the public offering price, underwriting syndicate (including any material relationships between the registrant and underwriters not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other items dependent upon the offering price, delivery dates, and terms of the securities dependent upon the offering date; and such form of prospectus need not contain such information in order for the registration statement to meet the requirements of Section 7 of the Securities Act [15 U.S.C. 77g] for the purposes of Section 5 thereof [15 U.S.C. 77e]. *Provided that,*

(1) The securities to be registered are offered for cash;

(2) The registrant furnishes the undertakings required by Item 512(j) of Regulation S–K [§ 229.512(j) of this chapter]; and

(3) The information ommitted in reliance upon paragraph (a) from the form of prospectus filed as part of a registration statement that is declared effective is contained in a form of prospectus filed with the Commission pursuant to Rule 424(b) or Rule 497(h) under the Securities Act [§§ 230.424(b) or 230.497(h) of this chapter]; except that if such form of prospectus is not so filed by the later of five business days after the effective date of the registration statement or five business days after the effectiveness of a post-effective amendment thereto that contains a form of prospectus, or transmitted by a means reasonably calculated to result in filing with the Commission by that date, the information omitted in reliance upon paragraph (a) must be contained in an effective post-effective amendment to the registration statement.

(b) The information omitted in reliance upon paragraph (a) from the form of prospectus filed as part of an effective registration statement, and contained in the form of prospectus filed with the Commission pursuant to Rule 424(b) or Rule 497(h) under the Securities Act [§§ 230.424(b) or 230.497(h) of this chapter], shall be deemed to be a part of the registration statement as of the time it was declared effective.

(c) When used prior to determination of the offering price of the securities, a form of prospectus relating to the securities offered pursuant to a registration statement that is declared effective with information omitted from the form of prospectus filed as part of such effective registration statement in reliance upon this Rule 430A need not contain information omitted pursuant to paragraph (a), in order to meet the requirements of Section 10 of the Securities Act [15 U.S.C. 77j] for the purpose of section 5(b)(1) [15 U.S.C. 77e(b)(1)] thereof. This provision shall not limit the information required to be contained in a form of prospectus meeting the requirements of section 10(a) of the Act for the purposes of section 5(b)(2) thereof or exception (a) of Section 2(10) [15 U.S.C. 77b(10)] thereof.

(d) this rule shall not apply to registration statements for securities to be offered by competitive bidding.

Note.—If information is omitted in reliance upon paragraph (a) from the form of prospectus filed as part of an effective registration statement, or effective post-

effective amendment thereto, the registrant must ascertain promptly whether a form of prospectus transmitted for filing under Rule 424(b) of Rule 497(h) under the Securities Act actually was received for filing by the Commission and, in the event that it was not, promptly file such prospectus.

5. In § 230.481, paragraphs (b)(2) and (d)(2) are revised to read as follows:

§ 230.481 Information required in prospectus.

* * * * *

(b) * * *

(2) In the case of any prospectus to be used before the effective date of the registration statement (or, in the case of any prospectus that omits information as permitted by Rule 430A under the Securities Act [§ 230.430A of this chapter], prior to the determination of the initial public offering price), in red ink, the capiton "Subject to Completion," the date of its issuance, and the following statement printed in type as large as that generally used in the body of the prospectus:

Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any state.

* * * * *

(d) * * *

(2) If the stabilizing began prior to the effective date of the registration statement, disclosure of the amount of securities bought, the prices at which they were bought and the period within which they were bought. In the event that Rule 430A (§ 230.430A of this chapter) is used, the prospectus filed pursuant to Rule 497(h) (§ 230.497(h) of this chapter) or included in a post-effective amendment must include information as to stabilizing transactions effected prior to the determination of the public offering price set forth in such prospectus.

* * * * *

6. Paragraph (a)(4) of § 230.482 is added to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(a) * * *

(4) It contains the statement required by Rule 481(b)(2) under the Securities Act [§ 230.481(b)(2) of this chapter] when used prior to effectiveness of the company's registration statement or, in the case of a registration statement that becomes effective omitting certain information from the prospectus contained in the registration statement in reliance upon Rule 430A under the Securities Act [§ 230.430A of this chapter], when used prior to the determination of the public offering price.

* * * * *

7. By adding new paragraph (h) of § 230.497 to read as follows:

§ 230.497 Filing of prospectus—number of copies.

* * * * *

(h) No later than the second business day following the earlier of the date of the determination of the offering price or the date it is first used after effectiveness in connection with a public offering or sales, ten copies of every form of prospectus and Statement of Additional Information, where applicable, that discloses the information previously omitted from the prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the Securities Act [§ 230.430A of this chapter] shall be filed with the Commission in the exact form in which it is used, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

8. In paragraph (c)(7) of § 230.499, removing the reference to paragraph (c) of Rule 424 as follows:

§ 230.499 EDGAR temporary rule.

* * * * *

(c) * * *

(7) *Rule 424 of Regulation C, "Filing of prospectus—number of copies."* The copies required to be filed by paragraphs (a) and (b) of Rule 424 under the Securities Act (§ 230.424 of this chapter) shall consist * * *

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. The introductory language of paragraph (b) of Item 11 of Form S–3 (§ 239.13) is revised to read as follows:

Note: The text of Form S–3 does not appear in the Code of Federal Regulations.

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

Form S–3

* * * * *

Part I. Information Required in Prospectus.

* * * * *

Item 11. Material Changes.

(b) Include in the prospectus, if not incorporated by reference therein from the reports filed under the Exchange Act specified in Item 12(a), a proxy or information statement filed pursuant to Section 14 of the Exchange Act, a prospectus previously filed pursuant to Rule 424(b) or (c) under the Securities Act (§ 230.424(b) or (c) of this chapter) or, where no prospectus is required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or a Form 8–K filed during either of the two preceeding years: (i) * * *

* * * * *

3. The introductory language of paragraph (b) of Item 10 of Form S–4 (§ 239.25) is revised to read as follows [note that the text of Form S–4 does not appear in the Code of Federal Regulations]:

§ 239.25 Form S–4, for the registration of securities issued in business combination transactions.

* * * * *

Form S–4

* * * * *

Part I. Information Required in the Prospectus.

* * * * *

B. Information About the Registrant

* * * * *

Item 10. Information with Respect to S–3 Registrants.

* * * * *

(b) Include in the prospectus, if not incorporated by reference from the reports filed under the Exchange Act specified in Item 11 of this Form, a proxy or information statement filed pursuant to section 14 of the Exchange Act, a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter) or, where no prospectus is required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or a Form 8–K filed during either of the two preceeding fiscal years:

(1) * * *

* * * * *

4. In Note 1 to General Instruction C, Unavailability of the Form S–8 (Prospectus for Reoffers or Resales), of Form S–8 (§ 239.16b), the reference to "Rule 424(c)" is changed to refer to "Rule 424(b)" and the corresponding citation is changed from "(§ 230.424(c) of this chapter)" to "(§ 230.424(b) of this chapter)".

Note: The text of Form S–8 does not appear in the Code of Federal Regulations.

5. The introductory language of paragraph (b)(1) of Item 11 of Form F–3 (§ 229.33) is revised to read as follows:

Note: The text of Form F–3 does not appear in the Code of Federal Regulations.

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers pursuant to certain types of transactions.

* * * * *

Form F–3

* * * * *

Part I. Information Required in Prospectus.

* * * * *

Item 11. Material Changes.

(b)(1) Include in the prospectus, if not included in the reports filed under the Exchange Act which are incorporated by reference into the prospectus pursuant to Item 12 or a prospectus previously filed pursuant Rule 424(b) or (c) under the Securities Act [§ 230.424(b) or (c) under this chapter] or, where no prospectus is required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness: (i) * * *

* * * * *

6. The introductory language of paragraph (c) of Item 10 of Form F–4 (§ 239.34) is revised to read as follows:

Note: The text of Form F–4 does not appear in the Code of Federal Regulations.

§ 239.34 Form F–4, for registration of securities of certain foreign private issuers issued in certain business combination transactions.

* * * * *

Form F–4

* * * * *

Part I. Information Required in the Prospectus.

* * * * *

B. Information About the Registrant.

* * * * *

Item 10. Information with Respect to F–3 Companies.

* * * * *

(c) Include in the prospectus, if not incorporated by reference from the reports filed under the Exchange Act specified in Item 11 of this Form, from a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter) or, where no prospectus is required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or from a Form 6–K filed during either of the two preceding fiscal years:

(1) * * *

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part as follows:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w. * * *

2. Item 14(b)(1)(ii) introductory text of § 240.14a–101 is revised to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 14. Mergers, Consolidations, Acquisitions and Similar Matters.

* * * * *

b. Information about the registrant and the other person.

* * * * *

(i) Information with respect to S–3 registrants.

* * * * *

(ii) Include in the proxy statement, if not incorporated by reference from the reports filed under the Exchange Act specified in paragraph (b)(1)(iii) of this Item, from a proxy or information statement filed pursuant to section 14 of the Exchange Act, from a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter) or, where no prospectus is required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or from a Form 8–K filed during either of the two preceding fiscal years: * * *

* * * * *

Dated: May 27, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–12707 Filed 6–4–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 375, and 382

[Docket No. RM87–3–000; Order No. 472]

Annual Charges Under the Omnibus Budget Reconciliation Act of 1986

Issued: May 29, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to establish annual charges as required by section 3401 of the Omnibus Budget Reconciliation Act of 1986. The Commission will assess these charges against gas and oil pipelines, investor-owned utilities (IOUs), Federal power marketing agencies (PMAS), and one electric cooperative. The charges will be based on volumes of energy transported and sold by gas pipelines, PMAs, IOUs and the electric cooperative, and on the revenues received by the oil pipelines.

EFFECTIVE DATE: Section 382.201(b)(4) of the Commission's regulations will be effective May 29, 1987. All other amendments made by this final rule will be effective on July 6, 1987.

FOR FURTHER INFORMATION CONTACT:

For Legal Matters: Roland M. Frye, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8315.

For Technical Matters: Jewel C. Poore, Office of Management Systems Analysis, Management Systems Division, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–5362.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish annual charges as required by section 3401 of the Omnibus Budget Reconciliation Act of 1986 (Budget Act).[1] The Commission will assess these charges against gas and oil pipelines, electric utilities, power marketing agencies, and one electric cooperative. The charges will be based on the volumes of energy transported and sold by the gas pipelines, electric utilities, power marketing agencies, and the electric cooperative, and on the operating revenues received by the oil pipelines.

II. Background

A. The Budget Act

Section 3401(a)(1) of the Budget Act requires the Commission to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." This authority is in addition to that granted to the Commission in sections 10(e) and 30(e)

[1] Act of October 21, 1986, Pub. L. No. 99–509, Title III, Subtitle E, section 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1874, 1890–91 (to be codified at 42 U.S.C. 7178), I FERC Statutes & Regulations ¶ 6253.

of the Federal Power Act (FPA).[2] The annual charges must be computed based on methods which the Commission determines to be "fair and equitable." [3] The Conference Report provides the Commission with the following guidance as to this phrase's meaning:

> [A]nnual charges assessed during a fiscal year on any person may be reasonably based on the following factors: (1) the type of Commission regulation which applies to such person such as gas pipeline or electric utility regulation; (2) the total direct and indirect costs of that type of Commission regulation incurred during such year; (3) the amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and (4) the total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.[4]

The Commission may assess these charges by making estimates based upon data available to it at the time of assessment.[5] The Commission is required to collect not only all its direct costs but also all its indirect expenses such as hearing costs and indirect personnel costs.[6]

Congress will continue to approve the Commission's budget through annual and supplemental appropriations. The annual charges do not enable the Commission to collect amounts in excess of its expenses, but merely serve as a vehicle to reimburse the United States Treasury for the Commission's expenses.[7]

B. Existing Fees and Annual Charges Schedules

The Commission currently assesses filing fees and annual charges under several statutes. Title V of the Independent Offices Appropriations Act of 1952 (IOAA) [8] permits the Commission to charge filing fees for special benefits provided to identifiable persons. Such fees are based on the cost to the agency of the agency's services.[9] Section 10(e) of the FPA requires that entities licensed under section 4 of that Act pay "reasonable annual charges" in order to, among other things, reimburse the United States for the costs of administering Title I of the FPA. Section 30(e) of the FPA instructs the Commission to establish fees "adequate to reimburse . . . reasonable costs incurred in connection with any studies or other reviews carried out . . . for purposes of compliance with" section 30 of the FPA.

The existing filing fee regulations implement the IOAA and recover part of the Commission's costs for certain services to gas, oil and electric companies which file with the Commission.[10] Under existing annual charges regulations promulgated pursuant to section 10 of the FPA, the Commission recovers costs from licensees for certain services provided to the hydroelectric industry.[11] On March 11, 1987, the Commission issued a Notice of Proposed Rulemaking [12] which set forth a proposal to implement the recent amendment to section 30 of the FPA.[13]

The Budget Act's billing authority is more comprehensive than the existing billing authority under either the IOAA or the FPA. Unlike FPA sections 10(e) and 30(e) which permit recovery of only those costs incurred in administering Part I and incurred in connection with studies and reviews performed pursuant to section 30 of the FPA respectively, and unlike the IOAA which permits recovery of only those costs incurred in providing special benefits to identifiable persons,[14] the Budget Act *requires* the Commission to recover *all* of its costs.

On January 28, 1987, the Commission issued a Notice of Proposed Rulemaking (NOPR) in which it proposed to recover through annual charges all costs not recouped through existing IOAA filing fees and FPA assessments.[15] The Commission proposed to assess annual charges against gas pipelines and electric utilities based upon volumes of energy transported and sold, and against oil pipelines based upon operating revenues.

The Commission received 90 comments on the proposed rule—19 from gas pipelines, 5 from gas trade associations, 2 from gas producers, 1 from a gas storage facility, 10 from local gas distribution companies (LDCs), 40 from investor-owned utilities (IOUs), 1 from a generating company, 1 from an electric trade association, 1 from a cooperative utility system, 10 from oil pipelines, 1 from an oil pipeline trade association, 5 from state public utility commissions, and 1 from a non-energy trade association.[16]

III. General Discussion of Annual Charges Formula

To implement the Budget Act, the Commission must first formulate an annual charge billing procedure. To do this, the Commission must determine:

- The types of companies which the Commission should bill.
- How to estimate and then allocate the Commission's costs among its regulatory programs.
- How to allocate each program's costs among the companies regulated under each program.

After formulating an annual charge billing procedure, the Commission must then determine:

- How to adjust the annual charges at the end of a fiscal year "to eliminate any overrecovery or underrecovery of [the Commission's] total costs, and any overcharging or undercharging of any person" pursuant to section 3401(e) of the Budget Act.
- The standards for waiving all or part of an annual charge pursuant to section 3401(g) of the Budget Act.

In this Part, the Commission addresses these five steps as they apply to all three programs. Parts IV, V, and VI will specifically address the types of

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[2] Budget Act section 3401(a)(2), *citing* 16 U.S.C. 803(e) (1982) and Act of October 16, 1986, Pub. L. No. 99-495, section 7(c), 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1243, 1248-1249 (to be codified at 16 U.S.C. 823a(e)), I FERC Statutes & Regulations ¶ 6253.

[3] Budget Act section 3401(b).

[4] Conference Report to Accompany H.R. 5300 (Conference Report), H.R. Rep. No. 1012, 99th Cong., 2d Sess. 239, *reprinted in* 1986 U.S. Code Cong. & Ad. News 3868, 3884.

[5] Budget Act section 3401(c).

[6] See Conference Report at 238, 1986 U.S. Code Cong. & Ad. News at 3883; *see also* Report of the Committee on the Budget of the United States Senate, to Accompany S. 2706 (Senate Budget Report), S. Rep. No. 348, 99th Cong., 2d Sess. 56, 66 and 68.

[7] Budget Act section 3401(f).

[8] 31 U.S.C. 9701 (1982).

[9] *See* New England Power Co. v. FPC, 151 U.S. App. D.C. 371, 374-375, 467 F.2d 425, 428-429 (1972), *aff'd, 415 U.S. 345 (1974).*

[10] 18 CFR Parts 346 and 381 (1986); *see also* 52 FR 10366 (April 1, 1987), 51 FR 43599 (Dec. 3, 1986), and 51 FR 35347 (Oct. 3, 1986) (all to be codified at 18 CFR Part 381).

[11] 51 FR 24308 (July 3, 1986) (to be codified at 18 CFR Part 11). Also, pursuant to section 10(f) of the FPA, the Commission assesses charges to recover the cost of its headwater benefit investigations. *Id.*

[12] 52 FR 8463 (March 18, 1987) and 10898 (April 6, 1987), IV FERC Statutes & Regulations ¶ 32,436.

[13] Act of October 16, 1986, Pub. L. No. 99-495, section 7(c), 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1243, 1248-1249 (to be codified at 16 U.S.C. 823a(e)).

[14] The legislative history indicates Congress intended the authority of its mandate in the Budget Act to go beyond that contained in Title V of the IOAA. *See* Report of the Committee on the Budget, House of Representatives, to Accompany H.R. 5300 (House Budget Report), H.R. Rep. No. 727, 99th Cong., 2d Sess. 44, *reprinted in* 1986 U.S. Code Cong. & Ad. News 3607, 3640 ("FERC does not currently have authority to assess charges on regulated companies for the remainder of the work performed by FERC in regulating oil pipelines, natural gas pipelines and public utilities. [This] leqislation gives that authority to FERC.")

[15] 52 FR 3128 (Feb. 2, 1987), IV FERC Statutes & Regulations ¶ 32,434.

[16] Some commenters fall into more than one category. A list of commenters is attached as Appendix A.

companies to be billed and the method for allocating the costs within each of the three regulatory areas. The Commission is adopting as a final rule most aspects of its proposed rule regarding each of these five steps. The major differences between the proposed and final rules are that the Commission (1) will assess annual charges against power marketing agencies; (2) will include short-term, limited-term and unit sales of electricity in the "coordination sales" category if such sales are for less than five years; (3) will include long-term firm transmission sales in the "sales for resale" category; (4) will not assess annual charges against gas pipelines with NGA section 7(f) declarations; (5) will assess natural gas pipelines based on only jurisdictional gas; (6) will establish a tracking mechanism for automatic passthrough of the natural gas pipelines' annual charges; (7) will assess oil pipelines based on only their revenues reported in Account Nos. 200, 210, and 220; (8) will impose a maximum level which an oil pipeline's annual charges may not exceed; and (9) will recompute each company's annual charges bill at the end of each fiscal year based on actual year-end data and adjust each company's bill for the following year by the difference between the annual charge payment received and the amount of the recomputed bill.

A. The Annual Charges Formula.

1. The Types of Companies To Be Billed

The Conference Report indicates that Congress intentionally did not specify the classes of companies subject to annual charges.[17] Congress instead granted the Commission discretion to identify the companies to be assessed annual charges. In the NOPR, the Commission proposed that fairness and equity (as required in section 3401(b) of the Budget Act) as well as administrative efficiency [18] justify the assessment of annual charges against only three types of companies: public utilities, interstate oil pipelines and interstate natural gas pipelines.

One commenter argues that while the Commission has certain limited discretion to establish an annual charges system and to allocate amounts to various groups, "it would be wrong to characterize such discretion as authority to create exemptions when Congress—the one body with such power—has chosen not to exercise it." [19] The Commission disagrees with this conclusion. The fact that Congress did not choose to address this issue does not preclude the Commission from doing so. Indeed, by failing to specify what classes of companies are subject to annual charges, Congress left that issue to be resolved by the Commission. Congress may (and generally does) leave the details of legislative implementation to the agencies charged with such implementation.[20]

The Commission therefore adopts the proposal to assess these three types of companies, as set forth in the NOPR. The reasons justifying the Commission's decision to assess annual charges against these three types of companies are discussed in the gas, oil and electric sections of this Preamble (Parts IV, V and VI below). In general, the Commission remains convinced that this approach is consistent with the legislative history, which indicates that the primary focus of Congress was on public utilities, interstate oil pipelines and interstate natural gas pipelines.[21] However, for the reasons set forth in Part VI, the Commission will also assess annual charges against the Federal power marketing agencies.

2. The Method for Estimating and Then Allocating The Commission's Costs Among Its Regulatory Programs

a. *Estimation of Costs.* The Commission is required to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." [22] The Commission's cost estimates may be based on data available to it at the time of assessment.[23] Because the annual charges must be paid by the end of the fiscal year for which they are assessed,[24] the Commission, when it assesses the annual charges, will not yet have available to it the actual cost data for that year. The Commission must therefore estimate its year-end expenses.

In the NOPR the Commission proposed that the most accurate available data on which to base such estimates would be the prior fiscal year's expenses. The Commission also proposed to adjust this cost figure upward or downward at the time bills are calculated to account for any actual or expected major changes in fiscal expenditures from the previous fiscal year, such as a supplemental budget increase.

The two commenters addressing the merits of this approach both support it.[25] The approach set forth in the NOPR is consistent with the manner in which the Commission develops its operating budget, *i.e.*, the Commission uses the prior fiscal year's expenditures as a guide for developing the next year's budget. For the above reasons, the Commission will use this approach.

b. *Allocation of Costs.* The Conference Report indicates that Congress intended the Commission to recover the costs of each program from those entities directly affected by the activities of the Commission in that program area:

> For example, public utilities subject to the Federal Power Act should be required to pay for the Commission's activities under the Federal Power Act and related statutes, including a proportionate share of the Commission's overhead. They should not be expected to pay for the Commission's activities under the Natural Gas Act or the Natural Gas Policy Act.[26]

The Budget Act does not require the Commission to create a new data base for billing purposes, and it is therefore free to use the most reliable data available to arrive at a reasonable approximation of its program costs.[27]

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[17] Conference Report at 239, U.S. Code Cong. & Ad. News at 3884.

[18] *See generally* House Budget Report at 55, 1986 U.S. Code Cong. & Ad. News at 3651 ("Any billing method that reasonably minimizes FERC and industry administrative costs is acceptable"); *cf. Capital Cities Communications* v. *Federal Communications Comm'n.* 180 U.S. App. D.C. 276, 279, 554 F.2d 1135, 1138 (1976) ("the statutory requirement that fees should be 'fair and equitable' does leave some room for consideration of administrative convenience"); *National Cable Television Ass'n* v. *Federal Communications Comm'n (National Cable).* 180 U.S. App. D.C. 233, 249, 554 F.2d 1094, 1108 (1976) ("considerations of administrative convenience may certainly be taken into account as one factor in the calculation" of fees).

[19] Comments of American Electric Power Service Corp. at 22–23.

[20] *See, e.g., Yakus* v. *United States.* 321 U.S. 414, 424–426 (1944).

[21] The Commission notes that the bill reported out of the House Budget Committee would have assessed annual charges against only these three types of companies. *See* Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[22] Budget Act section 3401(a)(1).

[23] Id. at section 3401(c).

[24] Id. at section 3401(d).

[25] Comments of Detroit Edison Co. at 1; New England Power Co. at 3.

[26] Conference Report at 238–239, 1986 U.S. Code Cong. & Ad. News at 3883–3884.

[27] *See* Budget Act section 3401(c); *see generally* Yosemite Park and Curry Co. v. United States, 686 F.2d 925, 931–932 (Ct. Cl. 1982) and authority cited in nn. 32–34 therein (IOAA fees need only have a reasonable, not exact, relationship to agency cost); *National Cable.* 250 U.S. App. D.C. at 246–247, 554 F.2d at 1105–1106 (FCC need not calculate the exact cost of servicing each regulated entity, but can base its fee computations on approximations); National Ass'n of Broadcasters v. Federal Communications Comm'n, 250 U.S. App. D.C. 259, 271 n. 28.554 F.2d 1118, 1130 n. 28 (1976) (FCC fee calculations need not be exact; reasonable approximations are sufficient.)

Moreover, the Commission's use of currently available data minimizes the administrative burden on the agency and, in the long run, the administrative burden on jurisdictional companies that are billed.[28]

The Commission currently uses a computerized management information system, the Time Distribution Reporting System (TDRS), which accounts for staff time by program area. In the NOPR, the Commission proposed that the TDRS data for the prior fiscal year would provide the most reliable basis for distributing direct and indirect costs among the Commission's gas, oil, and electric programs.

The four companies commenting on this methodology all approve of it.[29] The Commission adopts this approach. The Commission now uses the TDRS as the basis for calculating its IOAA filing fees and for allocating FPA hydroelectric annual charges. This system has proven to be effective and accurate.[30]

The Commission will allocate its costs among the three programs as follows. Costs that are directly related to a particular program (such as the cost of the Commission's contract for a gas pipeline flow analysis computer model) will be charged against only that program, while indirect expenses (such as Commission-wide computer support contracts) will be distributed pro rata among all programs based on direct staff time as reflected in the TDRS data.[31]

The Commission also proposed in the NOPR to distribute on a *pro rata* basis the net expenses (after subtracting filing fees collected) of administering appeals from Department of Energy remedial orders and adjustment request denials. Commenters addressing this issue unanimously oppose proration of DOE appeal expenses.[32] The commenters criticize the proposal as an inter-industry subsidy of the kind the Conference Committee indicated that the Commission should try to avoid:

> [T]he Commission shall endeavor to assess and collect amounts necessary to cover the cost of each regulatory program area from those directly affected by the activities of the Commission in each area.[33]
>
> * * * * *
>
> [P]ublic utilities subject to the Federal Power Act . . . should not be expected to pay for the Commission's activities under the Natural Gas Act or the Natural Gas Policy Act.[34]

Commenters also point out that the NOPR's rationale for excusing the oil pipeline industry from paying all such DOE appeal costs, i.e., that the appeals are unrelated to the Commission's oil pipeline regulatory program, applies equally to the gas and electric industries.[35] They generally suggest that the Commission increase its filing fees for such appeals,[36] and one commenter recommends that the Commission assess appeal costs against the losing parties.[37]

These commenters raise serious issues which are not easily resolved. While the Commission already has in place a fee schedule for DOE appeals, the Commission may propose in a separate docket to increase the IOAA fees for DOE appeals to the maximum extent allowed by law, thereby leaving only a small amount of such costs to be assessed in annual charges. However, as numerous commenters point out, the Commission may assess IOAA fees only for the cost of providing special benefits provided to identifiable persons rather than for all the Commission's costs.[38] To the extent that the Commission's DOE appeal expenses exceed such fee receipts, the Budget Act requires the Commission to recover the entire shortfall.[39] The Commission is aware of no statutory or other authority by which it could assess appeal costs against the losing party in a DOE appeal, and commenters have cited no such authority. Nor does the Commission believe that it would be practical and fair to assess annual charges against such appellants, which generally are small companies that appear before the Commission only once. Roughly 87 percent of these appellants have filed only one appeal with the Commission, and another 10 percent have filed only two appeals. They thus do not take regular advantage of the Commission's expertise and facilities, as do oil and gas pipelines, electric utilities, and Federal power marketing agencies.

The Commission therefore concludes that it has no choice but to recover through annual charges DOE appeal costs not already recouped through filing fees. This approach does not contravene the language of the Conference Report quoted above, which only instructs the Commission to "endeavor" to collect each program's costs from those affected by the program. More important, failure to include DOE costs in the annual charges would contravene the mandate of the statute itself to recover *all* Commission expenses. To the extent that the Conference Report and the statute provide divergent guidance, the Commission must follow the statutory language. Finally, the Commission notes that, even if the DOE appeal filing fees are not increased, the estimated unrecovered costs (based on fiscal year 1986 data) which would be included in annual charges would amount to only $590,000, or a 0.8 percent increase for each category of annual charge recipient. The impact on any particular company would thus be very small. For these reasons, the Commission has decided that each program's total cost will include all its direct costs and a *pro*

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[28] *See generally* House Budget Report at 55, 1986 U.S. Code Cong. & Ad. News at 3651 ("Any billing method that reasonably minimizes FERC and industry administrative costs is acceptable"); *cf.* Capital Cities Communications v. Federal Communications Comm'n, 180 U.S. App. D.C. 276, 279, 554 F.2d 1135, 1138 (1976) ("the statutory requirement that fees should be 'fair and equitable' does leave some room for consideration of administrative convenience"); *National Cable*, 180 U.S. App. D.C. at 249, 554 F.2d at 1108 (1976) ("considerations of administrative convenience may certainly be taken into account as one factor in the calculation" of fees).

[29] Comments of New England Power Co. at 9–11; Public Service Co. of Colorado at 3; Detroit Edison Co. at 1; Consolidated Edison Co. at N.Y. at 1–2.

[30] A detailed description of TDRS, including a discussion of its accuracy-control measures, was attached as Appendix A of the NOPR. The United States Court of Appeals for the Tenth Circuit upheld the Commission's filing fee schedules which were based upon the same TDRS system which the Commission will use in establishing annual charges. Phillips Petroleum Co. v. Federal Energy Regulatory Comm'n, 786 F.2d 370, *cert. denied*, ____ U.S. ____, 107 S. Ct. 92, 93 L. Ed. 2d 44, 55 U.S.L.W. 3232 (1986).

[31] The commenters do not object to this approach. *See, e.g.*, Comments of NEPCO at 3 and 10.

The United States Court of Appeals for the Fifth Circuit upheld a similar *pro rata* inclusion of indirect costs in the Nuclear Regulatory Commission's IOAA fees. Mississippi Power & Light Co. v. Nuclear Regulatory Comm'n, 601 F.2d 223, 231 (1979), *cert. denied*, 444 U.S. 1102 (1980); *see also* Central & Southern Motor Freight Tariff Ass'n v. United States, 250 U.S. App. D.C. 63, 77–78, 777 F.2d 722, 736–37 (1985); *National Cable*, 250 U.S. App. D.C. at 242, 554 F.2d at 1101 ("The costs assessed may include a pro rata share of any expenses for regulatory activities which are necessary in order to grant [an FCC certificate of compliance].")

[32] Comments of New England Power Co. at 3 and 10–11; Edison Electric Institute (EEI) at 31–33 and 34; American Electric Power Service Corp. at 27; Boston Edison Co. at 10; Williams Pipe Line Co. at 4; Texas Eastern Transmission Corp. at 12; Williams Natural Gas Co. at 3 and 9; American Gas Ass'n (AGA) at 8; Interstate Natural Gas Ass'n of America (INGAA) at 9–10.

[33] Conference Report at 238, 1986 U.S. Code Cong. & Ad. News at 3883, *quoted in* Comments of EEI at 31.

[34] *Id.* at 238–239, 1986 U.S. Code Cong. & Ad. News at 3883–3884, *quoted in* Comments of EEI at 32.

[35] Comments of Boston Edison Co. at 10; NEPCO at 11.

[36] Comments of American Electric Power Service Corp. at 27; Williams Pipe Line Co. at 4; Texas Eastern Transmission Corp. at 12; AGA at 8.

[37] Comments of Williams Pipe Line Co. at 4.

[38] *See* Federal Power Comm'n v. New England Power Co., 415 U.S. 345 (1974); National Cable Television Ass'n v. United States, 415 U.S. 336 (1974).

[39] *See* Budget Act section 3401(a).

rata share of indirect and DOE appeal costs less DOE appeal fees collected.

In the NOPR, the Commission proposed to reduce each program's costs by the amount of filing fees collected during the prior fiscal year from entities regulated under that program. The Commission also sought comments on whether each company's annual charges should be reduced by the amount of filing fees it paid. Eleven commenters favor a credit to the program,[40] while nine commenters support company-specific credits.[41] One commenter offers observations regarding this issue but takes no position.[42]

The commenters that support crediting the fees to the individual programs argue that company-specific credits would be inconsistent with the premise that filing fees are intended to compensate the Commission for costs incurred in providing a benefit or service,[43] that such credits would in effect relieve companies from paying filing fees,[44] that, because most companies' annual charges would be about the same under either approach, the administrative burden of implementing a company-specific credit would not be justified,[45] that such an approach would work to the disadvantage of companies selling or transporting large volumes of energy but filing relatively few applications at the Commission,[46] that some pipelines are already reimbursed for their filing fees, thus raising the possibility that such pipelines would recover their filing fees twice,[47] and that the additional administrative expense of crediting each company's filing fees would increase the annual charges of all companies.[48]

The commenters that favor company-specific credits argue that companies actively seeking new sales and transportation services would be penalized by the approach proposed in the NOPR, whereas individual credits would encourage more sales and transportation activity consistent with the spirit and intent of Order No. 436,[49] that pipelines with multiple filings should not subsidize the annual charges of companies with few filings,[50] and that company-specific credits would help rectify the disproportionate effect that the Commission's filing fees have on small companies.[51]

The Commission recognizes that, under either approach, some companies will, in varying degrees, subsidize other companies' shares of this agency's expenses. However, the Commission agrees with the arguments of the commenters opposing company-specific credits that such credits would undermine the Commission's filing fee system and would contravene the Commission's policy that those who use the Commission's services should pay more than those who do not. Given these persuasive arguments in favor of crediting the programs, the Commission cannot justify the additional administrative burden and expense which would result from crediting individual companies. The Commission also notes that the approach of crediting fees to the programs as a whole rather than to each company finds support in the House Budget Report:

> FERC is then to allocate and determine the costs incurred in administering its jurisdictional statutes, broken down into the following areas of responsibility: the administration of the Natural Gas Act and the Natural Gas Policy Act; the regulation of interstate oil pipelines under Title 49 U.S.C.; and, the regulation of public utilities under Parts II and III of the Federal Power Act.
>
> From these three subtotals, FERC is to subtract the fees collected (if any) under the Natural Gas Policy Act that are paid in connection with activities which pertain to each of the programs.
>
> The remaining costs of administering its jurisdictional statutes in each of the three areas are those costs which are to be assessed as annual charges.[52]

For these reasons, the Commission will reduce the assessable cost of each program by the amount of filing fees collected during the prior fiscal year from entities regulated under that program, but may adjust this figure if the Commission believes that the number does not accurately estimate the current year's fee receipts. However, the Commission expects that the prior year's filing fee receipts will generally serve as an accurate estimate of the current year's filing fee receipts.

c. *Sufficiency of Data in the NOPR.* Several commenters contend that the Commission did not provide sufficient data for companies to comment meaningfully regarding the estimation and allocation of costs.[53] Specifically, the commenters argue that the NOPR did not provide such data as a breakdown of fiscal year 1988 anticipated costs,[54] the cost of the gas regulatory program in years prior to fiscal year 1986,[55] the projected costs of the gas regulatory program in future fiscal years,[56] the amounts of revenue collected in past fiscal years from each of the Commission's existing filing fees,[57] the total filing fees collected in fiscal year 1986,[58] the estimated annual charges for each company,[59] a breakdown of the Commission's expenses within each of the three regulatory programs,[60] the cost of regulating electric entities other than IOUs,[61] the amounts expended to review PMA rates,[62] the amounts expended to implement the requirements of section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) [63] as they pertain to cogenerators and small power producers,[64] a breakdown of all product categories used in the TDRS,[65] expenditures by each product cagetory,[66] all expenses for the electric

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[40] Comments of New England Power Co. at 3, 10 and 12; Public Service Co. of Colorado at 3; San Diego Gas and Electric Co. at 1; Southern California Edison Co. at 2–3; Texaco USA at 2; Northwest Pipeline Corp. at 8–9; INGAA at 4–5 n.4; Florida Power & Light Co. at 3; Kansas Gas and Electric Co. at 7–8; South Carolina Generating Co. at 4; American Electric Power Service Co. at 36.

[41] Comments of Enron at 8–9; Texas Eastern Transmission Corp. at 11–12; Iowa-Illinois Gas and Electric Co. at 3; Southwestern Public Service Co. at 9; Texas-New Mexico Power Co. at 2; Southern Company Services, Inc. at 24–26; Eastern Shore Natural Gas Co. at 3; Lawrenceburg Gas Transmission Corp. at 5–6; AGA at 8.

[42] Comments of Granite State Gas Transmission, Inc. at 2–3.

[43] Comments of New England Power Co. at 12; Texaco USA at 2.

[44] Comments of Northwest Pipeline Corp. at 9; Kansas Gas and Electric Co. at 7–8.

[45] Comments of New England Power Co. at 12 n. 5.

[46] Comments of San Diego Gas and Electric Co. at 1; Southern California Edison Co. at 3.

[47] Comments of Granite State Gas Transmission, Inc. at 2–3.

[48] Comments of Southern California Edison Co. at 3; *cf.* Florida Power and Light Co. at 3 (concluding that company-specific credits would require "undue refinement of record keeping at FERC").

[49] Comments of Enron at 8–9.

[50] Comments of Texas Eastern Transmission Corp. at 11–12; Iowa-Illinois Gas and Electric Co. at 3; Southern Company Services, Inc. at 24–26.

[51] Comments of Eastern Shore Natural Gas Co. at 2–3.

[52] House Budget Report at 56, 1986 U.S. Code Cong. & Ad. News at 3652.

[53] Comments of West Texas Gas, Inc. at 2, AGA at 4–5 and 6; Southern Company Services, Inc. at 2; Southwestern Public Service Co. at 9 and 11; Cincinnatti Gas and Electric Co. at 8–9; Iowa Power and Light Co. at 2; Iowa Southern Utilities Co. at 1–2; Potomac Electric Power Co. at 3; EEI at 10–15.

[54] Comments of West Texas Gas, Inc. at 2.

[55] Comments of AGA at 4.

[56] *Id.*

[57] *Id.*

[58] Comments of EEI at 11.

[59] Comments of AGA at 4; Southwestern Public Service Co. at 11; EEI at 11–12.

[60] Comments of EEI at 11.

[61] Comments of Cincinnatti Gas & Electric Co. at 9.

[62] Comments of Iowa Southern Utilities Co. at 2; EEI at 11.

[63] 16 U.S.C. 824a–3 (1982).

[64] Comments of Iowa Southern Utilities Co. at 2; EEI at 11.

[65] Comments of Iowa Southern Utilities Co. at 2; EEI at 11.

[66] Comments of Iowa Southern Utilities Co. at 2.

regulatory program,[67] all filing fees receipts for the electric program,[68] the internal allocation of Commission resources for the electric program which breaks down expenditures between coordination sales and sales for resale,[69] the sources of "interchange out" and "transmission delivered" data for companies filing Annual Report FERC Form No. 1–F,[70] and a breakdown of filing fee receipts by fee category with a comparison of regulatory expenditures by those categories.[71]

The Commission does not believe that the commenters need such specific data in order to make relevant comments about the NOPR. If the NOPR is conceptually flawed, then the absence of additional data would not place commenters at a disadvantage. If the NOPR is conceptually valid, then such data would be irrelevant. The purpose of a notice of proposed rulemaking is to provide an accurate picture of the reasoning that has led the agency to the proposed rule, so that interested parties can contest that reasoning if they wish.[72] To provide such a picture, the Commission need only describe the subjects and issues involved.[73]

Moreover, many of the requests do not appear at all relevant to the issue of cost allocation, *e.g.*, the revenue amounts in past years from each different type of filing fee, the breakdown of all TDRS product categories, and the cost of the gas regulatory program in years prior to fiscal year 1986.

Moreover, it was not necessary to provide pre-1986 program costs or 1988 costs because the 1986 costs figures which the NOPR did provide are more relevant to the estimation of fiscal year 1987 costs. The Commission notes that the commenters could have obtained more detailed breakdowns of program costs from the Commission's annual budget submission to the Office of Management and Budget and the Commission's budget testimony before Congress, both of which are matters of public record and are available in the Public Reference Branch of the Commission's Public and Legal Reference Division, Office of Administrative Services.

[67] *Id.*

[68] *Id.*

[69] *Id.*; EEI at 11.

[70] Comments of Iowa Southern Utilities Co. at 2.

[71] Comments of EEI at 11.

[72] National Cable Television Ass'n v. Federal Communications Comm'n, 241 U.S. App. D.C. 389, 393, 747 F.2d 1503, 1507 (1984).

[73] *See, e.g.*, California Citizens Band Ass'n v. United States, 375 F.2d 43, 49 (9th Cir.), *cert. denied*, 389 U.S. 844 (1967); *see also* B. Schwartz, *Administrative Law* 173 (2d ed. 1984).

3. Allocation of Each Program's Costs Among the Companies Regulated Under Each Program

After the Commission's costs are allocated among the three regulatory programs, the Commission must further allocate each program's costs among the regulated companies. In the NOPR, the Commission proposed that the amount of each natural gas pipeline's and public utility's bill would be directly related to the volume of gas or electricity which it sells or transports, and that the amount of each oil pipeline's bill would be directly related to the operating revenues it receives from the transportation of oil and petroleum products.

The Commission also sought comments on a sampling method which would require the Commission to set up categories of companies based on generalized sales and transportation data, assign companies to various categories, and assess each company within a category the same annual charge. Of the nine commenters addressing the option of a sampling method,[74] only two support it.[75] Those opposing the alternative contend that it would become an administrative nightmare resulting in endless controversies over the proper categories to which companies should be assigned,[76] that its selection in lieu of the proposed method would add needless imprecision to the calculation of annual charges,[77] and that it would add unnecessary expense to the Commission's operations.[78] New England Power Company supports the use of a sampling method because it would be more administratively convenient, would give companies a degree of certainty regarding the amount of their annual charges, and would lend itself to minimum and maximum charge categories.[79] Lawrenceburg Gas Transmission Corporation urges the Commission to establish special categories for short pipelines and for pipelines rendering service solely to their affiliated distribution companies.[80]

The Commission is adopting the method proposed in the NOPR (to base companies' annual charges on volumes of gas or electricity sold or transported and on amounts of oil pipeline revenues) because this method is more precise than the sampling method. Also, it will impose no greater expense or burden on the Commission than the sampling method, and will provide the same degree of certainty to the companies as would the sampling method. Finally, this approach is more closely in accord with the expectation reflected in the Conference Report that the Commission will "assess annual charges proportionately on the basis of annual sales or volumes transported."[81]

4. Adjustment of Charges for a Fiscal Year so as to Eliminate Any Overrecovery or Underrecovery of the Commission's Total Costs and any Overcharging or Undercharging of any Company

In the NOPR, the Commission proposed to correct overrecovery or underrecovery of costs by comparing at the end of the fiscal year the actual amounts collected with the actual fiscal year costs, and adjusting the subsequent fiscal year's estimated program costs by the difference.

Section 3401(e) of the Budget Act requires such an adjustment in order to eliminate any overrecovery or underrecovery of the Commission's costs as well as any overcharging or undercharging of any person being assessed annual charges. In the NOPR, the Commission set forth three approaches for satisfying these two statutory requirements. Under the approach proposed in the NOPR, the Commission would compare at the end of the fiscal year the actual amounts collected with the actual fiscal year costs, and would adjust the subsequent fiscal year's estimated program costs by the difference. The Commission would accordingly increase or decrease each annual charge bill for the next fiscal year, but would not adjust the bills for the recently completed fiscal year. Under the second approach, the Commission would issue refund checks and supplemental charges, once it had the actual fiscal-year-end data with which to compute how much each

[74] Comments of Lone Star Gas Co. at 5; Pacific Gas Transmission Co. at 5; AGA at 8; INGAA at 5; Southwestern Public Service Co. at 10; Southwestern Electric Power Co. at 5; Lawrenceburg Gas Transmission Corp. at 6; New England Power Co. at 3; Southern California Edison Co. at 3.

[75] Comments of Lawrenceburg Gas Transmission Corp. at 6; New England Power Co. at 3.

[76] Comments of AGA at 8.

[77] Comments of Lone Star Gas Co. at 5; Pacific Gas Transmission Co. at 5; Southwestern Public Service Co. at 10; Southwestern Electric Power Co. at 5.

[78] Comments of Southern California Edison Co. at 3.

[79] Comments of New England Power Co. at 3 and 12–16.

[80] Comments of Lawrenceburg Gas Transmission Corp. at 6.

[81] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884; *see also* House Budget Report at 54–55, 1986 U.S. Code Cong. & Ad. News at 3650–3651; H.R. 5300, 99th Cong., 2d Sess. section 4101(b) (1986).

company was overassessed or underassessed in the Commission's annual charges bill. Under the third approach, the Commission would recalculate each bill based on the Commission's year-end financial data, compare the actual collection from each individual company to the recalculated bill for that company, and carry over any differences as a debit or credit on each company's annual charges bill for the following year.

All five commenters addressing this issue support the approach proposed in the NOPR.[82] They all contend in various ways that the alternatives to the proposal would be too administratively burdensome on the Commission, resulting in unnecessary modifications in the Commission's recordkeeping [83] and perhaps even the need to supplement the Commission staff.[84]

The Commission has decided not to adopt the proposed approach. The NOPR's proposal of adjusting the next year's program cost overrecoveries or underrecoveries at the end of the fiscal year has the advantage of being administratively simple, requiring assessment and collection of only one set of annual charge bills each fiscal year. However, while it may satisfy section 3401(e)'s first requirement of eliminating overrecovery or underrecovery of the Commission's costs, it fails to meet the section's second requirement of eliminating overcharging or undercharging of any person. The advantage of the second approach (recomputing each bill and issuing refund checks and supplemental bills) is that it would satisfy both of section 3401(e)'s requirements. However, the disadvantage is that the approach would impose a major administrative burden on the Commission's Office of Management Systems Analysis to calculate, assess and collect two sets of annual charge bills each year. The third option (recomputing each bill and crediting or debiting each company's bill for the following year) has the combined advantages of the first two options, but none of their disadvantages. It would satisfy both requirements of section 3401(e), would be simple to administer, requiring assessment and collection of only one set of annual charges bills each year,[85] and would impose little more of an administrative burden on the companies than would the method proposed in the NOPR.

The Commission therefore chooses the third option. The entire billing computation is illustrated in the following example, which calculates hypothetical costs for the natural gas program.[86]

Line		(Dollars in thousands) 1987
	Billing Basis	
1	Prior Fiscal Year's Program Cost	49,300
2	Adjustment Based on Current Year Program Changes	
3	Filing Fees Adjustment (Subtract estimated filing fees collected for gas program)	−12,000
4	Billing Basis	37,300
5	Waivers	−100
6	Amount Collected (from annual charges)	37,200
	Actual Costs (Calculated after end of Fiscal Year)	
7	Actual Costs for Program	49,000
8	Filing Fees Adjustment (using actual filing fee receipts)	−12,200
9	Actual Net Costs	36,800
10	Overcollection or Undercollection—Difference between Amount Collected (Line 6) and Actual Net Costs (Line 10)	+400

In the above example, to arrive at the billing basis for FY 1987, the Commission will start with the prior year's actual costs for the natural gas program, hypothetically $49.3 million (line 1). Next, the Commission will adjust for current year program changes (line 2). While there is no adjustment in this example, an adjustment could be expected if there were a significant change, such as the need to request a supplemental budget appropriation from Congress.

Next, the Commission will deduct estimated filing fee collections. The estimate will be based on the prior year's collections, with possible adjustments to take into account the changes in the amount of filing fees published each year.[87] In the above example, the adjustment is $12 million (line 3). The billing basis of $37.3 million (line 4) will be divided among the pipeline companies in annual charges by the proposed method described in Part IV of this Notice.

The Commission may grant waivers of annual charges after billing. In this example, the Commission granted $100,000 in waivers (line 5), and thus would collect $37.2 million in annual charges from pipelines during the fiscal year (line 6).

After the end of the fiscal year, the Commission will calculate actual costs and compare them to the amount collected. In the example, actual costs for the program were $49.0 million (line 7) and actual filing fees received were $12.2 million (line 8). Therefore, actual net costs (line 7 less line 8) were $36.8 million (line 9). In this example, the amount collected from annual charges (line 6) exceeded actual net costs (line 9) by $400,000 (line 10). This difference will be credited or debited in the following year to individual companies, based on the following procedure. The Commission will first recalculate the bills, using actual net costs (line 9) plus the amount lost to waivers during the billing year (line 5). The Commission will then compare actual collections from individual companies to the recalculated bills for those companies, and carry over any differences as debits and credits onto each company's bill for the next year.

5. Standards for Waiving all or Part of an Annual Charge

In the NOPR, the Commission proposed to apply to annual charges the standards for waiver currently applicable to filing fees. The Commission's regulations permit a company to seek a waiver of a filing fee if it can show that it is economically unable to pay all or part of the fee or that such payment would place it in financial distress or emergency.[88] The Commission further proposed that any requests for waiver of annual charges must be received before the bill is due (*i.e.*, within 45 days after the billing date) and must be based upon sufficient financial data for the Commission to make its decision. Finally, the Commission proposed that the Director of the Office of Pipeline and Producer Regulation, the Oil Pipeline Board, and the Director of the Office of Electric Power Regulation would be delegated the authority to rule on waiver requests in the gas, oil and electric areas, respectively.

New England Power Company supports a strict standard as proposed in the NOPR because an annual charge waived for one company would have to be borne by others.[89] However, it also recommends that waivers above an unspecified amount be granted by the full Commission rather than by the office directors and only after other companies are given an opportunity to comment on such waiver requests.[90]

[82] Comments of New England Power Co. at 10 and 18–19; Texaco USA at 11; Pacific Gas Transmission Co. at 5–6; Florida Power and Light Co. at 4; American Electric Power Service Corp. at 36.

[83] Comments of Florida Power and Light Co. at 4.

[84] Comments of New England Power Co. at 19.

[85] The burden of calculating, assessing and collecting two sets of bills (second option) is far greater than that of merely calculating two sets of bills (third option).

[86] This example is a modified version of the one presented in the NOPR.

[87] *See* 18 CFR 381.104 (1986).

[88] 18 CFR 381.106 (1986).

[89] Comments of New England Power Co. at 19.

[90] *Id.*

Lawrenceburg Gas Transmission Corporation supports the proposal that the Director of the Office of Pipeline and Producer Regulation rule on petitions for waiver, arguing that the Director is responsive to the individual financial posture of jurisdictional pipelines.[91] National Fuel Gas Distribution Corporation urges the Commission to permit waivers where an applicant's jurisdictional status is incidental and imposes no significant costs on the Commission.[92] Finally, Detroit Edison Company suggests that any waived charges be recovered at a future date with interest.[93]

The Commission concludes that the stringent standard applicable to filing fees should also apply to annual charges because any charges waived for one company must be paid in the following year by all the program's regulated companies, due to the Budget Act's requirement that the Commission recover *all* its costs. The Commission therefore declines to expand the standards as suggested by National Fuel. The Commission (like Lawrenceburg Gas) is satisfied with the way in which its delegated fee waiver authority has been exercised. The Commission therefore adopts the proposal to delegate its authority to waive annual charges. The Commission sees no advantage to opening up waiver petitions for public comment. Such comments would perforce be limited to statements of general support or opposition based on the commenters' own financial interests (which are irrelevant under the Commission's waiver standards). The Commission also declines to adopt Detroit Edison's suggestion of recovering waived charges with interest. Such an approach would in effect substitute an indefinite loan in lieu of a waiver. This would contravene the Congressional intent that the Commission provide for waivers of annual charges.[94] Finally, the Commission concludes that, given the considerable advance notice to the companies that they would be assessed annual charges, a reduction of the filing period for waiver petitions from 45 to 15 days after issuance of the annual charges bill will not unduly prejudice the companies, and will assure that all payments are due to the Commission prior to the end of each fiscal year (as required by section 3401(a) of the Budget Act).

[91] Comments of Lawrenceburg Gas Transmission Corp. at 8–9.

[92] Comments of National Fuel Gas Distribution Corp. at 4.

[93] Comments of Detroit Edison Co. at 2.

[94] Budget Act section 3401(g).

B. Other Matters

The Commission proposed in the NOPR to provide a 45-day period for payment of annual charges, and to assess interest on overdue annual charges. Such interest will be computed in accordance with § 154.67(c)(2)(iii) of the Commission's regulations.[95]

The Commission also proposed that it may refuse to process any application or consider any other filing of a company which has annual charges or interest amounts in arrears, unless a petition for waiver is pending, and that it may take any other appropriate action permitted by law.

The Commission received one comment addressing the interest issue. Southwestern Public Service Company recommends that the Commission pay the companies interest on any money it overrecovers.[96] Because the Commission will not assess interest against the companies on year-end underrecoveries (but only against companies which do not provide full payment of their bills), the Commission does not believe it would be equitable for it to pay interest on year-end overrecoveries.

The Commission also received one comment concerning the possible refusal to consider filings of companies with annual charges or interest in arrears. The American Paper Institute (API) points out that such filings could include requests regarding new gas or electric service which cannot proceed without prior Commission approval.[97] According to API, if a pipeline or utility is in arrears on payment of annual charges, its customers could suffer the consequences by being denied access to gas supplies or electric power.

API raises a valid equitable concern of the type the Commission contemplated when it proposed that it "may" refuse to process pleadings of a company in arrears. The Commission will consider this and other equitable factors before deciding whether to exercise this enforcement mechanism. The Commission expects that the vast majority of companies will pay their annual charges promptly and that the interest provision will serve as a sufficient enforcement tool in all but the most unusual situations.

The Commission therefore adopts its proposals concerning both interest, the potential refusal to process filings, and also the taking of any other appropriate action permitted by law.

Many commenters took the opportunity to address the Commission's filing fee system. Five commenters suggest that the Commission review the fee amounts to ensure that fee-payers are paying their fair share of the Commission's costs.[98] The Commission in fact reviews each fee amount every year on the basis of the prior year's data. One of these commenters also recommends that the Commission annually review the types of companies to be assessed.[99] The Commission plans to review periodically the types of companies to be assessed annual charges, but will base the frequency of such reviews on its experience with the annual charges program as it evolves.

Another company urges the Commission to recoup at least half its budget from filing fees in order to ensure that companies with few filings at the Commission pay substantially less than those companies with many filings at the Commission.[100] The Commission will continue to review its fees annually to ensure that the filers are paying their fair share of Commission expenses. However, the amount of money which the Commission may lawfully collect in IOAA filing fees is limited by the Supreme Court's narrow construction of the IOAA.[101]

Various commenters also recommend that the Commission revise its fee regulations to give it the discretion to apply direct billing to all proceedings,[102] to increase producer fees,[103] to eliminate producer fees,[104] to

[95] 18 CFR 154.67(c)(2)(iii) (1986):

(2) Interest shall be computed * * *

(iii)(A) At an average prime rate for each calendar quarter on all excessive rates or charges held (including all interest applicable to such rates and charges) on or after October 1, 1979. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin, or in the Federal Reserve's "Selected Interest Rates" (Statistical Release G. 13), for the fourth, third, and second months preceding the first month of the calendar quarter.

(B) The interest required to be paid under paragraph (d)(2)(iii)(A) of this section shall be compounded quarterly.

[96] Comments of Southwestern Public Service Co. at 11–12.

[97] Comments of American Paper Institute at 1–2.

[98] Comments of Enron at 8; Pacific Gas Transmission Co. at 4; Virginia Electric and Power Co. at 2; EEI at 37–39; Carolina Power & Light Co. at 12–13.

[99] Comment of Enron at 7.

[100] Comments of San Diego Gas and Electric Co. at 1.

[101] *See* Federal Power Comm'n v. New England Power Co., 415 U.S. 345 (1974); National Cable Television Ass'n v. United States, 415 U.S. 336 (1974).

[102] Comments of Central Illinois Public Service Co. at 6; Public Service Electric and Gas Co. at 3.

[103] Comments of Pacific Gas & Electric Co. at 8.

[104] Comments of Independent Petroleum Ass'n of America at 4.

waive filing fees for any company which pays in excess of a certain amount in annual charges,[105] to assess new filing fees against applicants for preliminary permits and exemptions,[106] intervenors,[107] complainants and protesters,[108] to modify the fees of cogenerators and small power producers,[109] to investigate whether fees assessed for filings under 18 CFR 381.502 overrecover the Commission's costs of addressing such filings,[110] and to fund the PURPA programs and general corporate regulatory program completely from filing or other fees.[111] Such recommendations are beyond the scope of this rulemaking, the only purpose of which is to promulgate regulations concerning annual charges. Moreover, the Commission evaluates its fees annually, will continue to do so in the future, and will change the fees as appropriate.

Four companies express concern that the annual charges regulations could lead to an unwarranted increase in the Commission's expenditures, and recommend various means of capping such costs.[112] These commenters' concern is unnecessary. As indicated in the NOPR and in section II A of this Preamble, Congress will continue to approve the Commission's budget through annual and supplemental appropriations. The annual charges thus do not constitute a "blank check" to the Commission but merely serve as a vehicle to reimburse the United States Treasury for the Commission's expenses approved by Congress.[113]

One commenter argues that the Commission's services are for the public welfare and that the federal tax base should therefore finance the Commission's programs.[114] Such an approach is precluded by the Budget Act, which requires the Commission to recoup all its expenses through filing fees and annual charges rather than through the federal tax base.

Numerous commenters argue that Congress in section 3401 unconstitutionally delegated its taxing authority to the Commission.[115] The Commission of course accepts the constitutionality of a statute enacted by Congress,[116] and is therefore implementing the authority delegated to the Commission by Congress.

Finally, in the NOPR, the Commission proposed to accept payment of annual charges by check, draft, money order, or Electric Funds Transfer System (EFTS). The Commission has decided not to accept EFTS as a valid means of payment of annual charges. The Commission currently does not have such a system and does not believe that the system would be used with sufficient frequency to justify the expense and administrative burden required for its establishment.

IV. Cost Basis for the Natural Gas Regulatory Program

A. The Types of Companies To Be Billed

In the NOPR, the Commission proposed to assess annual charges only against interstate natural gas pipelines, and to continue to collect all the IOAA filing fees it currently collects from natural gas producers, and interstate and intrastate pipelines.[117]

The Commission has the authority to assess annual charges against the approximately 110 intrastate natural gas pipelines that receive authority to transport natural gas across state lines pursuant to section 311 of the NGPA.[118] Section 311 gives the Commission limited jurisdiction over intrastate natural gas pipelines. The Commission believes that such jurisdiction is sufficient to permit the inclusion of these pipelines within the group of companies subject to annual charges under the Budget Act. However, in the NOPR, the Commission proposed not to assess annual charges against these companies because the intrastate pipelines already pay in filing fees almost all the Commission's expenses attributable to the implementation of section 311, because the collection of the difference would be administratively burdensome, and because the Commission does not wish to discourage intrastate pipelines from voluntarily seeking section 311 authorization.

Four commenters support the NOPR's proposal to exempt intrastate pipelines from the assessment of annual charges [119] and two oppose that proposal.[120] Those favoring exemption of intrastate pipelines argue that the intrastates are already paying their own way at the Commission,[121] that such assessment would discourage them from seeking NGPA section 311 authorizations,[122] and that the companies are nonjurisdictional.[123] Those opposing argue that such an exemption requires interstate pipelines to subsidize intrastate pipelines.[124] One commenter also suggests that, if the Commission concludes that collection of the unrecovered section 311 program costs is too burdensome, the Commission should at least include a provision permitting it to assess intrastate pipelines in the event that the amount of unreimbursed costs rises to the level where it is no longer too burdensome to recoup.[125]

The Commission concludes that it should not at this time exercise its authority to assess annual charges against intrastate pipelines. The Commission estimates that such companies already pay in filing fees $1.7 million of the approximately $1.8 million in the gas program costs attributable to the implementation of section 311 with respect to intrastate pipelines. These

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[105] Comments of Texas Eastern Transmission Corp. at 6 n. 6 and 11.

[106] Comments of EEI at 44; American Electric Power Service Corp. at 34–35.

[107] Comments of INGAA at 9; Texas Eastern Transmission Corp. at 9; Northwest Pipeline Corp. at 10; Central Illinois Public Service Co. at 7; Utah Power & Light Co. at 6–7; Pacific Power & Light Co. at 2–3.

[108] Comments of Northwest Pipeline Corp. at 10.

[109] Comments of Carolina Power & Light Co. at 12–13; Kansas Gas & Electric Co. at 5–6; New England Power Co. at 7–8; San Diego Gas & Electric Co. at 2.

[110] Comments of EEI at 37–39.

[111] Comments of American Electric Power Service Corp. at 35–36.

[112] Comments of Pacific Gas and Electric Co. at 3; Public Service Electric and Gas Co. at 2; Central Illinois Public Service Co. at 9 n. 3; Washington Water Power Co. at 2.

[113] Budget Act section 3401(f).

[114] Comments of Texaco USA at 1–2; *cf.* Comments of Williams Natural Gas Co. at 8–9 (arguing that, from the standpoint of commodity marketability, gas is not suitable for assignment of agency costs).

[115] Comments of American Electric Power Service Corp. at 16–19; Boston Edison Co. at 1–7 and 11–12; New England Power Co. at 1 n. 2; Southern Company Services, Inc. at 2–12; EEI at 15–31; Association of Oil Pipelines at 1; Consolidated Gas Transmission Corp. at 9–10; Eastern Shore Natural Gas Co. at 2–3; Enron at 2–3; Northern Border Pipeline Co. at 2; Texas Eastern Transmission Corp. at 3–4 and 14; Connecticut Natural Gas Corp. at 3; Washington Gas Light Co. at 9; INGAA at 5–11; United Distribution Cos. at 4–6.

[116] *See, e.g.*, McDonald v. Board of Election Comm'rs, 394 U.S. 802, 808–809 (1969).

[117] For purposes of this rulemaking, an interstate natural gas pipeline is defined as any person (1) engaged in natural gas sales for resale or natural gas transportation that are subject to the Commission's jurisdiction under the Natural Gas Act (NGA), 15 U.S.C. 717–717w (1982), (2) not engaged solely in "first sales" of natural gas as that term is defined in section 2(21) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3302(21) (1982), and (3) to whom the Commission has not issued a Natural Gas Act section 7(f) declaration. Based on FY 1986 data, the Commission would expect to collect $11,914,202 in filing fees and $37,625,798 in annual charges in 1987.

[118] 15 U.S.C. 3371 (1982).

[119] Comments of Lone Star Gas Co. at 5–6; Transok, Inc. at 2–3; Association of Texas Intrastate Natural Gas Pipelines at 3; Texaco U.S.A. at 2.

[120] Comments of Texas Eastern Transmission Corp. at 7–8; Iowa State Utilities Board at 3.

[121] Comments of Lone Star Gas Co. at 5–6; Transok, Inc. at 2; Association of Texas Intrastate Natural Gas Pipelines at 3.

[122] Comments of Transok, Inc. at 3; Association of Texas Intrastate Natural Gas Pipelines at 3.

[123] Comments of Lone Star Gas Co. at 5–6.

[124] Comments of Texas Eastern Transmission Corp. at 7–8.

[125] *Id.* at 5, 7–8.

companies have therefore already reimbursed the Commission for nearly all of their share of the regulatory expenses. To the extent that this exemption requires the interstate pipelines to subsidize the intrastate pipelines, such a subsidy is minimal (0.2 percent of gas program costs). The Commission must balance conflicting goals in this rulemaking, and the statute requires only that methods used to compute annual charges be fair and equitable. Also, the collection of the remaining $100,000 in costs from over 100 pipelines would be administratively burdensome.[126] Moreover, the Commission does not wish to discourage intrastate pipelines from voluntarily seeking section 311 authorization. For these reasons, the Commission will not assess annual charges against section 311 intrastate pipelines. However, the Commission will periodically review the categories of companies being assessed annual charges, and if it concludes that the above considerations no longer justify the exemption of intrastate pipelines, the Commission will revise the annual charges regulations accordingly.

Similarly, the Commission proposed in the NOPR not to assess annual charges against producers. Five commenters support this proposal,[127] five oppose it,[128] and two offer additional observations and suggestions.[129] Those supporting the exemption of producers from annual charges argue that the thrust of the Commission's regulatory scheme is to protect the public from potentially abusive pricing practices of those interstate gas pipelines which have developed *de facto* monopolies,[130] that the additional revenue from producers' annual charges would not justify the administrative burden of collecting such charges,[131] and that the increase in producer costs which would result from annual charges would give producers an additional reason to favor intrastate gas sales, contrary to the objectives of the NGPA.[132]

Those opposing the producer exemption contend that it would require pipelines to subsidize producers,[133] that it would place pipelines at a disadvantage when competing with producers in the marketplace,[134] and that the Commission should assess annual charges against at least those producers which it can identify (such as those filing for abandonment under NGA section 7).[135]

The Commission concludes that it should not assess annual charges against producers. Although the Conference Report indicates that Congress intended to give the Commission the discretion to assess charges against any natural gas company it regulates, the legislative history also indicates that its primary focus was on natural gas pipelines.[136] In fact, the House Budget Report expressly placed on the gas pipelines the burden of the Commission's "cost of administering all aspects of the Natural Gas Policy Act of 1978."[137] Therefore, while the Budget Act may authorize the Commission to collect charges from producers, the Commission clearly has the discretion to exclude producers for good cause.

Collection of the approximately $10 million from nearly 10,000 producers would be nearly impossible, and the administrative burden of attempting such a collection would be severe and disproportionate to any countervailing benefits. The Commission does not presently maintain a list of all producers and does not collect a complete body of data by which it could identify such producers. While the Commission is provided some volumetric data by pipelines in their purchased gas adjustment filings, such data only reflects the volumes sold to the pipelines, but not the increasingly large volumes sold to local distribution companies and end users under limited-term abandonments[138] and Order Nos. 436[139] and 451.[140] While some producers inform the Commission of the sales volumes when they file reports required by the Commission's orders granting limited-term abandonments, the data provided does not distinguish between jurisdictional and nonjurisdictional gas sold. Thus, in order to assess accurately annual charges against producers, the Commission would need to collect additional data from them. The Commission is reluctant to impose this burden on such a large group of small entities.

In addition, the Commission rejects for two reasons the suggestion to assess at least some of the producers, such as those filing for abandonment. First, such an assesment would contravene the goal of the NGPA to create a unified national wellhead market for gas without regard to whether the gas was subject to the Commission's NGA jurisdiction. If the Commission were to assess annual charges against producers, the sale of jurisdictional gas would be less attractive due to the annual charge burden which it would entail—especially the reporting and accounting burdens which would be associated with such charge.[141] Second, it would discriminate against the small minority of producers who still file applications with the Commission.[142] For all the above reasons, the Commission will not assess annual charges against gas producers.

Another alternative which the Commission has considered is to require interstate pipelines to serve as agents for assessing and collecting annual charges from their producer-sellers. Under this alternative, the Commission would inform each pipeline of those costs it would be entitled to recover from producers, and each natural gas pipeline would then have to collect these charges from its producer-sellers. The Commission's calculations of recoverable costs would be based on the

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[126] *See generally* House Budget Report at 55, 1986 U.S. Code Cong. & Ad. News at 3651 ("Any billing method that reasonably minimizes FERC and industry administrative costs is acceptable"); *cf.* Capital Cities Communications v. Federal Communications Comm'n, 180 U.S. App. D.C. 276, 279, 554 F.2d 1135, 1138 (1976) ("the statutory requirement that fees should be 'fair and equitable' does leave some room for consideration of administrative convenience"); *National Cable*, 180 U.S. App. D.C. at 249, 554 F.2d at 1108 (1976) ("considerations of administrative convenience may certainly be taken into account as one factor in the calculation" of fees).

[127] Comments of Champlin Petroleum Co. at 2; Cities Services Oil & Gas Corp. at 2; Independent Petroleum Ass'n of America at 2–3; Natural Gas Supply Ass'n at 3–4; Texaco U.S.A. at 2.

[128] Comments of Lawrenceburg Gas Transmission Corp. at 6–7; Texas Eastern Transmission Corp. at 7; Pacific Gas & Electric Co. at 8; AGA at 6–7; Iowa State Utilities Board at 3–4.

[129] Comments of Lone Star Gas Co. at 6; Pacific Gas & Electric Co. at 8.

[130] Comments of Cities Services Oil & Gas Co. at 2.

[131] Comments of Independent Petroleum Ass'n of America at 2–3.

[132] Comments of Natural Gas Supply Ass'n at 3–4.

[133] Comments of Lawrenceburg Gas Transmission Corp. at 6–7; Pacific Gas & Electric Co. at 8.

[134] Comments of Texas Eastern Transmission Corp. at 7.

[135] Comments of AGA at 6–7; Lawrenceburg Gas Transmission Corp. at 6–7; Iowa State Utilities Board at 3–4.

[136] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[137] House Budget Report at 54, 1986 U.S. Code Cong. & Ad. News at 3650 (emphasis added).

[138] *See* Felmont Oil Corp. and Essex Offshore, Inc., 33 FERC ¶ 61,333 (1985), *reh'g denied*, 34 FERC ¶ 61,296 (1986).

[139] 50 FR 42408 (Oct. 18, 1985), FERC Statutes & Regulations (Regulations Preambles 1982–1985) ¶ 30,665.

[140] 51 FR 22168 (June 18, 1986), III FERC Statutes & Regulations (Regulations Preambles) ¶ 30,701.

[141] *See* Comments of Independent Petroleum Ass'n of America at 2–3.

[142] In fiscal year 1986, 792 producers filed for abandonment. During the first half of fiscal year 1987, 396 producers have filed for abandonment.

volumetric data currently reported in Annual Report FERC Form No. 2 at page 520, column c (gas receipts by type of source, such as purchases, exchanges, transportation, storage, *etc.*), and page 327, lines 1, 3 and 4, column b (gas purchases by type of source, such as wellhead, processing plant, field line, another pipeline, and city gate). Similar data requirements would have to be added for Annual Report FERC Form Nos. 2–A and 14.

The four commenters addressing this alternative all oppose it,[143] arguing that it would impose severe additional reporting burdens [144] and would bifurcate the wellhead market by increasing the price of interstate gas over that of intrastate gas.[145]

The Commission concludes that, for the reasons already stated, the billing of only interstate pipelines is the most equitable and efficient method of assessing annual charges. Moreover, the Commission is reluctant to impose additional reporting burdens on the pipelines which file Form Nos. 2–A and 14, and does not wish to bifurcate the wellhead market.

As of April 30, 1987, the Commission requlated 148 pipelines under section 7 of the NGA. Of these pipelines, the Commission proposed in the NOPR to assess annual charges against the following groups (which, based on the latest figures, total 135 pipelines):

(a) Interstate natural gas pipelines that have certificates of public convenience and necessity under section 7 of the NGA, that are subject to Commission NGA section 4 authority, and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year (currently 114 pipelines);

(b) Interstate natural gas pipelines that have certificate authority under section 7 of the NGA but no tariff on file for jurisdictional or nonjurisdictional sales and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year (currently 12 pipelines);

(c) LNG importers that fall within the Commission's jurisdiction pursuant to both sections 3 and 7 of the NGA and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year (currently 5 pipelines); and

(d) Regulated interstate natural gas pipelines that have NGA section 7(f) declarations and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year (currently 4 pipelines).

The Commission proposed to exempt any interstate natural gas pipeline with annual sales and transportation volumes of 200,000 Mcf or less in each of the three calendar years immediately preceding the billing year (currently 13 pipelines).[146]

1. Interstate Pipeline Companies To Be Billed

Consistent with the Conference Report,[147] the Commission will assess annual charges against those companies over which it has jurisdiction under section 7 of the NGA, exempting only pipelines with NGA section 7(f) declarations (a reversal of the proposal set forth in the NOPR) and pipelines with throughputs of 200,000 Mcf or less annually in each of the three calendar years immediately preceding the billing year.

(a) Interstate natural gas pipelines apply for certificates for the transportation and sale of natural gas for resale in interstate commerce under section 7 of the NGA. One-hundred twenty-two companies, excluding LNG importers but including gatherer-type pipelines, currently have certificates under NGA section 7 and are also subject to the Commission's NGA section 4 rate regulatory authority. In the NOPR, the Commission proposed to assess annual charges against the companies in this group with sales and transportation volumes exceeding 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year. This group currently numbers 114 pipelines.

Each of the three commenters addressing this category of pipelines argues that it was incorrectly included in this category. Lone Star Gas Company contends that its status has changed because it makes no sales for resale in interstate commerce and has no sales tariff on file with the Commission, and that it transports its own and others' gas as an interstate pipeline but makes sales only through its nonjurisdictional local distribution facilities. It requests to be moved to category (b).[148] Lone Star is correct, and the Commission will therefore delete its name from the list of companies in category (a) and add it to the list of companies in category (b). The Commission notes, however, that a shift from category (a) to category (b) will not affect the amount of the company's annual charge.

The second commenter, Cincinnati Gas & Electric Company, argues that its affiliate, Union Light, Heat & Power Company, will be assessed not only for the gas it transports as an interstate pipeline but also for the gas it sells as an LDC. Cincinnati therefore asks that the Commission amend its formula to base the assessment only on transmission system sales and on deliveries for other interstate pipeline companies. Such a sweeping change in its proposed assessment methodology would exclude gas transported for producers, end-users and LDCs (and would apparently relieve Union of any annual charge obligation under the natural gas program). The Commission is unwilling to remove such a large volume of gas from the volumetric basis for annual charges. However, it is not the Commission's intent to assess annual charges based upon any distribution sales volumes which were reported on Form Nos. 2 and 2–A, but which were delivered to the LDC portion of the reporting pipeline by another jurisdictional pipeline and which were not transported through any portion of the reporting pipeline's interstate facilities. (Such volumes would be included in Form No. 2 or 2–A of that other jurisdictional pipeline.) If a company wishes to provide the Commission with a statement made under oath identifying the LDC volumes which it received through a pipeline other than its own, then the Commission will reduce the volumetric total (on page 521 of Form No. 2 or page 18 of Form No. 2–A) by that amount. Such statements are strictly voluntary, but will be subject to the normal audit procedures of the Commission's Office of the Chief Accountant and Office of Pipeline and Producer Regulation. To be considered in the fiscal year 1987 annual charge calculations, such statements must be filed with the Commission within 15 calendar days from the day this rule is issued.[149] In future fiscal years, each pipeline will be required to provide such information as part of the company's Form No. 2 (as a footnote on page

[143] Comments of Lone Star Gas Co. at 6; Lawrenceburg Gas Transmission Corp. at 7; Pacific Gas & Electric Co. at 8; Independent Petroleum Ass'n of America at 2–3.

[144] Comments of Lone Star Gas Co. at 6; Pacific Gas & Electric Co. at 8.

[145] Comments of Independent Petroleum Ass'n of America at 2–3.

[146] In Appendix B, the Commission separates the companies into the above categories based on the most current information in the Commission's files.

[147] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[148] Comments of Lone Star Gas Co. at 6–7.

[149] To facilitate such natural gas pipelines' timely filing of this data, the Commission is serving a copy of this rule on each pipeline listed in Appendix B. This service is by United States Mail, first class, on the date of issuance of this order.

520) [150] or Form No. 2–A (as a footnote on page 21).[151]

The third commenter, Washington Natural Gas Company, argues that it is a project operator which neither purchases gas, sells gas, takes title to gas, nor transports gas for a charge in the conventional sense. It therefore reports no sales or transportation volumes in its Form No. 2. It merely stores the gas of its three owners and releases the gas into the pipeline as needed. For these reasons, Washington Natural requests removal from the list of entities to be assessed annual charges.[152] The Commission is not exempting Washington Natural or any other company engaged in jurisdictional storage activities. Such a company files storage rates and a Form No. 2 or 2–A with the Commission, and its storage services are considered to be transportation for jurisdictional purposes.

Therefore, the Commission will assess annual charges against all interstate natural gas pipelines that have NGA section 7 certificates, that are subject to NGA section 4 authority, and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year.[153]

(b) Section 1(b) of the NGA provides, in part, that the sale in interstate commerce for resale of natural gas for ultimate public consumption is jurisdictional. This usually involves the sale of natural gas to a local distribution company (LDC) the facilities and services of which are under state or local jurisdiction. The Commission has authority to set rates for sales to LDCs pursuant to section 4 of the NGA. However, some natural gas pipeline companies make sales to companies that use the natural gas for their own consumption. These sales are referred to as direct sales. The Commission does not set rates for direct sales because they are not regulated under section 4 of the NGA. However, the construction and operation of service facilities and the interstate transportation of natural gas for direct sale are subject to the Commission's jurisdiction under section 7 of the NGA. Consistent with the scope of the Commission's NGA jurisdiction, the Commission in the NOPR proposed to assess annual charges on all sales volumes, *i.e.*, both the volumes sold for resale and the volumes transported in interstate commerce for direct sale. Sixteen such interstate pipeline companies currently have certificate authority but no sales tariff on file. If the Commission were using the latest data to assess annual charges, it would exempt four pipelines on a volumetric basis (200,000 Mcf or less per year for each of the three immediately preceding calendar years) and assess the remaining twelve pipelines an annual charge. The Commission proposed to calculate the charges based upon total (interstate and intrastate) transportation and sales volumes.

Five commenters argue that the Commission should modify its proposal and determine its annual charge assessment solely on interstate gas sales and transportation volumes. Currently, some pipelines do not separate in their Form Nos. 2 and 2–A their interstate from their intrastate volumes. Likewise, many pipelines that also perform a distribution function do not separate in their Form Nos. 2 and 2–A the volumes sold or transported in interstate commerce from nonjurisdictional volumes sold to end-users. To assess annual charges based on the combined volumes would greatly inflate the volume on which these two types of companies are assessed.[154] The commenters' concern is valid. As noted in Part IV A 1(a) above, the Commission's intent is to base its annual charges on only interstate natural gas volumes. Within 15 calendar days of the day this rule is issued, any interstate pipeline which also performs local distribution or intrastate functions may provide the Commission with a sworn statement that shows (1) the 1986 volumes which the reporting pipeline transported or sold through its local distribution facilities or intrastate facilities, and which it received through gathering facilities, distribution facilities, or intrastate facilities; and (2) the 1986 volumes which the reporting pipeline received, sold or transported through any interstate portion of its pipeline facilities. The Commission will reduce the company's volumetric total by the first amount.[155] In response to the above five comments, the Commission is also amending its instructions to Form Nos. 2 and 2–A to require that every pipeline provide this same data as a footnote on page 520 of its Form No. 2 or on page 21 of Form No. 2–A.

In a related matter, two commenters recommend that the Commission exclude from its computations the gathering volumes currently booked to Account No. 489.[156] These commenters contend that gathering services "arguably" do not require any Commission processing time because gathering is exempted from Commission jurisdiction under NGA section 1(b), and that inclusion of gathering volumes would frequently result in double-counting because most gathering volumes are subsequently transported.

Because the Commission does not have jurisdiction over the function of gathering, any company that reported gathering volumes in its 1986 Form No. 2 or 2–A may file, within 15 calendar days of the day this rule is issued, a sworn statement indicating the amount of gas that represents its gathering volumes.[157] The Commission will reduce the company's volumetric total by that amount, except that the Commission will not reduce the volumetric totals by any gathering volumes of gas if they are destined for the interstate market or if they are transported through any interstate portion of the reporting pipeline.[158] As with LDCs and intrastate piplines, these companies with gathering lines must report such information next year as a footnote on page 520 of Form No. 2 or page 21 of Form No. 2–A.

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[150] A revised page 520 of Form No. 2 is attached to this rule as Appendix C.

[151] A revised page 21 of Form No. 2–A is attached to this rule as Appendix D. The new instructions added to both page 520 of Form No. 2 (referred to *supra* note 150) and page 21 of Form No. 2–A are:

Also indicate by footnote the volumes of nonjurisdictional gas which did not incur FERC regulatory costs by showing (1) the local distribution volumes delivered to the local-distribution-company portion of the reporting pipeline by another jurisdictional pipeline; (2) the volumes which the reporting pipeline transported or sold through its local distribution facilities or intrastate facilities, and which the reporting pipeline received through gathering facilities, distribution facilities or intrastate facilities, but not through any of the interstate portion of the reporting pipeline; and (3) the gathering line volumes which were not destined for the interstate market or which were not transported through any interstate portion of the reporting pipeline.

[152] Comments of Washington Natural Gas Co. at 2–4.

[153] Raton Gas Transmission Company correctly informs the Commission that it had been misnamed in the NOPR's Appendix B as Raton Natural Gas Company. Comments of Raton Gas Transmission Co. at 1. The error has been corrected in Appendix B to this rule.

[154] Comments of Lone Star Gas Co. at 7–8; Northwest Pipeline Corp. at 8; Iowa State Utilities Board at 4–5; National Fuel Gas Distribution Corp. at 5; Connecticut Natural Gas Corp. at 2 n. 1.

[155] To facilitate such natural gas pipelines' timely filing of this data, the Commission is serving a copy of this rule on each pipeline listed in Appendix B. This service is by United States Mail, first class, on the date of issuance of this order.

[156] Comments of Northwest Pipeline Corp. at 7–8; Williams Natural Gas Co. at 6–7.

[157] To facilitate such natural gas pipelines' timely filing of this data, the Commission is serving a copy of this rule on each pipeline listed in Appendix B. This service is by United States Mail, first class, on the date of issuance of this order.

[158] *See* Public Service Comm'n of Kentucky v. FERC, 610 F.2d 439 (6th Cir. 1979) (holding that direct sale deliveries from gathering facilities are subject to the Commission's jurisdiction).

(c) In the NOPR, the Commission proposed to assess annual charges against importers that are subject to the Commission's NGA section 3 [159] jurisdiction and that file a Form No. 14, only if the companies are also subject to the Commission's NGA section 7 jurisdiction.[160] In addition, the Commission proposed to assess annual charges against only those importers which sell or transport more than 200,000 Mcf per year in any of the three calendar years immediately preceding the billing year. Based on the latest data, there are currently five companies in this category. No commenters addressed the proposal to assess annual charges against this category of company.

Under the DOE Organization Act,[161] regulatory authority involving natural gas imports and exports is vested in the Secretary of Energy. The Secretary has delegated to the Commission the authority to regulate the use of domestic facilities for the sale or transportation of imported natural gas.[162] One source of natural gas used to supplement national supplies is imported liquefied natural gas (LNG). An LNG importer is subject to the Commission's jurisdiction under section 3 of the NGA and files with the Commission a Form No. 14 indicating the total LNG volumes transported. Because the Commission has jurisdiction over these natural gas companies and has sufficient volumetric data with which to assess annual charges against them, it will include this type of company among the groups to be assessed annual charges.

2. Interstate Pipeline Companies To Be Exempted

(a) In the NOPR, the Commission proposed to exempt natural gas pipelines with annual sales and transportation volumes of 200,000 Mcf or less in each of the three years immediately preceding the billing year. Only one commenter addresses this category of company. Pacific Gas Transmission Company opposes exempting small pipelines, proposing instead that every interstate pipeline be required to pay at least a minimum annual charge.[163]

The Commission has decided to exempt from annual charges all natural gas pipelines with annual sales and transportation volumes of 200,000 Mcf or less in each of the three calendar years immediately preceding the billing year. The Commission does not currently collect the volumetric data necessary to assess accurately annual charges against these smaller pipelines. Collection of such data would impose significant new reporting burdens on these small pipelines and would also increase the Commission's costs of computing, billing and collecting annual charges. The Commission does not believe that the financial benefits to be derived from collecting such data justify the resulting administrative burden on the agency and the small pipelines. For instance, even if the Commission ignored its current absence of data and assumed (to these small pipelines' disadvantage) that each one sold and transported the maximum exempt yearly volume of 200,000 Mcf, the small pipelines would still each be assessed only a $351 annual charge.[164] The maximum annual amount that could be collected from all thirteen companies would thus be only $4,563 (13×$351).[165] The Commission believes that the benefit of collecting this minimal amount of money from so few companies is outweighed by the disadvantages associated with changing the existing reporting requirements.

The Commission rejects Pacific Gas Transmission Company's argument to impose a "minimum charge." The Commission believes that a minimum charge that is greater than $351 would be unfair to such small companies because the annual charge paid by a small pipeline would be based on a higher rate per Mcf than the annual charge paid by a larger pipeline.

Another commenter seeks to expand this "small exemption" to include pipelines of 25 miles or less in length, regardless of the volume sold and transported,[166] and pipelines for which the transportation and sales volumes of natural gas to affiliated LDCs account for 100% of total annual volumes.[167] The Commission declines to add these exemptions. The length of a pipeline and the relationship between pipeline and purchaser are irrelevant to the volumetric approach which Congress indicated that the Commission should adopt.

(b) Under section 7(f) of the NGA, a natural gas pipeline may enlarge or extend its facilities to satisfy increased market demands without prior Commission authorization. Six regulated pipelines, not already included in Parts IV A 1(a) and 1(b) above, currently have section 7(f) declarations. These are natural gas companies under the NGA that perform a distribution function across state lines. For example, under section 7(f) of the NGA, Washington Gas Light Company (which serves the Washington, DC, metropolitan area in Virginia, Maryland and the District of Columbia) can change its facilities and services for the purpose of supplying market demand in its service area without prior Commission authorization.

If the Commission assessed annual charges using the latest data, it would exempt two of these pipelines because they have not sold and transported more than 200,000 Mcf annually for any of the last three calendar years. Under the

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[159] 15 U.S.C. 717b (1982).

[160] Persons required to file for authority to import or export natural gas under section 3 of the NGA may or may not be natural gas companies within the meaning of the Natural Gas Act. Natural gas company status is determined by whether a person transports or sells gas subject to section 7 requirements. Under the Department of Energy Organization Act and the Secretary of Energy's Delegation Orders Nos. 0204–111 (49 FR 6684, 6690 (Feb. 22, 1984), 5 Fed. Energy Guidelines (CCH) ¶ 70,033, I FERC Statutes & Regulations ¶ 9912) and 0204–112 (49 FR 6684, 6690–6691 (Feb. 22, 1984), 5 Fed. Energy Guidelines (CCH) ¶ 70,034, I FERC Statutes & Regulations ¶ 9913), the primary jurisdiction under section 3 lies with Department of Energy's Economic Regulatory Administration (ERA). The Commission has the authority only to approve or disapprove the siting and construction of new facilities, and to issue Presidential Permits under Executive Order No. 10,485 for facilities on an international boundary. 3 CFR Part 970 (1949–1953 compilation), 18 FR 5397 (Sept. 9, 1953), *reprinted in* 15 U.S.C. 717b note (1982), *amended by* 3 CFR Part 136 (1979), 43 FR 4957 (Feb. 7, 1978), *reprinted in* 42 U.S.C. 7151 note (1982). Because of this joint authority for section 3 filings and the fact that import authority can be authorized by ERA without the necessity for a filing with the Commission, the Commission will not assess annual charges against companies which fall under the Commission's jurisdiction solely due to section 3 of the NGA and the filing requirements of Part 153 of the Commission's regulations. 18 CFR Part 153 (1986). Based on the latest data, there are currently twelve such companies. No commenters addressed the exclusion of this category of company.

[161] 42 U.S.C. 7101–7352 (1982).

[162] DOE Delegation Order No. 0204–112, 49 FR 6684 (Feb. 22, 1984), 5 Fed. Energy Guidelines (CCH) ¶ 70,034, I FERC Statutes & Regulations ¶ 9913.

[163] Comments of Pacific Gas Transmission Co. at 6; *cf.* Comments of New England Power Co. at 12–16 (advocating minimum annual charges for electric utilities).

[164] This estimated annual charge figure is calculated by multiplying 200,000 Mcf by $.0017539 per Mcf. This latter number is obtained by dividing the annual cost of the natural gas program less filing fees in fiscal year 1986 ($37,625,798) by the total sales and transportation volumes of jurisdictional gas reported for calendar year 1985 (21,464,897 MMcf).

[165] This $4,563, when allocated among the 131 assessed pipelines, increases the average annual charge bill by only $34.83, or 0.01 percent.

[166] Comments of Lawrenceburg Gas Transmission Corp. at 8; *cf.* Comments of Raton Gas Transmission Co. at 1–2 (arguing (like Lawrenceburg) that the proposed rule unfairly assesses short pipelines the same charge per Mcf as long pipelines, but recommending that this problem be avoided by changing the basis of the assessment from Mcf to operating revenues.) Lawrenceburg's Comments at 3–5 makes a similar proposal to change the basis to Mcf-miles. These are discussed below in Part IV B 5.

[167] Comments of Lawrenceburg Gas Transmission Corp. at 5.

proposed rule set forth in the NOPR, the remaining four pipelines would be required to pay an annual charge.

All three comments addressing this category oppose the assessment of annual charges against section 7(f) LDCs in general and against Washington Gas Light Company and Shenandoah Gas Company in particular.[168] Commenters argue that such assessment results in double counting because the gas is assessed when in the pipeline's possession and again when in the LDC's possession,[169] that the Commission's oversight of section 7(f) LDC's is *de minimis*,[170] that inclusion of such LDCs is inequitable when the Commission is at the same time excluding from annual charges the producers and intrastate pipelines both of which types of company cost the Commission far more in regulatory expense than do the two LDCs (Washington Gas Light and Shenandoah Gas),[171] and that the section 7(f) LDCs can only recover annual charges in rate proceedings before state public utility commissions, resulting in a delay in recovery which would place them at a disadvantage as compared to other LDCs.[172] The Commission agrees that the degree of regulation over section 7(f) LDCs is so minimal that assessment of annual charges would be inappropriate. The Commission therefore will exempt all section 7(f) LDCs from paying annual charges.[173]

(c) Iowa-Illinois Gas & Electric Company requests that the Commission exempt three more groups of companies: (1) Any company or portion thereof for which the company has been issued a declaration of exemption ("Hinshaw exemption") from the provisions of the NGA; (2) any company making no sales for resale; and (3) any company fully regulated by state regulatory agencies.[174] The first group will not be assessed annual charges based on any nonjurisdictional gas. According to Iowa-Illinois, the filing fees paid by the second group reimburse the Commission for the expenses which the Commission incurs in regulating such companies. Nevertheless, this group is subject to the Commission's gas transportation rate jurisdiction even though not subject to its sales rate jurisdiction,[175] does cause the Commission to incur expenses (exceeding IOAA fee receipts) in regulating the group's numbers,[176] and will therefore be assessed annual charges. The third group is not regulated by the Commission, was not included as an assessed category in the NOPR, and will not be assessed annual charges.

(d) Finally, Connecticut Natural Gas Corporation seeks confirmation that the Commission does not intend to assess annual charges against companies holding limited jurisdiction certificates.[177] The Commission has no such intention, as evidenced by the fact that no companies with only limited jurisdiction certificates appeared on the NOPR's list of prospective companies to be assessed.

B. Overview of the Annual Charges Formula

In keeping with the Conference Report,[178] the Commission proposed to assess annual charges based on the pipelines' annual sales and transportation volumes. The Commission believes that the most representative sales and transportation volumes can be found in FERC Form No. 2 from the sum of Line 42, *Total Sales* Line 46, *Total, Gas Transported or Compressed for Others*, Line 50, *Natural Gas Delivered to Underground Storage*, and Line 51, *Natural Gas Delivered to LNG Storage*, page 521 (Line 11 plus applicable transportation volumes in Lines 13–15, Page 18 of Form No. 2–A). For importers, FERC Form No. 14, Line 13 of Schedule I, Natural Gas, and Line 13 of Schedule II, LNG, provide this information. As noted above, within fifteen calendar days, pipelines should notify the Commission of any volumes which were not subject to Commission regulation but which were nevertheless included on these lines.

In the NOPR, the Commission proposed to apportion its gas program costs among the assessed natural gas pipeline companies based upon the relationship of each company's total sales and transportation volume subject to Commission's regulation to the total sales and transportation volume subject to Commission regulation of all natural gas pipeline companies being assessed annual charges. Specifically, the Commission proposed to:

(1) Subtract all producer and pipeline filing fee collections from total gas program costs, to yield collectible gas program costs.

(2) Divide collectible gas program costs by the amount of jurisdictional gas sold and transported by all billable gas pipelines,[179] to yield the charge per Mcf.

(3) Multiply the charge per Mcf by the amount of jurisdictional gas sold and transported by each individual gas pipeline, to yield each individual pipeline's annual charge.

Commenters suggest numerous modifications to the proposed formula for calculating gas pipelines' annual charges. Several commenters suggest that the annual charges be based on Mcf-miles (to take into account the difference in size and capital investment of companies),[180] miles of pipelines (to provide a more equitable basis for annual charges),[181] operating revenue (to take into account the differences in size of various companies),[182] the value of the company's certificated facilities (to prevent unusually heavy assessments against companies which are small or do not impose significant regulatory burdens on the Commission),[183] and a two-year or three-year rolling average of sales and transportation volumes (to allow for the possibility of abnormal weather conditions which may alter pipelines' gas loads from year to year).[184] The Commission lacks the data necessary to base an assessment on Mcf-miles, and believes that such an approach would be extremely difficult to administer. Also, the Commission does not believe that the pipeline-miles and facility-value approaches are consistent with the Congressional guidance to assess annual charges on a volumetric basis.

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[168] Comments of Washington Gas Light Co. and Shenandoah Gas Co. at 7–10; D.C. Public Service Comm'n at 2, 5 and 6; State Corporation Comm'n of Virginia at 2.

[169] Comments of Washington Gas Light Co. at 8; D.C. Public Service Comm'n at 5; State Corporation Comm'n of Virginia at 2.

[170] Comments of Washington Gas Light Co. at 7; D.C. Public Service Comm'n at 6.

[171] Comments of Washington Gas Light Co. at 9–10; D.C. Public Service Comm'n at 6.

[172] Comments of Washington Gas Light Co. at 10.

[173] Pursuant to our decision in *Iowa-Illinois Gas and Electric Co.*, Docket No. CP86–688–000, 39 FERC ¶ 61,016 at 61,043 (April 3, 1987), we include Iowa-Illinois Gas and Electric Company in this exemption.

[174] Comments of Iowa-Illinois Gas & Electric Co. at 2–3.

[175] *See* Panhandle Eastern Pipe Line Co. v. Public Service Comm'n, 332 U.S. 507, 516 (1947).

[176] IOAA fees in fiscal year 1986 recouped only $5,944,629 of the Commission's $14,575,000 in expenses for the pipeline certificate program.

[177] Comments of Connecticut Natural Gas Corp. at 4–7; *see also* Comments of National Fuel Gas Distribution Corp. at 3–4.

[178] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[179] If a company does not timely provide the Mcf data, the Commission will calculate the company's annual charge based upon the Commission's estimate of the Mcf amount using other data provided on Form Nos. 2, 2A, or 14 by the company in that year or, if necessary, in a prior year.

[180] Comments of Texaco USA at 2; West Texas Gas, Inc. at 4; Lawrenceburg Gas Transmission Corp. at 4; Raton Gas Transmission Co. at 1–2.

[181] Comments of Texaco USA at 2.

[182] Comments of Raton Gas Transmission Co. at 2; West Texas Gas, Inc. at 4.

[183] Comments of West Texas Gas, Inc. at 4; Iowa State Utilities Board at 4.

[184] Comments of Pacific Gas Electric Co. at 9.

While the operating revenue approach comes closer to the Congressional guidance and is in fact the approach the Commission is using to assess oil pipelines, the strictly volumetric basis for calculating charges more closely conforms to Congressional guidance. Moreover, the unusual equitable consideration present in the oil industry which justifies the Commission's use of operating revenue, *i.e.*, that certain small companies would otherwise be assessed grossly disproportionate annual charges, simply does not exist in the gas industry.[185]

The Commission sees no need to use two or three years of data in computing annual charges. Using the most recent year's figures will provide a more up-to-date picture of a company's fair share of the Commission's expenses. Moreover, using a multi-year data approach could result in the Commission assessing companies no longer within its jurisdiction (such as pipelines which sell their jurisdictional facilities or companies all of whose certificated pipelines qualify for Hinshaw exemptions), a result clearly at odds with Congressional intent that the Commission base its annual charge assessments on the volumes of regulated gas.[186]

Two pipelines purchasing almost all of their gas from Canada argue that they should not be required to pay any share of the Commission's expense to regulate domestic producers, and that such a payment would constitute a subsidy by Canadian producers to domestic producers.[187] This argument fails to recognize that, unlike IOAA fees, the annual charges under the Budget Act need not be based on the benefit accorded the regulated entity.

One common objection to the annual charges formula concerns the potential for multiple assessment against a given volume of gas. Commenters argue that gas sold and transported by one interstate pipeline to another would be subject to multiple annual charge assessments. They also argue that this would place pipelines which buy gas from other pipelines at a disadvantage when competing against producers or brokers who pay no annual charges or against interstate pipelines which buy gas which has not previously been transported through another company's interstate pipeline,[188] and that this situation could impede the free movement of gas in a competitive environment.[189] Another common objection concerns the cost passthrough mechanism proposed in the NOPR (inclusion of annual charges in Account No. 928). Commenters argue that under the proposed mechanism the pipelines might not recover all of their annual charges [190] and might not be able to recoup even the recoverable charges in a timely manner.[191]

Commenters present a number of solutions to these two common objections. The most frequently recommended solution is for the Commission to adopt a tracking mechanism such as the one that the Gas Research Institute (GRI) uses to recover its Commission-approved budget. Under such a mechanism, annual charges would be assessed against gas only when it leaves the Commission's jurisdiction. The assessed pipelines would recover the annual charges through a per-Mcf surcharge automatically included in the pipeline's sales and transportation rates, and would transfer the annual charge collections to the Commission each month.[192] The companies point out that the House Budget Report indicated that no volumes should be counted twice and alluded specifically to the GRI tracking mechanism:

> It is intended that pipeline-to-pipeline sales or deliveries not be included in the calculation of volumes. In this way, no volumes will be counted twice. Many of the pipelines are familiar with identifying those volumes which should not be counted (to avoid double counting), because they perform this identificati[o]n in determining the volumes which are assessed the funding unit for the Gas Research Institute.
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> The Committee's only intent is that each unit of gas that is transported through the interstate pipeline (with adjustments to assure no double imposition of charges) bear the same charges. . . .[193]

The commenters enumerate many advantages to a GRI-type tracking mechanism, *e.g.*, that it would avoid multiple-billing of gas,[194] would avoid the risk of underrecovery in rate case settlements,[195] would avoid the incurrence of carrying costs [196] and other (presumably administrative) costs associated with annual charges,[197] would be similar to a methodology already well-understood by the industry,[198] would keep the annual charges out of a company's gross receipts, thereby precluding the company being taxed on such receipts in certain jurisdictions,[199] would be simple for the Commission to administer [200] and monitor on an ongoing basis,[201] would be inexpensive to administer,[202] would enhance the flow of funds to the United States Treasury,[203] would

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[185] *See* Part V B below. Similarly, the justification for imposing a maximum assessment on oil pipelines (one pipeline system yielding 40 percent of the industry's revenue) does not exist in the gas industry. Therefore, we decline in the gas program to adopt the suggestion by the Iowa State Utilities Board at 4 to impose such a ceiling on annual charges.

[186] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[187] Comments of Pacific Gas Transmission Co. at 6–7; Pacific Gas & Electric Co at 8–9.

[188] Comments of ANR Pipe Line Co. at 3–4; Columbia Gas Transmission Corp. at 3; Enron at 5–6; Public Service Electric and Gas Co. at 2; Consolidated Gas Transmission Corp. at 4; Northwest Alaskan Pipeline Co. at 4; Washington Gas Light Co. at 4–5; D.C. Public Service Comm'n at 3–4; *cf.* Raton Gas Transmission Co. at 3–4 (noting that gas travelling through the pipelines of two affiliated companies would be subject to two assessments but the same amount of gas travelling through the same two pipelines would be assessed only once if the two affiliates merged).

[189] Comments of Northwest Alaskan Pipeline Co. at 6.

[190] Comments of INGAA at 13; ANR Pipe Line Co. at 4–5.

[191] Comments of Consolidated Gas Transmission Corp. at 7–9; Enron at 3–4; Texas Eastern Transmission Corp. at 5–6.

[192] Comments of Columbia Gas Transmission Corp. at 3–5; Consolidated Gas Transmission Corp. at 5 and 7–9; Enron at 3–5; Washington Gas Light Co. at 4–5; ANR Pipe Line Co. at 3–5; Northwest Alaskan Pipeline Co. at 6–8; Northwest Pipeline Corp. at 5–7; INGAA at 11–13; Texas Eastern Transmission Corp. at 6.

Two other commenters recommend that the Commission adopt a similar tracking mechanism by permitting the pipelines to include their annual charges in their purchased gas adjustments. Comments of Cincinnati Gas & Electric Co. at 12; Lawrenceburg Gas Transmission Corp. at 9. Two other commenters generally support direct billing of the end-user. Comments of Williams Natural Gas Co. at 8; Granite State Gas Transmission, Inc. at 2. Finally, a commenter recommends that pipelines bill end-users for 50 percent of the annual charges and absorb the other 50 percent. Comments of Texaco USA at 2–3.

[193] House Budget Report at 54, 1986 U.S. Code Cong. & Ad. News at 3650, *quoted in* Comments of Washington Gas Light Co. at 4–5 and in Comments of D.C. Public Service Comm'n at 4.

[194] Comments of Northwest Alaskan Pipeline Co. at 6; Northwest Pipeline Corp. at 10; INGAA at 12; Texas Eastern Transmission Corp. at 10.

[195] Comments of Northwest Alaskan Pipeline Co. at 6; Northwest Pipeline Corp. at 5; ANR Pipe Line Co. at 4–5; Consolidated Gas Transmission Corp at 7; Texas Eastern Transmission Corp. at 10.

[196] Comments of Columbia Gas Transmission Corp. at 4–5; Northwest Alaskan Pipeline Co. at 6; Northwest Pipeline Corp. at 5; Enron at 3–4.

[197] Comments of Columbia Gas Transmission Corp. at 4–5.

[198] Comments of Northwest Alaskan Pipeline Co. at 6.

[199] Comments of Texas Eastern Transmission Corp. at 11; INGAA at 12–13.

[200] Comments of Northwest Alaskan Pipeline Co. at 6; Enron at 5–6; Texas Eastern Transmission Corp. at 10–11; INGAA at 12.

[201] Comments of Northwest Alaskan Pipeline Co. at 6.

[202] *Id.* at 7; Northwest Pipeline Corp. at 6.

[203] Comments of Northwest Alaskan Pipeline Co. at 6; Northwest Pipeline Corp. at 5

increase the likelihood of full recovery from program beneficiaries,[204] would spread the charges uniformly [205] over the broadest base of consumers,[206] would avoid an increase in rate filings,[207] and would inform consumers of what share of their gas bill is attributable to the Commission's annual charge.[208]

Commenters also suggest that, if the Commission is unwilling to adopt a tracking mechanism such as used to collect GRI's budget, the Commission should, at the very least, guarantee that the companies will recover these annual charges (along with associated carrying costs) in their rate cases.[209]

The Commission declines to adopt any of the suggestions regarding multiple assessment. While the House Budget Report may be said to prohibit double counting, the Conference Report does not prohibit it. That report indicates Congress' intent that the Commission base its annual charges computations on the "amount of energy . . . transported or sold . . . by *such* person" compared with "the total volume of all energy transported or sold . . . by all similarly situated persons." [210] Because the same gas is frequently transported or sold by several pipelines before leaving the Commission's jurisdiction, a failure to assess every such pipeline would directly contravene Congressional intent that the Commission consider the amount of energy transported or sold by each "such person." Multiple assessment of gas is thus inherent in the approach specified in the Conference Report. The Commission therefore concludes that the assessment methodology it is adopting is consistent with Congressional intent.

Although, as a matter of policy, the Commission generally does not favor use of tracking mechanisms,[211] it has approved such mechanisms in unusual circumstances. The purchased gas adjustment (and the Fuel Adjustment Clause in the electric regulation [212]) were necessitated by rapid increases in gas costs.[213] The GRI tracking mechanism was approved in order to provide gas pipelines an incentive to support voluntarily GRI's research, development and demonstration budget.[214] The Commission's regulations applicable to gas pipelines also permit shippers on the Alaska Natural Gas Transportation System (ANGTS) to pass through transportation costs,[215] due to the unprecedented scale and cost of ANGTS and its unique international character and legal framework.[216]

The Commission concludes that, due to the fact that the annual charges will reduce the net income (before preferred dividends) of the gas pipeline industry by 2.5 percent,[217] the pipelines should be permitted to pass through the charges directly to their customers. While the Commission will establish a tracking mechanism to accomplish this, the mechanism (described below) will not be based upon the GRI mechanism recommended by many of the commenters. (The Commission is not establishing a tracking mechanism for the electric and oil industries because their net income would be reduced only 0.16 percent [218] and 0.53 percent [219] respectively.)

The Commission will therefore amend 18 CFR 154.38 to provide natural gas pipelines the option of passing along the annual charges to their customers through an annual charges adjustment clause (ACA clause) that the pipelines may include in their FERC Gas Tariffs. Alternatively (and as proposed in the NOPR), the pipelines may include their annual charge expenses in Account No. 928 (Regulatory commission expenses) for consideration in their general rate filings made pursuant to 18 CFR 154.63 of the Commission's regulations.

Natural gas pipelines choosing the ACA clause option will be required to include in each of the sales and transportation schedules of their tariffs the unit rate used to determine the annual charge assessment for the previous fiscal year (adjusted as appropriate to a thermal basis, different pressure base, *etc.*) The Commission will give notice of this unit rate each year at the time it calculates the annual charges. Pipelines electing the ACA clause option will then be required to file tariff sheets reflecting the new annual charge unit rate, to be effective on the first day of the next fiscal year. However, only those pipelines the annual charges of which are not in arrears will be permitted to collect the fiscal year's unit rate through ACA clauses.

The ACA clause will authorize the pipeline to collect a per unit surcharge, applicable to each sales and transportation unit delivered by the pipeline. (The surcharge is not applicable to exchange units because annual charge assessments are not based on such units.) While an ACA clause will give pipelines the ability to include the Commission's annual charge unit surcharges in their rates without filing a general rate case to reflect such costs, recovery of the annual charge expenses will lag behind the pipelines' payment of annual charges because annual charges will be assessed and paid near the end of one fiscal year but recouped in rates during the subsequent fiscal year.

Due to the difference between the throughput used to calculate the annual charges and the throughput assessed the per unit surcharge, a pipeline may overrecover or underrecover its prior year's annual charge expenses in any fiscal year. Such disparities will be generally offset during the following year because that year's annual charge assessment will be based on the same

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[204] Comments of Northwest Pipeline Corp. at 10; INGAA at 12; Texas Eastern Transmission Corp. at 10.

[205] Comments of Northwest Alaskan Pipeline Co. at 6; Northwest Pipeline Corp. at 5.

[206] Comments of Texas Eastern Transmission Corp. at 10; INGAA at 12.

[207] Comments of Texas Eastern Transmission Corp. at 11.

[208] Comments of Northwest Pipeline Corp. at 10.

[209] Comments of Columbia Gas Transmission Corp. at 4–5; Texas Eastern Transmission Corp. at 13; INGAA at 13; ANR Pipe Line Co. at 4–5. *See also* producer comments of Cities Service Oil & Gas Co. at 3–4; Independent Petroleum Ass'n of America at 3; Natural Gas Supply Ass'n at 3–4 (supporting guaranteed passthrough in order to preclude pipelines from shifting the annual charges burden to the producers through net-back provisions).

[210] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884 (emphasis added).

[211] *See* 18 CFR 154.38(d)(3) (1986).

[212] 18 CFR 35.14 (1986).

[213] 18 CFR 154.38(d)(4) (1986).

[214] 18 CFR 154.38(d)(5) (1986).

[215] 18 CFR 154.201–154.213 (1986).

[216] Order No. 320, 48 FR 34,442 (July 29, 1983) and 49,655 (October 27, 1983), FERC Statutes & Regulations (Regulations Preambles 1982–1985) ¶ 30,475 at 30,573.

[217] The Commission arrives at this percentage by dividing the estimated annual charge receipts from the natural gas pipelines ($37,625,798) by 86 percent of the industry's most recent (FY 1986) net income before preferred dividends ($1,512,740,000). The estimated annual charge figure is derived by subtracting the actual 1986 fee receipts ($11,914,202) from the actual 1986 gas pipeline regulatory costs ($49,540,000). The 86-percent figure represents the proportion of the pipelines' net income attributable to gas over which the Commission has jurisdiction.

[218] The Commission arrives at this percentage by dividing the estimated annual charge receipts from electric companies ($19,650,145) by 20 percent of the industry's FY 1985 net income before preferred dividends ($3,740,983,000). The estimated annual charge figure is derived by subtracting the actual 1986 fee receipts ($2,403,865) from the actual 1986 electric regulatory costs ($22,054,000). The 20-percent figure represents the proportion of the electric industry's net income attributable to sales over which the Commission has jurisdiction.

[219] The Commission arrives at this percentage by dividing the estimated annual charge receipts from oil pipelines ($3,944,000) by the industry's 1985 net income ($2,430,845,000). Because the Commission refunded more fees than it received in 1985, the Commission uses a $0 estimation of its filing fee receipts for this calculation and therefore does not reduce the actual 1985 oil pipeline regulatory costs by any estimated filing fee receipts.

throughput data on which the prior year's per unit surcharge was based.

The Commission will permit pipelines to change methods of annual charges cost recovery. However, once a pipeline chooses one method, it can change to the other method only in the context of a general rate change filing under 18 CFR 154.63. A company may not operate under both options at the same time.

C. Other Matters

Under §§ 381.107 and 381.206 of its regulations,[220] the Commission annually bills the Gas Research Institute (GRI) for processing its research, demonstration and development budget.[221] In the NOPR, the Commission proposed to continue billing GRI, with the amounts collected from GRI to be subtracted from the overall costs of the natural gas program. No commenter objects to this approach and the Commission adopts it as proposed.

V. Cost Basis for the Oil Pipeline Regulatory Program

A. The Types of Companies To Be Billed

In the NOPR, the Commission proposed to assess annual charges against all oil pipelines required to file an Annual Report FERC Form No. 6 with the Commission pursuant to section 20 of the Interstate Commerce Act (ICA) [222] and § 357.2 of the Commission's regulations.[223] The Commission did not propose to exempt any oil pipelines from the payment of annual charges. Instead, the Oil Pipeline Board would be authorized to rule on petitions for waiver of the annual charges, and would grant waivers to those companies which meet the standards currently applicable to fees.[224]

Only one commenter addresses the issue of the types of companies to be billed. Phillips Pipeline Company suggests that the Commission exempt any oil pipeline company which transports less than 100,000 barrel-miles of oil per year for each of the last three years.[225] Phillips in essence urges the Commission to establish an oil pipeline exemption similar to that proposed for small gas pipelines. However, the Commission proposed to exempt gas pipelines with throughputs not exceeding 200,000 Mcf for each of the three years immediately preceding the billing year in large part because the Commission lacks the data necessary to compute such companies' annual charges on a volumetric basis.[226] That problem does not exist regarding oil pipelines. Moreover, no jurisdictional pipeline has transported less than 100,000 barrel-miles for *any* of the last three years, much less *all* three years. The Commission therefore rejects Phillips' argument.

B. Overview of the Annual Charges Formula

The Commission has decided to apportion its oil program costs among the oil pipelines based on the ratio of each company's operating revenue to all companies' operating revenue. In the NOPR, the Commission noted that each oil pipeline reports to the Commission in its Annual Report FERC Form No. 6 the amount of barrels delivered, barrel-miles transported,[227] and operating revenue received each year. The Commission is not apportioning the program's expenses based on the number of barrels delivered by the pipelines, even though such an approach would be most closely in accord with the volumetric approaches used to compute annual charges for natural gas pipelines and electric utilities. Such an approach would result in disproportionately high annual charges assessed against companies with short pipelines because it would not take into account the distance which the pipelines transported the delivered oil. A company moving a specific volume of oil one mile through a short pipeline would be assessed the same annual charge as another company moving the same volume of oil 100 miles through a longer pipeline. The Commission therefore concludes that, in the oil pipeline industry, the appointment of annual charges based on barrels delivered would result in inequitable assessments of annual charges.

The Commission also is not apportioning the program's expenses based on the number of barrel-miles transported. In its Form No. 6 (Line 33a of page 600), each company currently provides the Commission with the number of trunkline barrel-miles. However, Form No. 6 currently does not require reporting of gathering-line barrel-miles.[228] The Commission's data for calculating annual charges based upon barrel-miles would thus be incomplete unless the Commission imposed additional filing requirements on the oil pipelines, a step which the Commission is reluctant to take given that most pipelines do not currently have in place a mechanism for determining gathering-line barrel-miles. Moreover, the assessment of annual charges based on trunkline barrel-miles would lead to an inequitable assessment of annual charges.[229]

Given the problems with assessing annual charges based on either barrels-delivered or barrel-miles, the Commission has decided to apportion costs among oil pipelines based on each company's operating revenues. While not strictly a volumetric approach, this methodology is nevertheless consistent with the Conference Report which provides that the annual charges should be assessed on the basis of "annual sales or volumes transported" [230] because annual operating revenues are directly related to the annual transportation services which generate those revenues.

Two commenters argue that, regardless of which method is adopted, the Commission should establish minimum and maximum annual charges for oil pipelines.[231] The suggested ranges for annual charges are $5,000 to $250,000 [232] and $1,000 to $250,000.[233] A

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[220] 18 CFR 381.107 and 381.206 (1986).

[221] *See generally* Gas Research Institute, 36 FERC ¶ 61,395 (1986).

[222] 49 U.S.C. 20 (1976).

[223] 18 CFR 357.2 (1986). Based on FY 1986 data, the Commission expects to collect $3,944,000 in filing fees and annual charges from oil pipelines in 1987. The 137 oil pipelines which the Commission currently regulates are listed in Appendix E.

[224] *See supra* Part III A 5.

[225] Comments of Phillips Pipeline Co. at 3–4.

[226] See *supra* Part IV A 2(a).

[227] A barrel-mile is one barrel of oil or petroleum product moving one mile. Oil pipelines do not own the commodity they transport, but provide only a transportation service.

[228] Unlike gathering-line gas, gathering-line oil is subject to the Commission's transportation jurisdiction.

[229] The incomplete data regarding barrel-miles would cause an inequitable distribution of annual charges between companies with and without gathering lines. The most recently compiled mileage figures which include gathering miles (not to be confused with barrel-mile data, which is not available) show that gathering lines make up approximately 20 percent of all oil pipeline mileage. Even though the volumes through these lines are generally small compared with those of trunklines, the impact of excluding gathering barrel-miles from the annual charge computation would yield inequitable results. The mileage figures also indicate that five companies which own only gathering lines would be exempted from paying any annual charges at all (Clarco Pipeline Company, Ohio Oil Gathering Corporation II, National Transit Company, White Shoal Pipeline Corporation, and Crown-Rancho Pipe Line Corporation).

[230] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[231] Comments of Sohio Alaska Pipeline Co. at 4–5; ARCO Pipeline Co. at 2; *see also* Comments of Iowa State Utilities Board at 4 (generally suggesting a maximum annual charge but not recommending a specific figure).

[232] Comments of Sohio Alaska Pipeline Co. at 1–2.

[233] Comments of ARCO Pipeline Co. at 2.

third company suggests a minimum charge of $20,000.[234] Two companies argue that, without such a ceiling, the owners of the Trans-Alaska Pipeline System (TAPS) will be required to pay 40 percent of the Commission's oil program expenses.[235] One of these companies points out that such a payment is grossly disproportionate, especially given the minimal attention the Commission will need to devote to TAPS as a result of the settlement resolving all interstate TAPS rate case issues and establishing a methodology for determining maximum tariffs through the year 2011.[236]

The Commission sees no need to establish a minimum charge. The $1,000 proposed minimum charge would affect adversely 22 small companies and would reduce each of the other pipeline's bills by a maximum of only $191.[237] Given this *de minimis* effect, the Commission declines to impose a minimum charge. However, the Commission agrees with the commenters' recommendation to establish a maximum charge of $250,000 in order to avoid assessing disproportionate annual charges on the TAPS owners. The amount of undercollection which could be caused by the use of a maximum charge will be recovered by adding proportionate shares of the undercollection to the annual charges of the companies with annual charges less than the maximum. This reapportioning will result in charges that more accurately reflect the Commission's per company burden. Finally, the Commission will adjust annually this maximum figure by raising or lowering it in proportion to the increase or decrease in the oil program budget.[238]

This adjusted figure will be rounded to the nearest $1,000.[239]

Several commenters oppose the operating revenue methodology proposed in the NOPR. Champlin Petroleum Company argues that the proposed method is unfair because a new pipeline would pay no charges during its first year due to the absence of any base period.[240] Champlin also contends that, under the methodology proposed in the NOPR, a newer pipeline would pay a higher portion of the total costs because its rate of return would be based on a more expensive capital base.[241] While this first result may seem inequitable, the Commission notes that, under all three methods, a new pipeline would pay no annual charges during its first fiscal year. Moreover, as discussed above, the operating revenue method is less inequitable than the barrels-delivered or the barrel-miles methods. Concerning the second argument, the Commission sees no inequity in a company with greater revenue paying a greater portion of the Commission's regulatory expenses.

Champlin further contends that the proposed method would penalize rate-filers, because a company that increases its tariffs (and thus its revenues) will pay a proportionately higher annual charge the following year than the company that ignores cost passthrough.[242] The Commission does not believe that a company would decline to seek to raise its rates because it would have to pay a small percentage (currently approximating less than 0.1 percent) of that rate increase to the Commission the following year.

Phillips Pipeline Company contends that the smaller pipelines would be required to subsidize the larger pipelines. According to Phillips, larger pipelines tend to file more often with the Commission because they have more origin and destination points, and the Commission therefore incurs more expense servicing such pipelines.[243] However, the company supports this argument with no data. The Commission also notes that filings involving origin and destination points are seldom contested and therefore involve very little regulatory expense. Finally, this argument ignores the fact that Congress has told the Commission to base its allocation of annual charges on some volumetric standard (or its equivalent), not on the cost to the Commission.

Phillips also argues that the proposed method penalizes short-haul pipelines which "may well" have more revenues for fewer barrel-miles traveled.[244] Phillips' argument is admittedly hypothetical and the company supports it with no data.

Sohio Alaska Pipeline Company contends that low-revenue oil pipelines (such as Williams Pipe Line Company) can draw enormously on the Commission's resources.[245] While Sohio is correct, it is also true that high-revenue oil pipelines can do the same.

Finally, Williams Pipe Line Company opposes the operating revenue methodology on the ground that the level of pipelines' revenues is unrelated to the level of regulatory oversight required.[246] This is true, as noted just above. However, to the extent that the proposed methodology would impose an inequity on larger pipelines, the maximum annual charge should afford them some protection. To the extent that it works an inequity on smaller oil pipelines, the Commission believes that such an inequity is outweighed by other inequities previously noted which would result from the barrels-transported and barrel-mile methods.

A number of companies also suggest modifications to the operating revenue methodology. Two commenters suggest that the Commission should limit the revenue base to the operating revenue from Commission-regulated tariffs, *i.e.*, only the revenue reported in Account Nos. 200, 210, and 220.[247] The Commission agrees.[248] The revenue

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[234] Comments of Williams Pipe Line Co. at 3.

[235] Comments of ARCO Pipeline Co. at 1–2; Exxon Pipeline Co. at 2.

[236] Comments of Exxon Pipeline Co. at 2. While this is Exxon's characterization of the Commission's future burden related to TAPS rates, a recent Commission order approving a two-owner TAPS settlement stated that nonparties to the settlement "may file at any time in the future for an adjudicated rate." Trans-Alaska Pipeline System, 35 FERC ¶ 61,425 at 61,982 (1986).

[237] This maximum estimated difference is calculated as follows. Assuming that the 22 small pipelines would otherwise pay no annual charges, the minimum charge of $1000 would reduce the collective annual charges of the remaining 115 oil pipelines by $22,000 (22 × $1000), or $191 per pipeline ($22,000 ÷ 115).

[238] This maximum figure is currently 6.339 percent of the estimated costs of administering the oil regulatory program ($250,000 ÷ $3,944,000).

[239] The Commission believes the unique nature of the oil pipeline industry justifies treating its annual charges differently from those of the gas and electric industries. Neither of those industries receives nearly half its operating revenue from a single energy transportation system such as TAPS. Moreover, as noted in the Comments of Sohio Alaska Pipeline Co. at 3, "whether the barrels-delivered, barrel-miles or revenue approach is employed, inequities are present." The imposition of a maximum charge at least reduces these inequities. Finally, the Commission notes that it does not currently spend more than $250,000 regulating any single oil pipeline.

This decision to establish a maximum charge renders moot two arguments by Exxon Pipeline Company. Comments of Exxon Pipeline Co. at 2 (contending that, under the proposed method, TAPS and other frontier pipelines would pay more than their fair share simply because their operating revenue was higher due to the cost of service requirements associated with their massive investment and operating costs); and 4 (suggesting that the Commission weight-average several measures of company activity (such as number of barrels transported and number of pipelines owned) in order to avoid overcharging TAPS owners).

[240] Comments of Champlin Petroleum Co. at 2.

[241] Comments of Champlin Petroleum Co. at 2; *see also* Comments of Sohio Alaska Pipeline Co. at 3 and 5 (arguing that the proposed method penalizes large-diameter pipelines because of their greater revenue).

[242] Comments of Champlin Petroleum Co. at 2.

[243] Comments of Phillips Pipe Line Co. at 2.

[244] *Id.*

[245] Comments of Sohio Alaska Pipeline Co. at 3.

[246] Comments of Williams Pipe Line Co. at 2.

[247] Comments of ARCO Pipe Line Co. at 1–2; American Petrofina Pipe Line Co. at 1–2.

[248] Because of this decision, the Commission concludes that it is unnecessary to address the suggested modification of Williams Pipe Line Co. at 3, to reduce the operating revenue figure by the

Continued

assigned to other accounts is not directly related to the transportation tariffs regulated by the Commission, *i.e.*, while related to the transportation of oil, the services which result in such revenue are not required by such transportation. Account No. 230 includes only "allowance oil" revenues from the sale of oil collected for use as replacement oil in the event of an oil loss. Account No. 240 includes only demurrage and storage revenues. Demurrage charges are in essence a fee for late delivery or late receipt of oil. Storage revenue derives from fees assessed to store excess oil. Moreover, the Commission does not have complete storage volume data. Some storage facilities are owned by pipelines (*e.g.*, Williams Pipe Line Company) which report storage volumes to the Commission, while other storage facilities are owned by pipelines' affiliates (*e.g.*, affiliates of Chase Transportation Company) which do not report storage volumes to the Commission. Account No. 250 includes only rental revenues, *i.e.*, funds received by a pipeline company renting a pipeline to another company. (Any transportation revenues from such a rented pipeline would appear on the renter's Form No. 6.) Finally, Account No. 260 includes incidental revenues not directly related to the transportation of oil.

Three pipelines express a preference for the barrel-mile method.[249] Phillips Pipe Line Company contends that the Commission could obtain barrel-mile information from the Association of Oil Pipelines and thereby avoid imposing any new filing requirements on oil pipeline companies.[250] However, Phillips has not indicated that its trade association has data on gathering-line volumes, the only data the Commission does not already have for use in the barrel-mile method. Even if the association does have and is willing to provide such information,[251] the data would still not be certified as correct by the gathering-line company and could not be directly audited by the Commission.

Williams Pipe Line Company contends that the barrel-miles method is the most reliable indicator of pipelines' levels of business activity and regulatory exposure, that the barrel-miles method is most closely in accord with Congressional intent, and that the failure to include gathering-line data in the allocation formula would cause no significant disparities because of the short distances involved.[252] Williams supplies no support for its first (reliable indicator) argument. Nor does Williams explain why operating revenue is not at least as good an indicator of business activity and regulatory exposure as barrel-miles. Regarding its second (Congressional intent) argument, the Commission believes that, while the barrels-delivered methodology may be closer to the literal language of the Conference Committee's guidance that the Commission base its computations on "the amount of energy—electricity, gas, or oil—transported or sold," [253] the operating revenues standard is also consistent with Congressional intent. Moreover, for the reasons already stated, the Commission concludes that the barrels-delivered and the barrel-miles methods are less satisfactory than the operating revenues standard in meeting the "fair and equitable" standard set forth in section 3401(b). Williams provides no data to support its third argument that omission of gathering-line volumes will cause no significant disparities. The Commission notes that several oil pipeline companies own nothing but gathering lines.[254]

Only one pipeline, Exxon Pipeline Company, supports the barrels-delivered methodology. Exxon argues that under this method, TAPS owners would pay a more equitable 6.1 percent of the Commission's oil program costs, an amount which Exxon claims will more accurately match the level of service to be provided by the Commission to TAPS.[255] The Commission notes that the maximum charge of $250,000 will protect the TAPS owners from paying more than their fair share of the oil program expenses. Exxon also points out that the barrels-delivered approach is consistent with the approach used to assess gas pipelines and electric utilities and with the language of both the Budget Act and the Conference Report.[256] Because the barrels-delivered approach results in certain small pipelines being assessed disproportionately high annual charges, the Commission believes that fairness and equity (required by the statute) mandate the use of a standard in assessing oil pipelines which differs from that used in assessing gas pipelines or electric utilities.

Finally, one pipeline suggests an approach entirely different from those in the NOPR. Exxon Pipeline Company proposes that the Commission assess user fees against pipelines.[257] While filing fees are not within the scope of this rulemaking, the Commission notes that it currently does assess filing fees against oil pipelines [258] and that it will reduce the amount of annual charges imposed on the oil pipeline industry by the amount of fees received.

For all the reasons discussed above, the Commission believes that apportioning the annual charges based on operating revenue would most fairly and equitably distribute the oil program costs. The Commission will therefore apportion its oil program costs among the oil pipeline companies based upon the relation each company's annual operating revenue bears to the total annual operating revenue for all oil pipeline companies being assessed annual charges, with a 1987 maximum annual charge of $250,000 (adjusted annually to reflect changes in the oil program budget). Specifically, an individual company's annual charge will be calculated as follows:

(1) Subtract all oil pipeline fee collections (from total oil program costs, to yield collectable oil program costs.

(2) Divide the collectable oil program costs by the total of all oil companies' operating revenue in Account Nos. 200, 210 and 220 (FERC Form No,. 6, page 301, lines 1, 2 and 3, column d),[259] to yield the charge per dollar of operating revenue.

(3) Multiply the charge per dollar of operating revenue by each company's operating revenue, to yield each individual company's annual charge.

(4) For every company with an annual charge determined to be above the maximum charge, set that company's annual charge equal to maximum charge and reapportion the overage amounts (those above the maximum) to the remaining companies. This

amount of terminalling charges and loss allowances. These are not included in Accounts 200, 210, and 220. The decision also would make it extremely difficult to base annual charges assessments on net income, as suggested by Texaco USA at 3. The net income would include earnings from activities other than the jurisdictional transportation of oil. Moreover, the Commission notes that companies could easily manipulate their net income by simply assuming greater debt, and that a parent company of a pipeline could easily assign more of the parent's debt to the subsidiary.

[249] Comments of Champlin Petroleum Co. at 2; Phillips Pipe Line Co. at 2; Williams Pipe Line Co. at 2.

[250] Comments of Phillips Pipe Line Co. at 2.

[251] The association in its comments does not indicate that it has such gathering line volumetric data.

[252] Comments of Williams Pipe Line Co. at 2.

[253] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3864.

[254] *See supra* note 229.

[255] Comments of Exxon Pipeline Co. at 6.

[256] *Id.*

[257] Comments of Exxon Pipeline Co. at 4.

[258] *See* 18 CFR Part 346 (1986).

[259] If a company does not timely provide the operating revenue data, the Commission will calculate the company's annual charge based on the Commission's estimate of the operating revenue using other data provided on FERC Form No. 6 by the company in that year, or, if necessary, information provided in a prior year.

reapportioning is to be done using the same method outlined in steps 1 through 3 above but with the exclusion of those companies whose annual charge is already set at the maximum amount, and is to be repeated until no company's annual charge exceeds the maximum charge.

C. Other Matters

In the NOPR, the Commission proposed that the oil pipelines be allowed to include annual charges in their Operating Expense Account No. 510, Supplies and Expenses, of the Commission's Uniform System of Accounts.[260] The Commission indicated that it considers annual charges to be a cost of doing business for the oil pipelines.

Three commenters address this issue. Enterprise Pipeline Company seeks confirmation that the oil pipelines can pass through the annual charges to their shippers.[261] They can, as long as such passthroughs are consistent with Commission-approved rates.

Enterprise also suggests that the oil pipelines be permitted to bill the annual charges directly to the shippers.[262] Santa Fe Pacific Pipelines, Inc. presents a similar suggestion, that the Commission establish an annual fee percentage (similar to the GRI approach suggested by many gas pipelines). Santa Fe contends that this is the most equitable method because (1) the shipper ultimately pays, and (2) during periods in which oil pipeline companies do not file for rate increases, no other method would permit the companies to recover annual charges from their customers.[263] The Commission declines to adopt either of these suggestions. Unlike the natural gas program's annual charges, which reduce the gas pipelines' profits by 2.5 percent and which may therefore be passed through automatically to the pipelines' customers through a tracking mechanism, the oil program's annual charges will reduce the profits of the oil pipelines by only 0.53 percent, a figure too small to justify the establishment of a tracking mechanism.[264] Moreover, regarding Santa Fe's second point, if the pipelines do not take advantage of their right to seek rate increases from the Commission, that is their own business decision and is irrelevant to the appropriateness of the method for assessing annual charges. Finally, unlike the Commission's natural gas program, the oil program currently has in place no tracking mechanism by which to implement such a direct charge. Given the time constraints placed on the Commission by Congress, there is not sufficient time in this rulemaking proceeding to establish such a mechanism.

Finally, Williams Pipe Line Company suggests that the pipelines be permitted to choose each year whether to expense or to accrue and amortize the annual charges.[265] This is, in essence, a proposal that the pipelines be permitted to "bank" whatever annual charges they cannot pass through to their customers (presumably due to market conditions). The Commission declines to adopt Williams' suggestion because such an approach would permit companies to circumvent the tariffs approved by the Commission.

VI. Cost Basis for the Electric Regulatory Program

A. The Types of Companies To Be Billed

The Commission currently regulates 186 IOUs (including parent, subsidiary, and affiliated utilities), one cooperative,[266] and five Federal Power Marketing Agencies (PMAs).[267] In the NOPR, the Commission proposed to assess annual charges against those IOUs which (a) have rate schedules on file for sales for resale and coordination (interchange out and transmission delivered) sales [268] to municipal or cooperative electric utility systems, PMAs or other IOUs, and (b) are required to file an Annual Report FERC Form No. 1 (Major Utilities) or Form No. 1–F (Non-Major Utilities).

1. Power Marketing Agencies

In the NOPR, the Commission proposed to exempt the PMAs from the payment of annual charges. The Commission proposed to exempt the PMAs because it believed that Congress intended the Commission to recover the costs of the entire electric program from "public utilities" as defined in section 201(e) of the FPA [269] and limited by section 201(f) of the FPA.[270] Commenters addressing this issue unanimously oppose the NOPR's interpretation of congressional intent.[271] Those commenters raise two major issues: (1) Whether the Commission should exempt PMAs from paying annual charges, and (2) if the PMAs are exempted from the assessment of annual charges, whether the IOUs should be assessed the costs of PMA regulation.

The Commission proposed to exempt PMAs because it does not regulate them under the FPA, the House bill's basis for determining which entities are to be assessed charges. In response, one commenter argues that the Commission's jurisdiction under the Budget Act is not intended to be as narrow as the Commission's jurisdiction under the FPA.[272]

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[260] 18 CFR Part 352 (1986). *See generally* Senate Budget Report at 74.

[261] Comments of Enterprise Pipeline Co. at 1.

[262] Id. at 1–2.

[263] Comments of Santa Fe Pacific Pipelines, Inc. at 1–2.

[264] *See supra* notes 217 and 219.

[265] Comments of Williams Pipe Line Co. at 4.

[266] Golden Spread Electric Cooperative, Inc. (GSEC) filed on April 21, 1987, a rate schedule for the sale of firm requirements service to all of its members. Docket No. ER87–396–000.

[267] These entities are listed in Appendix F. Based on FY 1986 data, the Commission expects to collect $19,650,145 in annual charges and $2,403,855 in filing fees during FY 1987.

[268] The NOPR defined sales for resale as delivered energy reported on page 401 of the Form No. 1, line 22; on page 16 of the Form No. 1–F, line 7, column (C); and in Schedule II, Part 6 of EIA Form No. 861. Interchange out sales were defined as delivered energy reported on page 401 of Form No. 1, line 13. Transmission delivered was defined as energy listed at page 401 of Form No. 1, line 17.

[269] 16 U.S.C. 824(e) (1982). Section 201(e) states:

(e) "Public utility" defined.

The term "public utility" when used in this subchapter and subchapter III of this chapter means any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter (other than facilities subject to such jurisdiction solely by reason of section 824i, 824j, or 824k of this title).

[270] 16 U.S.C. 824(f) (1982). Section 201(f) states:

(f) United States, State, political subdivision of State, or agency or instrumentality thereof exempt.

No provision in this subchapter shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

[271] American Electric Power Service Corporation, Boston Edison Company, Carolina Power & Light Company, Central Illinois Public Service Company, Cincinnati Gas & Electric Company, Consolidated Edison Company of New York, Inc., Cleveland Electric Illuminating Company, Duke Power Company, Edison Electric Institute, Electric Utilities, Florida Power & Light Company, Golden Spread Electric Cooperative, Inc., Interstate Power Company, Iowa-Illinois Gas and Electric Company, Iowa Power and Light Company, Iowa Southern Utilities Company, Iowa State Utilities Board, Kansas Gas and Electric Company, Middle South Utilities, Inc., Montana Power Company, New England Power Service, Potomac Electric Power Company, Pacific Gas and Electric Company, Pacific Power & Light Company, Public Service Commission of Nevada, Public Service Electric and Gas Company, Puget Sound Power & Light Company, South Carolina Electric & Gas Company, Southern California Edison Company, Southern Company Services, Inc., Southwestern Electric Power Company, Southwestern Public Service Company, Texas-New Mexico Power Company, Texas Utilities Electric Company, Upper Peninsula Power Company, Utah Power & Light Company, Virginia Electric and Power Company, Washington Water Power Company.

[272] Comments of Montana Power Company (MPCo) at 4.

Another commenter points out that PMAs do not pay fees under the FPA and the IOAA because of statutory exemptions. A similar statutory exemption is absent from the Budget Act. Consequently, the commenter concludes that the Commission cannot assume that Congress intended to exempt PMAs from being assessed annual charges because the statute is silent on that issue.[273]

The commenters are persuasive in their arguments that the Budget Act does not make the assessment of annual charges contingent upon whether the Commission has jurisdiction over and collects fees from an entity regulated under the FPA. The Budget Act gives the Commission the authority to assess annual charges against any entity involved in the transfer or sale of energy under its jurisdiction. The Budget Act contains no explicit exemption for PMAs and the Commission has therefore decided not to infer one.

According to some commenters, neither the wording of the Budget Act nor its legislative history supports the conclusion that Congress intended to excuse the PMAs from financial responsibility for the administrative costs they generate at the Commission.[274] Some commenters point out that Congress intended the charges imposed under the Budget Act to be levied against entities "directly affected" by the Commission's regulatory program, without regard to the type of entity.[275] They argue that since PMAs are "directly affected" by the Commission's regulatory program they should be subject to annual charges.

The Commission agrees with the commenters that Congress may not have directed the Commission to use the rejected House bill as a guide to determine every type of entity that should be assessed an annual charge.[276] The Commission recognizes that neither the express language of the statute nor its legislative history addresses Commission treatment of PMAs. Furthermore, since Congress deleted from the enacted legislation the definition of the entities to be assessed annual charges (which would have exempted PMAs), the Commission concludes that it may assess PMAs annual charges as long as such an assessment is fair and equitable.

The Commission agrees with the commenters that Congress intended the annual charges imposed under the Budget Act to be levied against entities "directly affected" by the regulatory programs. This congressional intent, however, does not give the Commission such broad authority as to impose annual charges on every entity conceivably "directly affected" by the regulatory programs. For example, the Budget Act does not give the Commission jurisdictional authority over previously nonjurisdictional entities. Rather, the Budget Act gives the Commission authority to assess annual charges against entities already within the Commission's jurisdiction because of some other statute or administrative delegation.

The Commission's jurisdictional authority over the PMAs is limited to the regulation of PMA rates.[277] The Commission agrees with the commenters that its rate authority which imposes costs on the Commission likewise justifies the assessment of annual charges. For example, the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) gives the Commission the authority to finalize the rates that the Bonneville Power Administration (BPA) establishes. It provides that "(r)ates . . . shall become effective only . . . upon confirmation and approval by the Federal Energy Regulatory Commission upon a finding by the Commission that such rates . . . are based upon the Administrator's total system costs. . . ."[278] The Budget Act requires that the Commission's entire costs be recovered and that the recovery be accomplished in a "fair and equitable manner."[279] The Budget Act, combined with section 7 of the Northwest Power Act, gives the Commission sufficient authority to assess BPA annual charges.[280]

There are four other PMAs, the Alaska Power Administration (APA), the Southeastern Power Administration (SEPA), the Southwestern Power Administration (SWPA), and the Western Area Power Administration (WAPA). Several statutes vested rate confirmation authority for these PMAs to the Department of Interior.[281] Section 302 of the Department of Energy Organization Act transferred this oversight authority to the Department of Energy (DOE).[282] DOE Delegation Order No. 0204–108 transferred final rate oversight authority over APA, SEPA, SWPA, and WAPA from DOE to the Commission.[283] The delegation order provided, in part, that any rate developed by these PMAs "shall not become effective on a final basis unless and until such rate is confirmed and approved by the . . . Commission."[284]

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[273] Comments of Puget Sound Power & Light Company (PSP&L) at 6–7.

[274] Comments of Southern Company Services, Inc. (SCSI) at 14; Comments of Southern California Edison Company (SC Edison) at 1–2.

[275] Comments of Boston Edison Company, Central Vermont Public Service Corporation, El Paso Electric Company, Florida Power Corporation, Montaup Electric Company, Northern States Power Company, Public Service Company of New Hampshire, and Wisconsin Electric Power Company (Utilities Group I) at 8.

[276] Congress suggested the House bill as a guide only for establishing the classes to be assessed charges in connection with cogenerators and small power producers. The Conference Report said:

The House provision excluded the cost of regulating small power production and cogeneration, and exempted such power producers from annual charges. The Senate had no comparable provision. However, the Senate provision permitted the Commission to waive fees and charges. The Senate provision also did not specify the specific classes of entities subject to annual charges or fees, as the House provision did. The substitute follows the Senate provision in not specifying classes of entities subject to charges and fees and permitting the Commission to waive fees and charges. No specific exemption for cogenerators and small power producers is included. The conferees did not include the specific exemption, because the substitute provides sufficient authority for the Commission to achieve a similar result. The House included the specific exemption, and the Commission requested such language because of a concern that the imposition of fees could frustrate the purpose of encouraging small power production and cogeneration. The conferees expect the Commission to take into account this concern, as well as other appropriate concerns, in determining whether to assess fees or charges upon such power producers.

Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[277] However, the Commission cannot establish rates for a PMA. The Commission can only approve or disapprove a PMA rate proposal.

[278] Northwest Power Act section 7(a)(2)(B), 16 U.S.C. 839e(a)(2)(B) (1982).

[279] The Conference Report states:

In defining the "fair and equitable" method of computing the fees and charges, the Commission shall endeavor to assess and collect amounts necessary to cover the cost of each of its program areas from those directly affected by the activities of the Commission in each area.

Conference Report at 238, 1986 U.S. Code Cong. & Ad. News at 3883.

[280] Furthermore, a court has held that BPA rate filings under section 7(k) of the Northwest Power Act (nonfirm, nonregional sales of energy), 16 U.S.C. 839e(k) (1982), are subject to FPA procedural and filing requirements. Southern California Edison Company v. FERC, 770 F.2d 779 (9th Cir. 1985). Consequently, the Commission regulates the BPA under the FPA, albeit to a limited extent. This authority provides the Commission with yet another basis on which it can assess the BPA annual charges.

[281] The Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Federal Columbia River Transmission System Act, 16 U.S.C. 838g (1982); the Pacific Northwest Power Preference Act, 16 U.S.C. 837 (1982); the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839 (1982); the Reclamation Act of 1939, 43 U.S.C. 485h (1982).

[282] 42 U.S.C. 7152 (1982).

[283] 48 FR 55664 (Dec. 14, 1983), I FERC Statutes & Regulations ¶ 9910, *amending* DOE Delegation Order No. 0204–33, 43 FR 60636 (Dec. 28, 1978).

[284] I FERC Statutes & Regulations ¶ 9910 at 9926. *See also* DOE Delegation Order No. 0204–33, giving the Commission similar approval authority over BPA rates. I FERC Statutes & Regulations ¶ 9907.

One of the Commission's review criteria is "whether the . . . rates are sufficient to recover the costs of producing and transmitting electric energy. . . ." [285]

One commenter asserts that while the Commission has discretionary power to waive annual charges for PMAs, such discretion must be tempered with fairness and equity.[286]

The Commission agrees that its discretionary power to waive annual charges for any entity must be tempered with fairness and equity. As argued by the commenters, the Commission incurs significant costs regulating PMAs. Furthermore, no commenter has argued that public policy supports the exemption of PMAs from annual charge assessment and the Commission is aware of none. In consideration of the filed comments and after examination of related statutes, the Commission concludes that it would not be fair or equitable to exempt PMAs from the assessment of annual charges.[287]

The second issue raised in connection with the proposed exemption for PMAs is whether the IOUs should be assessed the cost of Commission regulation of exempted PMAs. Many commenters oppose this allocation of costs.[288] Some challenge the Commission's assertion that the PMA enabling statutes are related to the FPA [289]—a finding which, if valid, could justify assessing the costs against the IOUs.[290] In light of the Commission's decision to assess annual charges against PMAs and to exclude the costs of regulating the PMAs from the category of costs to be assessed against IOUs, it is not necessary to decide the issue of the "relatedness" of the PMA enabling statutes and the FPA.[291]

2. Municipals and Rural Electric Cooperative Utility Systems

In the NOPR, the Commission proposed to exempt municipals and rural cooperative utility systems (cooperatives) from the assessment of annual charges. Some commenters argue that these entities should not be exempt, pointing out that municipals and cooperatives frequently compete with IOUs in the markets of sales for resale and coordination sales of electric power.[292] Thus, one commenter argues that IOUs should not be required to subsidize their municipal and cooperative competitors.[293]

According to one commenter, the appropriate criteria for assessing annual charges to municipals and cooperatives is cost causation.[294] In other words, the Commission should endeavor to charge those "directly affected" by particular regulatory programs.[295] Some commenters believe that nonjurisdictional entities can be directly affected by Commission regulation and therefore must be assessed annual charges under the Budget Act.[296] Two commenters point out that when municipals and cooperatives appear before the Commission seeking redress, they generate regulatory costs for which they should compensate the Commission.[297]

The Commission will exempt municipals and cooperatives because, with one exception, it does not have direct jurisdiction over these entities under the FPA or any other statute.[298] In the Commission's view, the argument that it should assess annual charges against municipals and cooperatives so as to be fair and equitable is misplaced. Unlike PMAs over which the Commission has limited rate jurisdiction, the Commission has no jurisdiction over municipals and cooperatives that have no rates on file at the Commission. The Commission sees no more basis for assessing annual charges against such municipals and cooperatives than against any other nonjurisdictional group.[299] The Commission recognizes that these entities do affect the costs of regulating the sale or exchange of jurisdictional energy by intervening in rate cases, independently seeking redress through complaint procedures, utilizing Commission research resources, and by being customers whose characteristics influence the determination of the just and reasonable rate. The Commission believes that municipals and cooperatives will ultimately pay for most or all of these activities since most or all of the annual charges paid by the utilities will be passed through to their customers.

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[285] I FERC Statutes & Regulations at 9926.

[286] Comments of SCSI at 15.

[287] The Commission notes that the Northwest Power Act provides that the BPA shall "establish and, as appropriate, revise (rates) to recover . . . the costs associated with the acquisition, conservation, and transmission of electric power. . . ." Northwest Power Act section 7(a)(1), 16 U.S.C. 838e(a)(1) (1982). Thus, the assessment of annual charges will not merely transfer funds from one government agency to another. BPA and the other PMAs, through similar enabling statutory provisions, will be able to recover these charges from their customers. *See supra* note 281.

[288] Comments of Interstate Power Company (IPC) at 5–7; Iowa-Illinois Gas and Electric Company (IIG&E) at 3–4; Kansas Gas & Electric Company (KG&E) at 2–5; Potomac Electric Power Company (PEPCo) at 3; Southwestern Electric Power Company (SWEPCo) at 4–5; Florida Power & Light Company (FP&L) at 5.

[289] Comments of American Electric Power Service Corporation (AEP) at 24–27; Utilities Group I at 9–10; FP&L at 4–6; IPC at 5.

[290] The Conference Report indicates that the Commission must recover the costs of its regulatory activities under the FPA and "related" statutes. Conference Report at 238–239, 1986 U.S. Code Cong. & Ad. News at 3883–3884.

[291] The Commission does note in passing that it is arguable that these PMA enabling statutes are related to the FPA. In Southern California Edison Company v. FERC, 770 F.2d 779 (9th Cir. 1985), the Court held that certain BPA rate filings are subject to FPA procedural and filing requirements. Furthermore section 303 of the FPA requires federal agencies to follow FPA sections 301 and 302 accounting and depreciation standards. *See* 16 U.S.C. 826b (1982). Finally, section 311 of the FPA gives the Commission broad investigatory authority relating to electric energy, however produced, whether or not otherwise subject to the Commission's jurisdiction. *See* 16 U.S.C. 825j (1982).

[292] Comments of Carolina Power & Light Company, Cleveland Electric Illuminating Company, Upper Peninsula Power Company (Utilities Group II) at 11–12; Public Service Commission of Nevada (PSC Nevada) at 1–2.

[293] Comments of PSC Nevada at 2.

[294] Comments of Texas-New Mexico Power Company (TNMP) at 1.

[295] Comments of Utilities Group I at 2; MPCo at 8.

[296] Comments of MPCo at 4–5; Edison Electric Institute (EEI) at 31–33; Utilities Group I at 8–9.

[297] Comments of New England Power Company (NEPCo) at 6–7; TNMP at 1.

[298] The Conference Report clearly intended that the Commission assess annual charges only against entities that were under its jurisdiction pursuant to a statute other than the Budget Act:

> The conferees intend that annual charges assessed during a fiscal year on any person may be reasonably based on the following factors: (1) *the type of Commission regulation which applies to such person such as gas pipeline or electric utility regulation;* (2) the total direct and indirect costs of that type of Commission regulation incurred during such year; (3) the amount of energy—electricity, natural gas, or oil—*transported or sold subject to Commission regulation by such person* during such year; and (4) the total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.
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> Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884 (emphasis added).

One commenter asserts that, if municipals or cooperatives have Commission-approved tariffs or exchange agreements on file, they should be assessed annual charges. Comments of PSC Nevada at 1–2. The Commission agrees that municipals or cooperatives which file rates with the Commission could then be assessed annual charges. To date, however, no municipals or cooperatives other than GSEC have filed any rate schedules. *See supra* note 266 and *infra* note 299.

[299] Under the NOPR, two criteria were proposed which would identify the recipients of bills for annual charges, *i.e.*, entities that file Form No. 1s (or Form No. 1–Fs for nonmajor utilities, or Energy Information Administration (EIA) Form No. 412 for the PMAs) and that have rate schedules on file with the Commission. The rate schedules are the instruments required to be filed by the providers of services, which are subject to the Commission's regulation. The municipals and cooperatives do not meet this criterion in most instances. However, GSEC, an electric cooperative, recently filed a rate schedule for the sale of firm requirements power it purchases from an IOU and that it intends to sell to its members. *See supra* note 266. As a result, the Commission will have direct authority over GSEC pursuant to the FPA once the Commission accepts its rate filing, and therefore will assess it annual charges.

3. Cogenerators and Small Power Producers

In the NOPR, the Commission proposed to exempt cogenerators and small power producers from annual charge assessments. Commenters argue that cogenerators and small power producers should be assessed annual charges.[300] They point out that congressional rejection of the House bill (which exempted these entities from the annual charges) requires the Commission to weigh other concerns against any possible exemption. They allege that the Commission did not do this.[301] A group of commenters asserts that the Commission must consider factors other than the cost of annual charges to cogenerators and small power producers if it exempts these entities because, if cost were the only relevant factor, Congress would have exempted these entities in the Budget Act.[302] This group argues that, before an exemption can be granted, the Commission must demonstrate that the charges would adversely affect the cogeneration and small power production programs.[303] One commenter argues that it is unrealistic to believe that cogeneration and small power production programs would be discouraged if annual charges were imposed.[304]

The Commission continues to believe that it is appropriate to exempt cogenerators and small power producers from annual charges. The Commission believes that the amount which would be assessed against these entities as an annual charge does not justify the risk of discouraging the fullest development of cogeneration and small power production by these small entities.[305] Furthermore, an additional problem arises in assessing annual charges to these entities because of the ephemeral nature of the constituency. The pool of applicant cogenerators and small power producers changes from year to year, thereby precluding the use of "makewhole" annual charge mechanisms.

Several commenters argue that IOUs should not be assessed (and in effect subsidize) the costs of regulating cogenerators and small power producers.[306] Two commenters argue that, even under section 210 of PURPA, which was designed to encourage cogeneration and small power production, IOUs and their customers are not required to subsidize cogenerators and small power producers.[307]

A group of commenters state that, if the House bill is to serve as justification for the exemption of cogenerators and small power producers, then the cost of regulating the cogenerators and small power producers cannot be recovered from IOUs. They point out that the House bill exempted cogenerators and small power producers from annual charges *and* removed the cost of these programs from the annual charges to be assessed.[308]

The Commission disagrees with the commenters. Even if PURPA specifically prohibits subsidizing these entities, the Commission believes that Congress clearly envisioned the possibility that IOUs would absorb the unrecovered costs of regulating cogenerators and small power producers.

While Congress did not adopt the explicit exemption for cogenerators and small power producers that was in the House bill, the conferees explicitly stated that the Commission retained the discretion to grant the exemption if it wished to do so to encourage the development of cogeneration and small power production. Significantly, the portion of the House bill which excluded the cost of regulating cogenerators and small power producers from the charges to be assessed to non-exempt entities, was not adopted or even referred to by the conferees. Thus, the Commission is left with the requirement that all of its costs (including the cost of regulating small power producers and cogenerators) be recovered *and* the congressional guidance favoring exemption of these entities.[309] The conclusion is inescapable that Congress was aware that, if the Commission exempts cogenerators and small power producers from annual fees, as it clearly has the discretion to do, then other entities (namely IOUs) must absorb those costs.

4. Electric Utilities of Alaska and Hawaii

The NOPR proposed to exempt intrastate utilities from the assessment of annual charges. Only one commenter addresses this proposed exemption. NEPCo opposes the proposed exemption alleging it is unfair. NEPCo argues that "there is a threshold level of costs incurred by the Commission from many utilities who have no or very small levels of FERC jurisdictional sales. This fact mitigates toward a minimum fee assessment. . . ." [310]

The Budget Act's legislative history limits annual charges to the cost of regulating energy which is transferred between entities pursuant to Commission jurisdiction.[311] IOUs in Hawaii and Alaska do not sell jurisdictional energy. Consequently, the Commission does not have the power to assess them annual charges.[312]

5. Other Entities

Because of the type of sales involved, several commenters request that they be exempt from annual charges even though they are subject to the jurisdiction of the Commission. They argue that jurisdictional sales and exchanges between subsidiaries, parents,[313] affiliated companies,[314] power pool members,[315] and members

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[300] Comments of Utilities Group I at 10–11; MPCo at 6; Utah Power and Light Company (UP&L) at 4–6.

[301] Comments of Utilities Group I at 10–11; MPCo at 6.

[302] Comments of Utilities Group I at 5–8.

[303] *Id* at 10–11.

[304] Comments of UP&L at 4–6.

[305] Indeed, the cost of regulating cogenerators and small power producers which is not recovered by filing fees is so substantial that it could very well inhibit development of these alternative energy sources. In FY 1986, the Commission recovered in filing fees only $442,900 of its $1,526,696 in cogeneration and small power production program costs.

[306] Comments of KG&E at 5–6; NEPCo at 7–8; San Diego Gas and Electric Company (San Diego) at 2; South Carolina Electric and Gas Company (SCE&G) at 3.

[307] Comments of Southwestern Public Service Company (SPSCo) at 5–7; Virginia Electric Power Company (VEPCo) at 1–2.

[308] Comments of Utilities Group II at 14–16.

[309] Conference Report at 239, 1986 U.S. Cong. Code & Ad. News at 3884.

[310] Comments of NEPCo at 9.

[311] *See* Conference Report at 238–239, 1986 U.S. Code Cong. & Ad. News at 3883–3884.

[312] *See* Part VI A 2 for discussion of the effect of an entity making jurisdictional sales on the Commission's power to assess annual charges. *See* Part VI C 3 for a discussion of individual requests for exemption by two Texas IOUs. However, these Texas utilities are subject to the Commission's jurisdiction due to their interstate transmission activities. Therefore, the Commission will assess them annual charges based on only these transmission activities. (All remaining Texas utilities engage in interstate sales for resale or coordination transactions).

[313] Comments of Ohio Valley Electric Corporation (OVEC) at 1–7; Allegheny Power Systems Inc. (Allegheny) at 2; Cincinnati Gas & Electric Company (CG&E) at 6–8; *See also* Comments of Commonwealth Edison Company (CEC) at 2 (suggesting, as a compromise, that the Commission reflect no more than 10% of jurisdictional sales between parent and wholly-owned subsidiaries in the annual assessment).

[314] Comments of Middle South Utilities (MSU) at 2–3; SCSI at 17–24.

[315] Comments of AEP at 33; Pacific Power and Light Company (PP&L) at 1; Connecticut Light & Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Northeast Utilities Service Company, Northeast Nuclear Energy Company (Northeast Utilities) at 2–3; MSU at 2; GSEC at 7; Washington Water Power Company (WWP) at 2.

of cooperatives [316] should be exempt from the assessment of charges. Some of the commenters reason that these types of transactions should not be considered for purposes of allocating annual charges because they are not intended to generate a profit.[317] Similarly, they argue that separate corporate identities within the same company are often mandated by state law, not economic necessity.[318] Some commenters assert that annual charges assessed for these transactions constitute discriminatory, multiple-billing for the same amount of electricity.[319]

The Commission does not agree that transactions among subsidiaries, parents, affiliates, power pool members, or cooperatives should be exempt from annual charges. It does not matter if the transaction which is subject to Commission oversight generates, or is intended to generate, a profit. An annual charge is not intended to represent an assessment on total energy delivered to the ultimate end-user of that energy. Rather, it is designed to allocate the cost of regulating each wholesale transaction. Consequently, while there may be a multiple assessment on some kilowatt-hours, such assessment is justified because *each* wholesale transaction is governed by a rate schedule on file with the Commission which causes the Commission to incur separate and distinct costs.[320] Furthermore, the Commission is unaware of any public policy which would justify exempting these cost-generating activities because of the relationship of the parties involved.

Some commenters argue that, even if the Commission incurs costs to regulate the entities involved in these transactions, the cost is minimal because these types of transactions generate little dispute among the parties before the Commission.[321] Thus, they assert that these affiliated company transactions are less expensive to regulate. The Commission does not believe that it is appropriate to treat affiliated companies differently from nonaffiliated companies. In fact, because affiliated companies may have mutual interests, the Commission must take a more active role in investigating the justness and reasonableness of the rates which they charge one another.[322]

Two commenters propose that the Commission assess annual charges against intervenors in rate cases. Alternatively, they propose that the Commission charge intervenors fees.[323] Another commenter believes that intervenors should be billed directly so that they can be made to "understand that use of the Commission's time and other resources are not free of charge."[324]

The Commission is not persuaded that intervenors should be assessed annual charges or fees for participating in dockets where the Commission must evaluate a rate filing. First, the Commission has no authority to assess annual charges against nonjurisdictional entities, as noted earlier, and many intervenors, which have no rates on file, are nonjurisdictional entities. Furthermore, the Commission believes that assessment of a fee or charge will have an unnecessary and undesirable "chilling effect" on intervenors, such as state authorities, who exercise their right to be heard and who have no customers to whom they can pass the assessed charge or fee. The Commission believes that, on the whole, intervenors' activities contribute positively to its oversight authority. The Commission therefore declines to assess fees or charges which may inhibit this contribution. Moreover, the administrative disadvantages of annual charge assessment to intervenors would outweigh any perceived advantage. Assessment of annual charges to intervenors would require estimates of the potential costs of intervention by jurisdictional and nonjurisdictional entities who may or may not be customers of the entity which filed the rate and whose intervention in a single case may be the only contact they ever have with the Commission. Finally, intervenors, who are customers of an entity against which charges are assessed, will indirectly absorb most or all of the cost of this activity through their rates.

Still another commenter proposes that the Commission modify the basic proposal by reducing the bills to IOUs that negotiate their rates before filing.[325] The Commission believes that it would be administratively costly and unduly burdensome to attempt to assign all regulatory costs directly to specific proceedings. Furthermore, given the form in which Commission staff time is reported, it is not possible for the Commission to separate out the time spent on particular rate cases. Since the Budget Act does not require that the Commission change its method of data collection, the Commission will not do so here.

B. Overview of the Annual Charges Formula

The NOPR proposed to apportion costs among the IOUs on the basis of sales for resale and coordination sales (interchange out and transmission kilowatt-hour deliveries). These energy sales are reported to the Commission in Form Nos. 1 and 1–F and the Annual Electric Utility Report Form No. 861 filed with the EIA.[326]

The final rule will apportion costs among IOUs and certain other entities with rates on file at the Commission on the basis of adjusted sales for resale and adjusted coordination sales [327] minus the costs of regulating PMAs. The costs of regulating PMAs will be apportioned among the five PMAs.[328]

1. Proposed Apportionment.

In the NOPR, the Commission proposed to apportion its electric program costs among investor-owned utilities (currently 186) based upon each IOU's total jurisdictional sales for resale and coordination sales. Specifically, the Commission proposed to:

(1) Subtract all electric program filing fee collections from total electric program costs, to yield the collectable electric program costs.

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[316] Comments of SCSI at 18; GSEC at 6–7.

[317] Comments of OVEC at 4–7.

[318] Comments of OVEC at 6.

[319] Comments of Northeast Utilities at 2–3; AEP at 33; SCG&E at 4; GSEC at 7. These commenters believe that instances where there is no multiple assessment constitute an unfair advantage because the cost per kilowatt-hour is correspondingly lower.

[320] *See also* discussion of multiple billing issue in Part IV B.

[321] Comments of Baltimore Gas & Electric Company (BG&E) at 5–6; CEC at 2.

[322] Many times these transactions between affiliated companies involve the total passthrough of costs which are not objectively scrutinized until they reach the Commission. *See, e.g.*, Tucson Electric Power Company, 7 FERC ¶ 61,298 (1979), *reh'g denied sub nom.* Alamito Company, 33 FERC ¶ 61,286 (1985). In this case the customer complained of excessive purchased coal costs which were the result of the passthrough of the costs of coal that the utility purchased from one of its affiliates. *See also* Nantahala Power & Light Company v. FERC, 727 F.2d 1342, 1345 (4th Cir. 1984), where the court recognized that the Commission has an additional burden when it scrutinizes affiliate transactions which affect rates.

[323] Comments of UP&L at 6–7; PP&L at 2–3.

[324] Comments of Central Illinois Public Service Co. (CIPSCo) at 7.

[325] Comments of CIPSCo at 6–7.

[326] The classifications of delivered energy are listed at page 401 of Form No. 1 under "Electric Energy Account" as (1) Interchange out (line 13), (2) Transmission delivered (line 17), and (3) Sales for resale (line 22). Sales for resale information is similarly identified in Form No. 1–F on page 16, line 7, column c. Comparable information on all companies is available at Schedule II, Part 8, Energy Services and Disposition, in EIA Form No. 861.

[327] *See infra* Part VI B 1 for the discussion of how short-term, limited-term, and unit sales of less than five years duration have been shifted from the sales for resale category, as defined in the NOPR, to the coordination sales category, thereby rendering both categories "adjusted" in the final rule.

[328] *See supra* Part VI A 1.

(2)(a) Multiply the collectable electric program costs by the proportion of time devoted to sales for resale activities, to yield the sales for resale costs.

(b) Multiply the collectable electric program cost by the proportion of time devoted to coordination sales activities, to yield the coordination sales costs.

(3)(a) Divide the sales for resale costs by the total IOU sales for resale kilowatt-hours, to yield the sales for resale charge per kilowatt-hour.

(b) Divide the coordination sales costs by the total IOU coordination sales kilowatt-hours, to yield the coordination sales charge per kilowatt-hour.

(4)(a) Multiply the sales for resale charge per kilowatt-hour by each IOU's sales for resale kilowatt-hours, to yield each IOU's sales for resale charge.

(b) Multiply the coordination sales charge per kilowatt-hour by each IOU's coordination sales kilowatt-hours, to yield each IOU's coordination sales charge.

(5) Add each IOU's sales for resale charge and coordination sales charge, to yield each IOU's total annual charge.

Several commenters favor the proposal to apportion costs between sales for resale and coordination sales. One commenter argues that such an apportionment would be more balanced than focusing only on sales for resale or on a formula which does not differentiate data or apportion the Commission's work load by categories.[329] Another commenter concurs with this allocation of costs between resale and interchange out and transmission, as the costs of regulating sales for resale are significantly higher than the cost of regulating coordination sales.[330] One IOU favors the proposed allocation, which distinguishes between the different types of sales, because it is reasonable from an accounting perspective.[331]

Some commenters, while favoring the basic proposal for apportionment, propose to refine the allocation. One commenter wants the Commission to exclude all short-term, limited-term, and unit sales from the sales for resale category, and instead to include them in the coordination sales category. The commenter believes that these types of sales are similar to coordination sales because they are limited in the amount of energy contracted for and duration of delivery.[332]

[329] Comments of AEP at 31.

[330] Comments of SC Edison at 2.

[331] Comments of MSU at 4. *See also* KG&E at 6–7 (favoring the proposed apportionment on the ground that the amount of Commission resources dedicated to sales for resale transactions far exceeds the resources dedicated to coordination sales).

[332] Comments of Utilities Group II at 10.

The Commission agrees that short-term, limited-term, and unit sales of less than five years duration should be included in the definition of coordination sales. However, the Commission does not believe that unit sales for a duration of five years or more should be included in that definition. Longer-term unit sales and long-term firm transmission sales are similar to sales for resale because they have similar administrative and regulatory costs. By contrast, coordination sales do not share the same types of administrative costs because they are usually opportunity sales negotiated between buyer and seller that do not typically require intensive regulatory review.

One commenter proposes that the Commission assess these costs "based on electric revenues—similar to the method proposed in allocating charges to oil pipeline companies."[333] Another commenter questions the validity of assessing the Commission's costs on the basis of the volume of sales because sales volumes do not directly correlate to the causation of regulatory costs.[334] Another commenter also points out the perceived irrelevance of the volume of sales to the regulatory costs generated.[335]

The Commission believes that annual charges based on the deliveries of volumes of energy under these two service classifications is in accord with the Conference Report's requirement that the annual charges be assessed on the basis of the "annual sales or volumes transported."[336] The electric annual charges will therefore be based upon kilowatt-hours sold in each category.

One commenter is concerned that the proposed assessment methodology would act "as a disincentive for sales for resale and even more so for coordination transactions since such transactions typically carry little, if any, associated charges."[337] The Commission is not persuaded that the assessment of charges based upon coordination transactions will discourage these sales. First, the charge will be known at the time the transaction takes place. Second, the charge will apply to all such transactions. Third, the charge is so small (on the order of 1/100 mill per kilowatt-hour) that it is not likely to affect the economics of a transaction.

[333] Comments of WWP at 2.

[334] Comments of PP&L at 2.

[335] Comments of NEPCo at 14.

[336] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[337] Comments of PP&L at 2.

In an effort to ensure that all IOUs are actually assessed annual charges, NEPCo proposes that the Commission set up a fee schedule with three categories of IOUs. The schedule would contain minimum and maximum fees. According to NEPCo, the division of IOUs into these categories reflects the fact that all utilities impose costs upon the Commission. NEPCo believes that utilities with substantial jurisdictional sales impose approximately the same level of costs on the Commission even though there may be variations in the magnitude of sales in that category.[338] NEPCo proposes assessing a flat fee to each utility category—major and non-major utilities, as used in the Uniform System of Accounts, as well as a "nominal" category.

The Commission disagrees with NEPCo. A minimum and maximum fee schedule is not practical, necessary, or equitable. Such a fee schedule, which could be administratively simple, could have undesirable results. For example, a single flat fee assessed to each "major" utility would be unduly burdensome to smaller utilities in this "major" category as compared to the larger utilities. Furthermore, unlike in the oil area, there is no great disparity between a potential annual charge and the actual cost of regulation of an IOU.[339]

The Commission's proposed assessment is fairer and more accurate than the use of general categories because it does not give equal weight to all wholesale energy transactions which clearly impose differing burdens on the Commission. For example, a review of the TDRS data indicates that approximately 30 percent of all of the Commission's resources used to regulate the electric program are dedicated to the processing and review of coordination sales, a category representing approximately 60 percent of the total kilowatt-hours regulated by the Commission. The assignment of actual TDRS man-hours to the categories of sales for resale and coordination sales is a more equitable approximation of the total regulatory costs and how they should be apportioned than an assessment system which classifies IOUs as NEPCo proposes and which does not use actual TDRS data.

2. Alternative Apportionment Formulae

In the NOPR, the Commission requested comments on two alternatives for allocating costs to the IOUs. Under the first alternative, the Commission would apportion costs solely on the

[338] Comments of NEPCo at 14–15.

[339] *See supra* Part V B.

basis of sales for resale. It would not consider the effect of interchange out or transmission deliveries. Under the second alternative, the Commission would assess costs on the basis of total Commission-regulated energy deliveries but would not attempt to distinguish coordination-type services, *i.e.*, interchange out and transmission deliveries, from sales for resale.

Few commenters support these alternatives. One commenter favors Alternative No. 1 which allocates costs solely to sales for resale because the commenter argues that the filing fees for coordination sales compensate the Commission for the costs it incurs regulating those sales. Consequently, that commenter believes that no annual charge should be assessed for coordination sales. The commenter also believes that sales for resale filings are the most likely to be litigated and, as such, are responsible for the costs that the annual charges are designed to recover.[340] Similarly, another commenter argues that most IOUs do not engage in coordination sales, and that the allocation of program costs based on interchange out and transmission deliveries may inhibit these sales.[341]

One commenter points out compelling reasons for rejecting this alternative. It argues that the allocation of all costs to one type of service would be unfair and inequitable because the Commission spends more time reviewing and deciding sales for resale rate schedules than coordination rate schedules. Furthermore, it claims that in the future there will be a significant increase in coordination sales and a corresponding increase in Commission regulation of these sales.[342]

A few commenters support Alternative No. 2, which allocates costs on the basis of an IOU's total jurisdictional energy sales without distinguishing between sales for resale and coordination sales. Two commenters prefer this alternative because it would be administratively easy to implement.[343] One commenter also argues that there is occasional difficulty categorizing a type of service at issue in a particular case which, in turn, would compromise the validity of the assignment of costs to the two types of sales.[344]

Another commenter favors this alternative because all kilowatt-hours would bear an equal share; no particular transaction type would subsidize another type of transaction; and the process of determining annual charges would be simpler than the Commission's original proposal.[345] Alternatively, this commenter proposes to allocate costs among at least three categories—coordination sales, bulk power sales, and wholesale sales.[346] The commenter believes that additional differentiation of sales types would diminish the possibility of group cross-subsidization because of imperfectly allocated annual charges.[347]

For the reasons previously set forth in Part VI B 1, the Commission does not believe that any of the alternatives are more desirable than the original proposal. After consideration, the Commission adopts the apportionment methodology proposed in the NOPR, and will apply the methodology to all entities being assessed annual charges other than PMAs. The Commission believes that apportionment yields a fair and equitable distribution of regulatory costs incurred. The respective costs associated with the two classes of service will be determined by dividing these costs by the total kilowatt-hours delivered under each class. The figures so derived will be multiplied by each assessed entity's kilowatt-hours delivered under each class to determine that entity's total annual assessment. Specifically, an individual entity's annual charge will be calculated as follows:

(1) All electric filing fee collections and all costs of regulating PMAs will be subtracted from the total electric program costs, to yield collectable electric program costs.

(2)(a) Collectable electric program costs will be multiplied by the proportion of time devoted to adjusted sales for resale activities, to yield the adjusted sales for resale costs.

(b) Collectable electric program costs will be multiplied by the proportion of time devoted to adjusted coordination sales activities, to yield the adjusted coordination sales costs.

(3)(a) The adjusted sales for resale costs will be divided by the entity's total adjusted sales for resale kilowatt-hours, to yield the adjusted sales for resale charge per kilowatt-hour.

(b) The adjusted coordination sales costs will be divided by the entity's total adjusted coordination sales kilowatt-hours, to yield the adjusted coordination sales charge per kilowatt-hour.

(4)(a) The adjusted sales for resale charge per kilowatt-hour will be multiplied by each entity's adjusted sales for resale kilowatt-hours, to yield each entity's adjusted sales for resale charge.

(b) The adjusted coordination charge per kilowatt-hour will be multiplied by each entity's adjusted coordination sales kilowatt-hours, to yield each entity's adjusted coordination sales charge.

(5) Each entity's adjusted sales for resale charge and adjusted coordination sales charge will be added together, to yield each entity's total annual charge.[348]

3. PMA Costs

The procedures adopted by the Commission for assessing annual charges to the PMAs parallel those adopted for the other entities with rate schedules on file at the Commission except in three respects.

First, since PMAs do not pay filing fees, the Commission will not credit any amount against assigned PMA program costs.

Second, the Commission will determine the PMAs' annual charges based on sales reported by the PMAs in EIA Form No. 412 which they file with the Energy Information Administration. EIA Form No. 412 data, however, is reported on a fiscal year rather than the calendar year basis. Consequently, PMA annual charges will be based on prior fiscal year sales data.

Third, no differentiation between "Sales for Resale" and "Coordination Sales" is necessary for PMAs because the Commission's review of these rates is not of such a nature that distinctions can be drawn between different classes of service.[349] Consistent with this fact, the Commission reports its time and resources incurred in regulating the PMAs as a single category in the TDRS system. Therefore, the Commission believes it appropriate to allocate the costs of regulating the PMAs on the basis of the total kilowatt-hour energy sales of each PMA.

C. Other Matters

1. Passthrough of Charges in Account No. 928

In the NOPR, the Commission proposed that annual charges assessed against IOUs be charged to Account No. 928 (Regulatory Commission Expenses) of the Commission's Uniform System of Accounts. One commenter generally supports the proposal.[350] However, many commenters urge the Commission to modify the proposal.

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[340] Comments of BG&E at 5–6.

[341] Comments of Northeast Utilities at 2.

[342] Comments of NEPCo at 17.

[343] *Id.* at 17–18; Iowa State Utilities Board (ISUB) at 3.

[344] Comments of NEPCo at 17–18.

[345] Comments of SCSI at 28.

[346] *Id.*

[347] *Id.* Another commenter supports Alternative No. 2 without specifying the reason. *See* Comments of SWEPCo at 9.

[348] *See supra* note 327.

[349] *See supra* Part VI A 1.

[350] Comments of NEPCo at 10.

One group of commenters proposes that the Commission authorize an annual adjustment provision in sales for resale rate schedules similar to a fuel cost adjustment clause.[351] For coordination sales, that group of commenters asks the Commission to be flexible and to permit a utility to specify as a component of its existing rate the annual charge incurred in conjunction with the sale without making another rate filing.[352] That group points out that the charge will change from year to year because of changes in the Commission's costs, changes in the volume of jurisdictional sales, and changes in the weather.[353]

Another commenter points out that the annual charges are not a part of current rates and therefore may not be recoverable through the proposed mechanism. It suggests that the Commission "adopt a transition rule to allow collection of the annual charges from wholesale customers until such time when rates are adjusted to include annual charges."[354]

One commenter suggests that the Commission permit IOUs to add the estimated kilowatt-hour charges to bills rendered under currently effective rates for resale and coordination transactions in order to effectuate immediate recovery. Alternatively, this commenter proposes that the Commission allow an IOU to make one filing, that may be subject to a nominal filing fee, in order to revise all of that IOU's effective rates to reflect the newly imposed killowatt-hour charge. The commenter proposes to limit the proceeding to the sole issue of the per kilowatt-hour annual charge.[355] According to that same commenter it would be unfair to require IOUs to file rate changes in order to include these charges in base rates.[356]

One commenter points out that Congress intended "that the Commission implement its new authority through a 'generic decision' so that new rate proceedings would not have to be conducted for each company before the new charges are included in rates."[357] This commenter suggests that the Commission allow the annual charge to be included in an energy-related account, so that the costs could, "at least on a short term basis, be passed through in a fuel adjustment clause to wholesale customers on a kilowatt-hour basis or on a similar basis in formula rates commonly used in interchange sales agreements."[358]

Another commenter requests that the Commission issue a statement that the annual charges in Account No. 928 benefit retail customers, and are not simply a regulatory expense related to sales for resale which would require the entire expense to be allocated to the wholesale customers.[359]

The Commission will not adopt any of the above suggestions regarding automatic and guaranteed passthroughs. The Commission generally does not favor the use of automatic and guaranteed passthroughs.[360] These types of automatic mechanisms have been approved under circumstances very different from those that are present here.[361] For instance, unlike fuel costs which are susceptible to wide fluctuations that may not be reasonably predicted, and where such costs represent a substantial cost of providing service, it is extremely doubtful that an IOU or any other entity with a rate schedule on file with the Commission will face financial hardship if it is not able to recover annual charges until it makes and supports a new rate filing. Furthermore, the Commission believes that these annual charges represent reasonably estimable test period costs that should be recovered as would any other expense in a rate filing.[362] Thus, these costs are not so different in nature from other test period costs as to warrant special rate treatment.

The House version, which contained the suggestion that the Commission implement these annual charges through a general proceeding, was not adopted in the final bill, nor was it mentioned by the conferees. The Commission therefore feels free not to adopt this suggestion, especially in light of Commission policy which would counsel against such a generic proceeding at this time.[363]

2. Form Revisions

The NOPR proposed to base the assessment of the annual charges on information obtained from Form Nos. 1 and 1–F. Some IOUs express concern about this proposal. AEP points out that there may be inconsistencies among companies in the way the information is reported in these forms. In fact, AEP says that its past Form No. ls report overly high total coordination sales figures because it reported data on a metered basis rather than on an accounting or net basis.[364] As a result, AEP requests that the Commission clarify the instructions in the Form No. 1 to ensure that the IOUs file appropriate data in their Form No. 1 reports.[365] Another commenter is concerned that some IOUs have failed and will fail to file the required form or may inconsistently report data.[366]

The Commission has reviewed the Form Nos. 1 and 1–F, in conjunction with the comments to the NOPR, for the purposes of calculating annual charges. It appears that information reported in the Form Nos. 1 and 1–F is not consistent with the categorization of services proposed in the NOPR.

The Commission is therefore instituting a new information requirement (designated as FERC Reporting Requirement No. 582) solely for the purpose of assessing annual charges. The Commission believes that this new requirement should eliminate the concerns of the commenters about the consistency of the data used to assess annual charges. The new requirement obliges entities, other than PMAs, which have rate schedules on file with the Commission to report adjusted sales for resale in kilowatt-hours, as reported in Form No. 1 on page 310–311, Account No. 447; adjusted interchange out in kilowatt-hours as shown in Form No. 1 on page 328, included in Account

[351] Comments of Utilities Group II at 10. *See also* Comments of KG&E at 8 (suggesting that the Commission require that the annual charge be reflected as a component of all fixed and formula rates without a formal filing).

[352] Comments of Utilities Group II at 10.

[353] *Id.* at 9.

[354] Comments of FP&L at 1.

[355] Comments of SWEPCo at 3–4.

[356] *Id.* at 4.

[357] Comments of EEI at 8, *citing* H.R. Rep. No. 99–727, 99th Cong., 2nd Sess. 54 (1986). *See also* Comments of SCSI at 28–31.

[358] Comments of EEI at 8.

[359] Comments of PEPCo at 3.

[360] *See* 18 C.F.R § 35.4 (1986); Southwestern Electric Power Company, 31 FERC ¶ 61,389 (1985) (in which the Commission rejected a formula rate with an automatically adjusting return on common equity as being contrary to notice and filing requirements of the FPA).

[361] *See* New England Power Company, Opinion No. 633, 48 F.P.C. 899, 905 (1972) (Fuel Adjustment Clauses are a "practical vehicle for preserving the economic integrity of utilities . . . .") *See also* 18 CFR 35.14 (1986), the purpose of which is to provide prompt recovery of costs by utilities with frequent changes in the delivered cost of fossil fuel. The cost of fossil fuel is a major direct cost in the case of every electric utility using such fuel to generate electricity.

The automatic passthrough of natural gas pipelines annual charges is distinguishable in that those annual charges reduce the gas pipeline industry's profits approximately 1,500 percent more than the electric utilities' profits are reduced. *See supra* notes 217 and 218.

[362] Test period costs represent the basis for estimating costs which should be included in base rates. *See* 18 C.F.R. 35.13(d) (1986).

[363] *See supra* note 360.

[364] Comments of AEP at 32.

[365] *Id* at 33.

[366] Comments of SWEPCo at 10.

No. 555; and adjusted transmission delivered as shown in Form No. 1 on page 332, Account No. 456. This information requirement also redefines these three types of energy transactions. The following definitions are to be used for purposes of this information reporting requirement only:

Adjusted Sales for Resale for Annual Charges

This category includes jurisdictional sales of energy under contracts that do not anticipate service interruptions. Such energy must be available to a resale customer at all times during the period covered by a commitment, even under adverse conditions. Transactions to include under this reporting category are firm power sales supplying the full requirements or partial requirements of a customer, and sales of energy from unit or system capacity of a long-term duration (five years or more) under contracts that do not anticipate service interruptions when capacity is operationally available. These transactions include long-term sales of capacity and energy and long-term firm transmission service.

Adjusted Transmission Delivered for Annual Charges

Jurisdictional energy transactions not included in the above Adjusted Sales for Resale category, involving power transmitted for another party over the transmission facilities of the utility providing service.

Adjusted Interchange out for Annual Charges

Jurisdictional energy transactions not included in either the above Adjusted Sales for Resale category or the above Adjusted Transmission Delivered category.

All entities with rate schedules on file at the Commission must file, under oath, the data requested. This 1986 information must be filed with the Office of the Secretary within 15 days of the date of issuance of this rule.[367] In all subsequent years, this information shall be filed with the Office of the Secretary by April 30th of each year. In the absence of this filing, the Commission staff may estimate each entity's adjusted sales for resale and adjusted coordination sales including adjusted interchange out and adjusted transmission delivered for purposes of computing the annual charge.

3. Special Individual Requests

Three IOUs petition the Commission for special relief from assessment of annual charges. Texas Utilities Electric Company (TUECo) requests deletion of its name from the list of IOUs that will be assessed annual charges. According to TUECo, it is not a "public utility" as defined by the FPA and it is "subject to Commission jurisdiction solely under sections 210, 211, and 212 of the Federal Power Act."[368]

The Commission does not believe that TUECo should be exempt from annual charges. TUECo is, to a limited extent, subject to the Commission's jurisdiction. In fact, it has rate schedules on file with the Commission and files a FERC Form No. 1 annually. Since transactions are made under the rate schedules it is only fair that TUECo pay its portion of the Commission's expenses allocable to these transactions.

Houston Lighting & Power Company (HL&PCo), which has a single transmission tariff on file with the Commission, asserts that it should not be assessed an annual charge because it is not a "public utility" within the meaning of the FPA and therefore should not be assessed charges. HL&PCo relies on the NOPR's statement that only public utilities would be assessed annual charges.[369] Alternatively, HL&PCo argues that the filing fee it already paid in conjunction with its sole tariff compensates the Commission for any costs the Commission has incurred on HL&PCo's behalf.[370] Thus HL&PCo believes that assessment of annual charges to it would not constitute the recovery of costs of regulating IOUs.

The Commission is denying HL&PCo's requests for the same reasons it denies TUECo's request. The Commission incurs administrative costs in providing services to IOUs and other entities which have rate schedules on file with the Commission. Every such entity can take advantage of this program. The Commission emphasizes that the IOAA, not the Budget Act, allows a fee to be assessed only for a specific benefit rendered. Under the Budget Act, the assessment of an annual charge against entities with few rate filings is "fair and equitable" because, even if the entity files no requests for specific benefits, it nevertheless may be subject to Commission review of accounting or corporate matters or benefit from a host of Commission services.[371] Annual charge assessments for these two Texas utilities will be limited to and based upon the number of kilowatt-hour transactions taking place under the rate schedules on file with the Commission.

Ohio Valley Electric Corporation (OVEC) requests that the Commission exempt the sales transactions between it and its out-of-state wholly-owned subsidiary Indiana-Kentucky Electric Corporation (IKEC). According to OVEC, it was formed by 15 IOUs for the purpose of supplying the electric power requirements of the United States Department of Energy's gaseous diffusion plant.[372] OVEC claims that IKEC provides no retail service and makes only one sale for resale, the rate schedule for which was filed with the Commission on September 10, 1953.[373] OVEC asserts that IKEC should be exempt from the annual charge because the two companies' separate corporate identities exist only because of statutory requirements of the two states in which they operate. OVEC also asserts that assessing it an annual charge would be taking money out of DOE's coffers to put into the Commission's.

The Commission denies OVEC's request because the reason for its peculiar structure, while dictated by state corporate requirements, still generates costs when the Commission regulates the transactions between the two companies. Indeed, it is that structure which requires that a sale take place. The Commission must in turn regulate these power sales between OVEC and IKEC, thereby incurring the cost of regulation. Since the Commission is aware of no compelling policy reason to exempt them from the annual charges, IKEC will be so assessed.

OVEC's, HL&PCo's and TUECo's requests for exemption from annual charges are more appropriately designated as waivers. They are clearly IOUs which would otherwise be subject to annual charge assessment. None of them have alleged that the criteria necessary for waiver are applicable to their situations.[374] Thus, the

[367] To facilitate the timely filing of the requested information, the Commission is serving a copy of this rule on each entity listed in Appendix F. This service is by United States Mail, first class, on the date of issuance of this rule.

[368] Comments of TUECo at 2.

[369] Comments of HL&PCo at 5–6.

[370] *Id.* at 4.

[371] These may include access to the Commission's library and public docket room; availability of Commission filings, notices and decisions through the RIMS system of document retrieval; the publication and indexing of Commission decisions, regulations, underlying statutes, notices of proposed rulemakings, regulatory preambles, *etc.* in *FERC Reports* and *FERC Statutes & Regulations;* the opportunity to participate in proceedings in which the company's competitors seek benefits; the availability of Commission staff to discuss informally regulatory questions, either over the telephone or in person; plus the more general advantages which regulation provides to the members of any regulated industry.

[372] Comments at OVEC at 2.

[373] As modified by letter filed December 1, 1977 in Docket No. ER77–632. Comments of OVEC at 5.

[374] As noted in Part III B 5 above, the Commission will apply the same waiver standards as now apply to a petition for waiver of all or part of a filing fee. A company requesting waiver of a filing fee must show that it is economically unable to pay all or part of the fee or that such payment would place it in financial distress or emergency. 18 CFR 381.106 (1986). The Commission will impose the same stringent standard to requests for waiver of annual charges because any charges waived for one

Continued

Commission concludes that these IOUs should be assessed annual charges. Finally, the Commission does not believe that any of the three petitioners will suffer a significant monetary drain on their financial resources because of these annual charges. Annual charges will be assessed against those entities which (1) have rate schedules on file for sales for resale and coordination (interchange out and transmission delivered) sales, and (2) are required to file FERC Form No. 1 or 1–F. If an entity has few or no sales under these rate schedules, it will be assessed little or no annual charges.

VII. Regulatory Flexibility Act

When the Commission is required by section 553 of the Administrative Procedure Act [375] to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) [376] to prepare and make available for public comment an initial regulatory flexibility analysis, unless the Commission certifies pursuant to the RFA that the proposed rule would not have a "significant economic impact on a substantial number of small entities." [377] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities.

In this case, the RFA requires the Commission to analyze only the impacts on small entities that would be subject to this rule. As discussed before, this rule would only apply to four distinct classes of entities—interstate natural gas pipeline companies regulated under the NGA and the NGPA, public utilities, electric cooperatives and Federal Power Marketing Agencies regulated under the FPA and related statutes, and interstate oil pipeline companies regulated under the ICA. However, the Commission has proposed not to assess annual charges against specific small entities, such as natural gas pipelines with annual sales and transportation volumes not exceeding 200,000 Mcf in each of the three years immediately preceding the billing year; electric cooperatives without rates on file with the Commission; those entities that apply for qualifying facility status under PURPA; and those entities that seek review of DOE adjustment denials and remedial orders.

One commenter contends that multiple assessment of annual charges on the same kilowatt-hours will have a "significant economic impact" on the small entities which comprise electric cooperatives.[378] The Commission does not believe that the sale-for-resale assessment on the order of only $.001 per kilowatt-hour constitutes a "significant" economic impact under the Regulatory Flexibility Act.

Overall, the Commission does not believe that this rule will have a significant direct impact on small entities. Specifically, most, if not all, jurisdictional natural gas pipeline companies, public utilities, power marketing agencies, and oil pipeline companies that would be assessed annual charges under this rule do not fall within the RFA's definition of small entity because most jurisdictional natural gas pipeline companies, public utilities, power marketing agencies, and oil pipeline companies subject to this rule are too large to be considered "small entities." [379] Therefore, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

VIII. Paperwork Reduction Act Statement

The Paperwork Reduction Act [380] and the Office of Management and Budget (OMB) regulations [381] require that OMB approve certain information collection requirements imposed by agency rule. On May 28, 1987, the OMB approved for 90 days information collection requirements in 18 CFR 382.105 and 382.201(b)(4) under OMB Control Number 1902–0132, supplemental reporting requirements and revisions to FERC Form Nos. 2 and 2–A under OMB Control Numbers 1902–0028 and 1902–0030 respectively, and the natural gas rate annual charge adjustment clause filing requirement in 18 CFR 154.38(d)(6)(i) under OMB Control Number 1902–0070.

IX. Notice and Comment

The Commission finds good cause for making § 382.201(b)(4) of the Commission's regulations effective upon less than 30 days' notice. That regulation requires a public utility to file certain sales-for-resale and coordination sales data with the Commission within fifteen days from the issuance of this rule.

Notice and comment procedures are not required under the Administrative Procedure Act when the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest.[382] The legislative history of the Administrative Procedure Act indicates that notice and comment is impracticable "when the de and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings." [383]

The Commission finds that, in this instance, providing for notice and comment before the issuance of this portion of the final rule is impractical and unnecessary. Congress required the Commission to issue a rule requiring payment of the first annual charge bills by the end of fiscal year 1987.[384] To meet this deadline, the Commission must have the sales-for-resale and coordination-sales data by mid-June 1987. The Commission thus does not have sufficient time to allow for notice and comment prior to the effective date of § 382.201(b)(4). Therefore, the Commission is making that regulation effective immediately.[385]

X. Effective Date

Section 382.201(b)(4) of the Commission's regulations will be effective May 29, 1987. All other amendments made by this final rule will be effective on July 6, 1987.

List of Subjects

18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 382

Annual charges.

In consideration of the foregoing, the Commission amends Parts 154 and 375 of, and adds Part 382 to, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

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company must be paid the following year by all of the program's regulated companies, due to the Budget Act's requirement that the Commission recover *all* its costs.

[375] 5 U.S.C. 553 (1982).

[376] 5 U.S.C. 601–612 (1982).

[377] 5 U.S.C. 605(b) (1982).

[378] Comments of GSEC at 8–9.

[379] 5 U.S.C. 601(6) (1982).

[380] 44 U.S.C. 3501–3520 (1982).

[381] 5 CFR Part 1320 (1986).

[382] 5 U.S.C. 553(b)(B) (1982).

[383] Senate Rep. No. 752, 79th Cong., 1st Sess. 16 (1945).

[384] *See* Budget Act section 3401(d).

[385] As noted in Part VI C 2 above, to facilitate the electric entities' timely filing of this data, the Commission is serving a copy of this rule on each such entity listed in Appendix F. This service is by United States Mail, first class, on the date of issuance of this rule.

By direction of the Commission.
Kenneth F. Plumb,
Secretary.

PART 154—[AMENDED]

1. The authority citation of Part 154 is revised to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509, Title III, Subtitle E, Sec. 3401 (Oct. 21, 1986); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Department of Energy Organization Act, 42 U.S.C 7102–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 791a–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

2. In § 154.38, a new paragraph (d)(6) is added to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of rate.*

* * * * *

(6)(i) A natural gas pipeline company may adjust its rates annually to recover from its customers annual charges assessed it by the Commission under Part 382 of this chapter pursuant to an annual charge adjustment clause (ACA clause). The ACA clause: (A) Must be filed with the Commission; (B) must indicate the amount of annual charges to be flowed through per unit of energy sold or transported (ACA unit charge); and (C) can only be effective if approved by the Commission. A natural gas pipeline choosing to recover its annual charges pursuant to an ACA clause must use the ACA unit charge specified by the Commission at the time the Commission calculates the annual charge bills.

(ii) A company must reflect the ACA unit charge in each of its rate schedules applicable to sales or transportation deliveries. The company must apply the ACA unit charge to the commodity component of rate schedules with two-part rates.

(iii) Changes to the ACA unit charge must be filed annually to reflect the annual charge unit rate, as authorized by the Commission each fiscal year. Any tariff filings made by the company to change its ACA unit charge must meet the notice requirements of § 154.22 of this part.

(iv) Only if the company has paid the applicable annual charge in compliance with § 382.103 of this chapter, its ACA unit charge can go into effect.

(v) A company may recover annual charges through an ACA unit charge only if its rates do not otherwise reflect the costs of annual charges assessed by the Commission under § 382.106(a)(i) of this chapter.

* * * * *

PART 375—[AMENDED]

3. The authority citation of Part 375 is revised to read as follows:

Authority: Omnibus Budget Reconcilation Act of 1986, Pub. L. No. 99–509, Title III, Subtitle E, Sec. 3401 (Oct. 21, 1986); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p.142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982).

4. In § 375.306, a new paragraph (j) is added to read as follows:

§ 375.306 Delegations to the Oil Pipeline Board.

* * * * *

(j) Deny or accept, in whole or part, petitions for waiver of annual charges prescribed in § 382.203 of this chapter in accordance with the standard set forth in § 382.105 of this chapter.

5. In § 375.307, a new paragraph (w) is added to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline and Producer Regulation.

* * * * *

(w) Deny or accept, in whole or part, petitions for waiver of annual charges prescribed in § 382.202 of this chapter in accordance with the standard set forth in § 382.105 of this chapter.

6. In § 375.308, a new paragraph (v) is added to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

* * * * *

(v) Deny or accept, in whole or part, petitions for waiver of annual charges prescribed in § 382.201 of this chapter in accordance with the standard set forth in § 382.105 of this chapter.

7. A new Part 382 is added to read as follows:

PART 382—ANNUAL CHARGES

Subpart A—General Provisions

Sec.
382.101 Purpose.
382.102 Definitions.
382.103 Payment.
382.104 Enforcement.
382.105 Waiver.
382.106 Accounting for annual charges paid under Part 382.

Subpart B—Assessment of Annual Charges

382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.
382.202 Annual charges under the Natural Gas Act, Natural Gas Policy Act and related statutes.
382.203 Annual charges under the Interstate Commerce Act.

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509, Title III, Subtitle E, sec. 3401 (Oct. 21, 1986); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p.142 Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

Subpart A—General Provisions

§ 382.101 Purpose.

The purpose of this part is to establish procedures for calculating and assessing annual charges to reimburse the United States for all of the costs incurred by the Commission, other than costs incurred in administering Part I of the Federal Power Act and costs recovered through the Commission's filing fees.

§ 382.102 Definitions.

For the purpose of this part:

(a) "Natural gas pipeline company" means any person:

(1) Engaged in natural gas sales for resale or natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act whose sales for resale and transportation exceed 200,000 Mcf at 14.73 psi (60 °F) in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges; and

(2) Not engaged soley in "first sales" of natural gas as that term is defined in section 2(21) of the Natural Gas Policy Act of 1978; and

(3) To whom the Commission has not issued a Natural Gas Act section 7(f) declaration.

(b) "Public utility" means any person who owns or operates facilities subject to the jurisdiction of the Commission under Parts II and III of the Federal Power Act, and who has rate schedule(s) on file with the Commission and who is not a "qualifying small power producer" or a "qualifying cogenerator", as those terms are defined in section 3 of the Federal Power Act, or the United States or a state, or any political subdivision of the United States or a state, or any agency, authority, or instrumentality of the United States, a state, political subdivision of the United States, or political subdivision of a state.

(c) "Oil pipeline company" means any person engaged in the transportation of crude oil and petroleum products

subject to the Commission's jurisdiction under the Interstate Commerce Act.

(d) "Natural gas regulatory program" is the Commission's regulation of the natural gas industry under the Natural Gas Act; Natural Gas Policy Act of 1978; Alaska Natural Gas Transportation Act; Public Utility Regulatory Policies Act; Department of Energy Organization Act; Outer Continental Shelf Lands Act; Energy Security Act; Regulatory Flexibility Act; Crude Oil Windfall Profit Tax Act; National Environmental Policy Act; National Historic Preservation Act.

(e) "Electric regulatory program" is the Commission's regulation of the electric industry under Parts II and III of the Federal Power Act; Public Utility Regulatory Policies Act; Powerplant and Industrial Fuel Use Act; Department of Energy Organization Act; Energy Security Act; Regulatory Flexibility Act; Pacific Northwest Electric Power Planning and Conservation Act; Flood Control and River and Harbor Acts; Bonneville Project Act; Federal Columbia River Transmission Act; Reclamation Project Act; Nuclear Waste Policy Act; National Environmental Policy Act; and the Public Utility Holding Company Act.

(f) "Oil regulatory program" is the Commission's regulation of the oil pipeline industry under the Interstate Commerce Act; Department of Energy Organization Act; Regulatory Flexibility Act; Outer Continental Shelf Lands Act; and the Crude Oil Windfall Profit Tax Act.

(g) "Person" means an individual, partnership, corporation, association, joint stock company, public trust, or organized group of persons, whether incorporated or not.

(h) "Adjusted sales for resale activities" means the portion of the Commission's electric regulatory program devoted to the regulation of sales for resale.

(i) "Adjusted sales for resale" are the jurisdictional sales of energy under contracts that do not anticipate service interruptions Such energy must be available to a resale customer at all times during the period covered by a commitment, even under adverse conditions. Transactions to include under this reporting category are firm power sales supplying the full requirements or partial requirements of a customer, and sales of energy from unit or system capacity of a long-term duration (five years or more) under contracts that do not anticipate service interruptions when capacity is operationally available. These transactions include long-term sales of capacity and energy and long-term firm transmission service.

(j) "Adjusted transmission delivered" are jurisdictional energy transactions not included in the above "Adjusted sales for resale" category, involving power transmitted for another party over the transmission facilities of the utility providing service.

(k) "Adjusted interchange out" are jurisdictional energy transactions not included in either the above "Adjusted sales for resale" category or the above "Adjusted transmission delivered" category.

(l) "Adjusted coordination sales activities" means the portion of the Commission's electric regulatory program consisting of the regulation of all jurisdictional sales of energy except adjusted sales for resale activities.

(m) "Adjusted sales for resale kilowatt-hours" means the number of kilowatt-hours of electrical energy (1) sold under contracts that do not anticipate service interruptions, (2) reported as adjusted sales for resale under section 382.201(b)(4) of this Part, and (3) the rates, charges, terms and conditions of which are regulated by the Commission.

(n) "Adjusted coordination sales kilowatt-hours" means the number of kilowatt-hours of electrical energy that are (1) not adjusted sales for resale kilowatt-hours, (2) reported as adjusted interchange out and adjusted transmission delivered under section 382.201(b)(4) of this Part, and (3) the rates, charges, terms and conditions of which are regulated by the Commission.

(o) "Operating revenues" means the monies (1) received by an oil pipeline company for providing common carrier services regulated by the Commission, and (2) included in FERC Account No. 200, 210 or 220 in FERC Annual Report Form No. 6, page 301, lines 1, 2, and 3, column d, under Part 352 of the Commission's regulations.

(p) "Fiscal year" means the twelve-month period that begins on the first day of October and ends on the last day of September.

(q) "Preceding calendar year" means the twelve-month period that begins on the first day of January and ends the last day of December and immediately precedes the end of the fiscal year for which the Commission is assessing annual charges.

(r) "Adjusted costs of administration" means the difference between the estimated costs of administering a regulatory program for each fiscal year adjusted to reflect any overcollection or undercollection of cost attributable to that regulatory program in the annual charge assessment for the preceding fiscal year, and the estimated amount of filing fees collected during that fiscal year under the provisions of Parts 346 and 381 of the Commission's regulations for activities that relate to that regulatory program.

(s) "Power Marketing Agencies" means the Bonneville Power Administration, the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration.

§ 382.103 Payment.

(a) Annual charges assessed under this part must be paid within 45 days of the issuance of the bill by the Commission, unless a petition for waiver has been filed under § 382.105 of this part.

(b) Payment must be made by check, draft, or money order, payable to the United States Treasury.

(c) If payment is not made within 45 days of issuance of a bill, interest will be assessed. Interest will be computed in accordance with § 154.67(c)(2)(iii) of this chapter, from the date on which the bill becomes delinquent.

§ 382.104 Enforcement.

The Commission may refuse to process any petition, application, or other filing submitted by or on the behalf of any person that does not pay the annual charge assessed when due, or may take any other appropriate action permitted by law.

§ 382.105 Waiver.

(a) *Filing of petition.* Any annual charges bill recipient may submit a petition for waiver of the regulations in this part. An original and two copies of a petition for waiver must include evidence, such as a financial statement, clearly showing either that the petitioner does not have the money to pay all or part of the annual charge, or, if the petitioner does pay the annual charge, that the petitioner will be placed in financial distress or emergency. Petitions for waiver must be filed with the Office of the Secretary of the Commission within 15 days of issuance of the bill.

(b) *Decision on petition.* The Commission or its designee will review the petition for waiver and then will notify the applicant of its grant or denial, in whole or in part. If the petition is denied in whole or in part, the annual charge becomes due 30 days from the date of notification of the denial.

§ 382.106 Accounting for annual charges paid under Part 382.

(a) Any natural gas pipeline company subject to the provisions of this part must account for annual charges paid by charging the amount to either Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts, or the natural gas pipeline company's annual charge adjustment clause prescribed in § 154.38(d)(6) of this chapter.

(b) Any public utility subject to the provisions of this Part must account for annual charges paid by charging the amount to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System Accounts.

(c) Any oil pipeline company subject to the provisions of this Part must account for annual charges paid by charging the amount to Account No. 510, Supplies and Expenses, of the Commission's Uniform System of Accounts.

Subpart B—Annual Charges

§ 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.

(a) *Determination of costs to be assessed against public utilities.* The adjusted costs of administration of the electric regulatory program, excluding the costs of regulating the Power Marketing Agencies, will be apportioned between adjusted sales for resale activities and adjusted coordination sales activities in proportion to the total staff time dedicated to each. The amount apportioned to adjusted sales for resale activities will constitute "adjusted sales for resale costs," and the amount apportioned to adjusted coordination sales activities will constitute "adjusted coordination sales costs."

(b) *Determination of annual charges to be assessed against public utilities.* (1) The adjusted sales for resale costs determined under paragraph (a) of this section will be assessed against each public utility based on the proportion of the adjusted sales for resale kilowatt-hours of each public utility in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the public utility to be charged) to the sum of the adjusted sales for resale kilowatt-hours in the immediately preceding reporting year of all public utilities being assessed annual charges.

(2) The adjusted coordination sales costs determined under paragraph (a) of this section will be assessed against each public utility based on the proportion of the adjusted coordination sales kilowatt-hours of each public utility in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the public utility to be charged) to the sum of the adjusted coordination sales kilowatt-hours in the immediately preceding reporting year of all public utilities being assessed annual charges.

(3) The annual charges assessed against each public utility will be the sum of the amounts determined in paragraphs (b)(1) and (b)(2) of this section.

(4) Reporting requirement. (i) For purposes of computing annual charges, a public utility, as defined in § 382.102(b) of this part, subject to the provisions of this part, must submit under oath to the Office of the Secretary of the Commission, by June 13, 1987, and by April 30 of each year thereafter, an original and conformed copies of the following information (designated as FERC Reporting Requirement No. 582):

(A) The total annual adjusted sales for resale kilowatt-hours, as defined in § 382.102(m) of this part; and

(B) The total annual adjusted coordination sales kilowatt-hours, as defined in § 382.102(n) of this part.

(ii) The data required in paragraphs (4)(a) (i) and (ii) of this section will be derived from information reported to the Commission annually in the FERC Form Nos. 1 and 1–F. For purposes of computing annual charges, the definitions in § 382.102(i)–(1) of this part will be used in conjunction with the following worksheet to determine data reported in paragraphs (4)(a) (i) and (ii) of this section.

WORKSHEET.—AS REPORTED ON THE FERC FORM NO. 1

[Amounts in kilowatt-hours]

Annual charge categories	Form 1 sales for resale	Form 1 inter-change out	Form 1 transmis-sion delivered	Kwh totals
Totals from form 1	(1)	(2)	(3)	(4)
(A) Adjusted sales for resale for A/C purposes				
(B) Coordination sales including transmission delivered and interchange out for A/C purposes				

[1] Must agree with totals shown in Form No. 1, on pages 310–311, included in Account No. 447.

[2] Must agree with total interchange out shown in Form No. 1, on page 328, included in Account No. 555.

[3] Must agree with total transmission delivered shown in Form No. 1, on page 332, included in Account No. 456.

[4] Total A+B=Total [1]+[2]+[3].

(c) *Determination of annual charges to be assessed against power marketing agencies.* The adjusted costs of administration of the electric regulatory program as it applies to power marketing agencies will be assessed against each power marketing agency based on the proportion of the kilowatt-hours of sales of each power marketing agency in the immediately preceding fiscal year to the sum of the kilowatt-hours of sales in the immediately preceding fiscal year of all power marketing agencies being assessed annual charges.

§ 382.202 Annual charges under the Natural Gas Act and Natural Gas Policy Act of 1978 and related statutes.

The adjusted costs of administration of the natural gas regulatory program will be assessed against each natural gas pipeline company based on the proportion of the total jurisdictional gas subject to Commission regulation which

was sold and transported by each company in the immediately preceding calendar year to the sum of the jurisdictional gas subject to Commission regulation which was sold and transported in the immediately preceding calendar year by all natural gas companies being assessed annual charges.

§ 382.203 Annual charges under the Interstate Commerce Act.

(a) The adjusted costs of administration of the oil regulatory program will be assessed against each oil pipeline company based on the proportion of the total operation revenues of each oil pipeline company for the immediately preceding calendar year to the sum of the operating revenues for the immediately preceding calendar year of all oil pipeline companies being assessed annual charges.

(b) No oil pipeline company's annual charge may exceed a maximum charge established each year by the Commission to equal 6.339 percent of the adjusted costs of administration of the oil regulatory program. The maximum charge will be rounded to the nearest $1000. For every company with an annual charge determined to be above the maximum charge, that company's annual charge will be set at the maximum charge, and any amount above the maximum charge will be reapportioned to the remaining companies. The reapportionment will be computed using the method outlined in paragraph (a) of this section (but excluding any company whose annual charge is already set at the maximum amount). This procedure will be repeated until no company's annual charge exceeds the maximum charge.

Note.—Appendices A through F will not appear in the Code of Federal Regulations.

Appendix A—List of 90 Commenters

Allegheny Power System, Inc.
American Electric Power Service Corporation
American Gas Association
American Paper Institute, Inc.
American Petrofina Pipe Line Company
ANR Pipe Line Company
ARCO Pipe Line Company
Association of Oil Pipe Lines
Association of Texas Intrastate Natural Gas Pipelines
Baltimore Gas and Electric Company
Boston Edison Company *et al.*
Central Illinois Public Service Company
Champlin Petroleum Company
Cincinnati Gas & Electric Company *et al.*
Cities Services Oil & Gas Company
Columbia Gas Transmission Corporation
Commonwealth Edison
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York
Consolidated Gas Transmission Corporation
Detroit Edison Company
Duke Power Company
Eastern Shore Natural Gas Company
Edison Electric Institute
Electric Utilities
Enterprise Pipeline Company
Exxon Pipeline Company
Florida Power & Light Company
Florida Public Utilities Company
Georgia Power Company
Golden Spread Electric Cooperative, Inc.
Granite State Gas Transmission, Inc.
Houston Lighting & Power Company
Independent Petroleum Association of America
Interstate Natural Gas Association of America
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Southern Utilities Company
Iowa State Utilities Board
Kansas Gas and Electric Company
Lawrenceberg Gas Transmission Corporation
Lone Star Gas Company
Middle South Utilities, Inc.
Montana Power Company
National Fuel Gas Distribution Corporation
Natural Gas Supply Association
New England Power Service
Northeast Utilities
Northern Border Pipeline Company
Northern Natural Gas Company
Northwest Alaskan Pipeline Company
Northwest Pipeline Corporation
Ohio Valley Electric Corporation
Pacific Gas and Electric Company
Pacific Gas Transmission Company
Pacific Power & Light Company
Panhandle Eastern Pipe Line Company
Phillips Pipe Line Company
Potomac Electric Power Company
Public Service Commission of the District of Columbia
Public Service Commission of Nevada
Public Service Company of Colorado
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Raton Gas Transmission Company
San Diego Gas and Electric Company
Santa Fe Pacific Pipelines, Inc.
Sohio Alaska Pipeline Company
South Carolina Electric & Gas Company
South Carolina Generating Company
Southern California Edison Company
Southern Company Services, Inc.
Southwestern Electric Power Company
Southwestern Public Service Company
State Corporation Commission of Virginia
Texaco USA
Texas Eastern Transmission Corporation
Texas-New Mexico Power Company
Texas Utilities Electric Company
Transok, Inc.
United Distribution Companies
Utah Power & Light Company
Virginia Electric and Power Company
Washington Gas Light Company
Washington Natural Gas Company
Washington Water Power
West Texas Gas, Inc.
Williams Natural Gas Company
Williams Pipe Line Company

Appendix B

1. List of 131 Natural Gas Companies which would be Assessed Annual Charges based upon April 1987 Data.

(a) Interstate natural gas pipelines that have certificates of public convenience and necessity under section 7 of the NGA, that are subject to Commission NGA section 4 authority, and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year (currently 114 pipelines):

Alabama-Tennessee Natural Gas Company
Algonquin Gas Transmission Company
Algonquin LNG Inc.
ANR Pipeline Company
ANR Storage Company
Arkla Energy Resources, a division of Arkla, Inc.
Associated Natural Gas Company
Bayou Interstate Pipeline System
Bear Creek Storage Company
Black Marlin Pipeline Company
Blue Dolphin Pipe Line Company
Bluefield Gas Company
Border Gas, Inc.
Boundary Gas, Inc.
Canyon Creek Compression Company
Caprock Pipeline Company
Carnegie Natural Gas Company
Chandeleur Pipe Line Company
Cimarron Transmission Company
Colorado Interstate Gas Company
Columbia Gas Transmission Corporation
Columbia Gulf Transmission Company
Commercial Pipeline Company, Inc.
Consolidated Gas Transmission Corporation
Distrigas of Massachusetts Corporation
East Tennessee Natural Gas Company
Eastern Shore Natural Gas Company
El Paso Natural Gas Company
Equitable Gas Company, a division of Equitable Resources, Inc.
Florida Gas Transmission Company
Freeport Interstate Pipeline Company
Gas Gathering Corporation
Gas Transport, Inc.
Gasdel Pipeline System Inc.
Granite State Gas Transmission, Inc.
Great Lakes Gas Transmission Company
Hampshire Gas Company
High Island Offshore System
Honeoye Storage Corporation
Inland Gas Company, Inc.
Jackson Prairie Underground Storage Project, Washington Natural Gas Company, Operator
Jupiter Energy Corporation
KN Energy, Inc.
Kentucky West Virginia Gas Company
Lawrenceburg Gas Transmission Corporation
Locust Ridge Gas Company
Lone Star Gathering Company
Louisiana-Nevada Transit Company
MIGC, Inc.
Marengo Corporation
Michigan Consolidated Gas Company
Michigan Gas Storage Company
Mid Louisiana Gas Company
Midwestern Gas Transmission Company
Mississippi River Transmission Corporation
Mountain Fuel Resources, Inc.
National Fuel Gas Supply Corporation
Natural Gas Pipeline Company of America
North Penn Gas Company
Northern Border Pipeline Company
Northern Natural Gas Company, a Division of Enron Corp.

Northwest Alaskan Pipeline Company
Northwest Pipeline Corporation
Ohio River Pipeline Corporation
Orange and Rockland Utilities, Inc.
Overthrust Pipeline Company
Ozark Gas Transmission System
Pacific Gas Transmission Company
Pacific Interstate Offshore Company
Pacific Interstate Transmission Company
Pacific Offshore Pipeline Company
Panhandle Eastern Pipe Line Company
Pelican Interstate Gas System
Penn-Jersey Pipe Line Company
Penn-York Energy Corporation
Point Arguello Natural Gas Line Company
Raton Gas Transmission Company
Ringwood Gathering Company
Sabine Pipe Line Company
Seagull Interstate Corporation
Sea Robin Pipeline Company
South County Gas Company
South Georgia Natural Gas Company
Southern Natural Gas Company
Southwest Gas Corporation
Southwest Gas Storage Company
Southwest Gas Transmission Company
Stingray Pipeline Company
Superior Offshore Pipeline Company
Tarpon Transmission Company
TCP Gathering Company
Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
Texas Eastern Transmission Corporation
Texas Gas Pipe Line Corporation
Texas Gas Transmission Corporation
Texas Sea Rim Pipeline, Inc.
Trailblazer Pipeline Company
Transco Gas Supply Company
Transcontinental Gas Pipe Line Corporation
Transwestern Pipeline Company
Trunkline Gas Company
Union Light, Heat and Power Company
United Gas Pipe Line Company
U-T Offshore System
Valero Interstate Transmission Company
Valley Gas Transmission, Inc
West Texas Gas, Inc.
West Texas Gathering Company
Western Gas Interstate Company
Western Transmission Corporation
Williams Natural Gas Company
Williston Basin Interstate Pipeline Company
Wyoming Interstate Company, Ltd.
Zenith Natural Gas Company

(b) Interstate natural gas pipelines that have certificate authority under section 7 of the NGA but no tariff on file for jurisdictional and nonjurisdictional sales and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billable year (currently 12 pipelines):

American Distribution Company (Alabama Division)
Glacier Gas Company
Great Plains Natural Gas Company
Indiana Utilities Corporation
Interstate Power Company
Iowa Public Service Company
Lone Star Gas Company, a Division of Enserch Corporation
Michigan Power Company
Pennsylvania and Southern Gas Company
Phillips Gas Pipeline Company
South Penn Gas Company
Union Gas System, Inc.

(c) LNG importers that fall within the Commission's jurisdiction pursuant to both sections 3 and 7 of the NGA and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billable year (currently 5 pipelines):

Columbia LNG Corporation
Consolidated System LNG Company
Distrigas Corporation
Southern Energy Company
Trunkline LNG Company

2. List of 29 Natural Gas Companies which would be Exempted from Annual Charges based upon April 1987 Data.

(a) Companies the sales and transportation transactions of which do not exceed 200,000 Mcf per year for each of the three calendar years immediately preceding the billable year (currently 13 companies):

Blacksville Oil and Gas Co., Inc.
C.B. Gas Gathering, Inc.
Frontier Gas Storage Company
Gaylord Container Corporation
Georgia-Pacific Corporation
Great River Gas Company
International Paper Company
Mid-Continent Gas Storage Company
Mitco Pipeline Company
Northern States Power Company
RMNG Gathering Company
Urbana Corporation
Wheeler Gas, Inc.

(b) Importers with NGA section 3 and Presidential Permit authority only (currently 12 importers):

City of Roma, Texas
Del Norte Natural Gas Company
Entex, Inc.
Gas Service, Inc.
Inter-City Minnesota Pipelines Ltd., Inc.
Manchester Gas Company
Marathon Oil Company
Montana Power Company
Phillips Petroleum Company
St. Lawrence Gas Company
Valero Transmission Company
Vermont Gas Systems, Inc.

(c) Regulated interstate natural gas pipelines that have NGA section 7(f) declarations and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billable year (currently 4 pipelines):

Arkansas Oklahoma Gas Corporation
Iowa-Illinois Gas and Electric Company
Shenandoah Gas Company
Washington Gas Light Company

BILLING CODE 6717-01-M

Docket No. RM87-3-000

APPENDIX C

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 19__

GAS ACCOUNT — NATURAL GAS

1. The purpose of this page is to account for the quantity of natural gas received and delivered by the respondent, taking into consideration differences in pressure bases used in measuring Mcf of natural gas received and delivered.

2. Natural gas means either natural gas unmixed or any mixture of natural and manufactured gas.

3. Enter in column (c) the Mcf as reported in the schedules indicated for the items of receipts and deliveries.

01 NAME OF SYSTEM

Line No.	Item (a)	Ref. Page No. (b)	Amount of Mcf (14.73 psia at 60°F) (c)
2	GAS RECEIVED		
3	Natural Gas Produced	506	
4	LPG Gas Produced and Mixed with Natural Gas	515	
5	Manufactured Gas Produced and Mixed with Natural Gas		
6	Purchased Gas		
7	Wellhead	327	
8	Field Lines	327	
9	Gasoline Plants	327	
10	Transmission Line	327	
11	City Gate Under FERC Rate Schedules	327	
12	LNG	327	
13	Other	327	
14	TOTAL, Gas Purchased *(Enter Total of lines 7 thru 13)*	327	
15	Gas of Others Received for Transportation	312	
16	Receipts of Respondents' Gas Transported or Compressed by Others	332	
17	Exchange Gas Received	328	
18	Gas Withdrawn from Underground Storage	512	
19	Gas Received from LNG Storage		
20	Gas Received from LNG Processing		
21	Other Receipts *(Specify):*		
22	TOTAL Receipts *(Enter Total of lines 3 thru 5, 14, and 15 thru 21)*		

Add: (Instruction 4, page 521)

4. *** Also indicate by footnote the volumes of nonjurisdictional gas which did not incur FERC regulatory costs by showing (1) the local distribution volumes delivered to the local-distribution-company portion of the reporting pipeline by another jurisdictional pipeline; (2) the volumes which the reporting pipeline transported or sold through its local distribution facilities or intrastate facilities, and which the reporting pipeline received through gathering facilities, distribution facilities or intrastate facilities, but not through any of the interstate portion of the reporting pipeline; and (3) the gathering line volumes which were not destined for the interstate market or which were not transported through any interstate portion of the reporting pipeline.

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 19__

GAS ACCOUNT — NATURAL GAS (Continued)

4. In a footnote report the volumes of gas from respondent's own production delivered to respondent's transmission system and included in natural gas sale.

5. If the respondent operates two or more systems which are not interconnected, submit separate pages for this purpose. Use copies of pages 520 and 521.

01 NAME OF SYSTEM

Line No.	Item (a)	Ref. Page No. (b)	Amount of Mcf (14.73 psia at 60°F) (c)
23	GAS DELIVERED		
24	Natural Gas Sales		
25	Field Sales		
26	To Interstate Pipeline Companies for Resale Pursuant to FERC Rate Schedules	310	
27	Retail Industrial Sales	306	
28	Other Field Sales	310	
29	TOTAL, Field Sales *(Enter Total of lines 26 thru 28)*		
30	Transmission Systems Sales		
31	To Interstate Pipeline Co. for Resale Under FERC Rate Sched.	310	
32	To Intrastate Pipeline Co. and Gas Utilities for Resale Under FERC Rate Schedules	310	
33	Mainline Industrial Sales Under FERC Certification	306	
34	Other Mainline Industrial Sales	306	
35	Other Transmission System Sales	310	
36	TOTAL, Transmission System Sales *(Enter Total of lines 31 thru 35)*		
37	Local Distribution by Respondent		
38	Retail Industrial Sales	303	
39	Other Distribution System Sales	303	
40	TOTAL, Distribution System Sales *(Lines 38 + 39)*		
41	Interdepartmental Sales		
42	TOTAL SALES *(Enter Total of lines 29, 36, 40 and 41)*		
43	Deliveries of Gas Transported or Compressed for:		
44	Other Interstate Pipeline Companies	312	
45	Others	312	
46	TOTAL, Gas Transported or Compressed for Others *(Enter Total of lines 44 and 45)*	312	
47	Deliveries of Respondent's Gas for Trans. or Compression by Others	332	
48	Exchange Gas Delivered	328	
49	Natural Gas Used by Respondent	330	
50	Natural Gas Delivered to Underground Storage	512	
51	Natural Gas Delivered to LNG Storage		
52	Natural Gas Delivered to LNG Processing		
53	Natural Gas for Franchise Requirements		
54	Other Deliveries *(Specify):*		
55	TOTAL SALES & OTHER DELIVERIES *(Lines 42, 46, 47 thru 54)*		
56	UNACCOUNTED FOR		
57	Production System Losses		
58	Storage Losses		
59	Transmission System Losses		
60	Distribution System Losses		
61	Other Losses *(Specify in so far as possible):*		
62	TOTAL Unaccounted for *(Enter Total of lines 57 thru 61)*		
63	TOTAL SALES, OTHER DELIVERIES, AND UNACCOUNTED FOR *(Enter Total of lines 55 and 62)*		

Docket No. RM87-3-000 APPENDIX D

Add: (Instruction 2, Part XVII, page 18)

2. *** Also indicate by footnote the volumes of nonjurisdictional gas which did not incur FERC regulatory costs by showing (1) the local distribution volumes delivered to the local-distribution-company portion of the reporting pipeline by another jurisdictional pipeline; (2) the volumes which the reporting pipeline transported or sold through its local distribution facilities or intrastate facilities, and which the reporting pipeline received through gathering facilities, distribution facilities or intrastate facilities, but not through any of the interstate portion of the reporting pipeline; and (3) the gathering line volumes which were not destined for the interstate market or which were not transported through any interstate portion of the reporting pipeline.

PART XVII: GAS ACCOUNT—NATURAL GAS

1. The purpose of this part is to account for the quantity of natural gas received and delivered by the respondent. Natural gas means either natural gas unmixed or any mixture of natural and manufactured gas.
2. Enter in column (b) the Mcf as reported in parts indicated for the respective items of receipts and deliveries.
3. If the respondent operates two or more systems which are not interconnected, separate pages should be submitted for each system.

01 Name of System:

Line No.	Item (a)	Amount of Mcf (14.73 psia at 60° F) (b)
02	GAS RECEIVED	
03	Natural Gas Produced	
04	Purchased Gas *(Enter total of above column b, line 05, Part XVI, Gas Purchases)*	
05	Other Receipts *(Specify):*	
06		
07		
08		
09	TOTAL RECEIPTS *(Enter total of lines 03 thru 08)*	
10	GAS DELIVERED	
11	Natural Gas Sales *(Transcribe entry from page 16, line 12, column c, Part XIII, Gas Sales Data)*	
12	Other Deliveries *(Specify):*	
13		
14		
15		
16	TOTAL DELIVERIES *(Enter total of lines 11 thru 15)*	
17	Unaccounted for	
18	TOTAL DELIVERIES AND UNACCOUNTED FOR *(Enter total of lines 16 and 17)*	

FERC Form No. 2-A (Revised 12-84)

BILLING CODE 6717-01-C

Appendix E

List of Interstate Oil Pipeline Companies which would be Assessed Annual Charges Based on 1985 Data (currently 137 pipelines):

Acorn Pipeline Company
Air Force Pipeline, Inc.
Algonquin Pipeline Company
Allegheny Pipeline Company
Amerada Hess Pipeline Corporation
American Petrofina Pipe Line Company
Amoco Pipeline Company
ARCO Pipe Line Company
Asamera Pipeline, Inc.
Ashland Pipe Line Company
Atlantic Pipeline Corporation
Badger Pipe Line Company
Belle Fourche Pipeline Company
Black Lake Pipe Line Company
BP Pipelines, Inc.
Buccaneer Pipe Line Company
Buckeye Pipe Line Company, L.P.
Buckeye Pipe Line Company of Michigan, L.P.
Butte Pipe Line Company
C & T Pipeline, Inc.
Calnev Pipe Line Company
Cenergy Transmission Company
Chase Transportation Company
Chevron Pipe Line Company
Chicap Pipe Line Company
Chisholm Pipeline Company
Ciniza Pipe Line, Inc.
Citgo Pipeline Company
Cities Service NGL Pipeline Company
CKB Petroleum, Inc.
Clarco Pipe Line Company
CNG Pipeline Company
Coastal Pipeline Company
Cochin Pipeline System
Collins Pipeline Company
Colonial Pipeline Company
Conoco Pipeline Company
Cook Inlet Pipe Line Company
Crown-Rancho Pipe Line Corporation
Diamond Shamrock Refining and Marketing Company
Dixie Pipeline Company
Dome Pipeline Corporation
El Paso Frontera Corporation
Emerald Pipe Line Corporation
Enron Liquids Pipeline Company
Enterprise Pipeline Company
Enterprise Products Company of Mississippi
Eureka Pipe Line Company
Explorer Pipeline Company
Exxon Pipeline Company
Farmland Industries, Inc.
Four Corners Pipe Line Company
Frontier Pipeline Company
G & T Pipeline Company
Gulf Central Pipeline Company
Hess Pipeline Company
Howell Crude Oil Company
Husky Pipeline Company
Interstate Storage & Pipe Line Corporation
Jayhawk Pipeline Corporation
Kaneb Pipe Line Company
Kaw Pipe Line Company
Kerr-McGee Pipeline Corporation
Kiantone Pipeline Corporation
Koch Pipelines, Inc.
Kuparuk Transportation Company
Lake Charles Pipe Line Company
Lakehead Pipe Line Company, Inc.
Largo Company
Laurel Pipe Line Company
Locap, Inc.
Marathon Pipe Line Company
Mark Oil Pipeline Company
McMoran Pipeline Company
Mesa Transmission Company
Mid-America Pipeline Company
Mid-Valley Pipeline Company
Midland-Lea, Inc.
Milne Point Pipe Line Company
Minnesota Pipe Line Company
Mitco Pipeline Company
Mobil Alaska Pipeline Company
Mobil Eugene Island Pipeline Company
Mobil Pipe Line Company
National Transit Company
Navajo Pipeline Company
Northern Rockies Pipe Line Company
NW Pipeline Inc.
Ohio Oil Gathering Corporation II
Ohio River Pipe Line Company
Oiltanking of Texas Pipeline Company
Olympic Pipe Line Company
Osage Pipe Line Company
Owensboro-Ashland Company
Paloma Pipeline Company
Pennzoil Offshore Pipeline Company
Phillips Alaska Pipeline Corporation
Phillips Pipe Line Company
Pioneer Pipe Line Company
PL Pipeline Company
Plantation Pipe Line Company
Platte Pipe Line Company
Pogo Offshore Pipeline Company
Point Pedernales Pipeline Company
Portal Pipe Line Company
Portland Pipe Line Corporation
Samedan Pipeline Corporation
Santa Fe Pipeline Company
Seminole Pipeline Company
Shamrock Pipe Line Corporation
Shell Pipe Line Corporation
Sohio Alaska Pipeline Company
Sohio Pipe Line Company
Sonat Oil Transmission, Inc.
Southcap Pipe Line Company
Southern Pacific Pipe Lines, Inc.
Sun Oil Line Company of Michigan
Sun Pipe Line Company
Tecumseh Pipe Line Company
Texaco Pipeline Inc.
Texas Eastern Transmission Corporation
Texas-New Mexico Pipe Line Company
Total Pipeline Corporation
Trans Mountain Oil Pipe Line Corporation
Trans-Ohio Pipeline Company
Transco Terminal Company
Unocal Pipeline Company
Wascana Pipe Line, Inc.
West Emerald Pipe Line Corporation
West Shore Pipe Line Company
West Texas Gulf Pipe Line Company
Western Oil Transportation Company, Inc.
White Shoal Pipeline Corporation
Williams Pipe Line Company
Wolverine Pipe Line Company
Wyco Pipe Line Company
Yellowstone Pipe Line Company

Appendix F

1. List of Investor-Owned Utilities which would be Assessed Annual Charges Based on 1986 Data (currently 186 IOUs):

AEP Generating Co.
Alabama Power Co.
Alamito Co.
Alcoa Generating Corp.
Allegheny Generating Co.
Appalachian Power Co.
Arizona Public Service Co.
Arkansas Power & Light Co.
Atlantic City Electric Co.
Baltimore Gas & Electric Co.
Bangor Hydro-Electric Co.
Black Hills Power and Light Co.
Blackstone Valley Electric Co.
Boston Edison Co.
Cambridge Electric Light Co.
Canal Electric Co.
Carolina Power & Light Co.
Centel Corp.
Central Hudson Gas & Electric Corp.
Central Illinois Light Co.
Central Illinois Public Service Co.
Central Louisiana Electric Co., Inc.
Central Maine Power Co.
Central Power & Light Co.
Central Vermont Public Service Corp.
Cincinnati Gas & Electric Co., The
Citizens Utilities Co.
Cleveland Electric Illuminating Co.
Columbus & Southern Ohio Electric Co.
Commonwealth Edison Co.
Commonwealth Edison Co. of Ind., Inc.
Commonwealth Electric Co.
Connecticut Light & Power Co.
Connecticut Valley Electric Co., Inc.
Connecticut Yankee Atomic Power Co.
Consolidated Edison Co. of New York, Inc.
Consolidated Water Power Co.
Consumers Power Co.
Dayton Power & Light Co., The
Delmarva Power & Light Co.
Detroit Edison Co., The
Duke Power Co.
Duquesne Light Co.
Eastern Edison Co.
Edison Sault Electric Co.
Electric Energy, Inc.
Empire District Electric Co., The
EUA Power Corporation
Fitchburg Gas & Electric Light Co.
Florida Power & Light Co.
Florida Power Corp.
Georgia Power Co.
Green Mountain Power Corp.
Gulf Power Co.
Gulf States Utilities Co.
Holyoke Power & Electric Co.
Holyoke Water Power Co.
Houston Lighting & Power Co.[1]
Idaho Power Co.
Illinois Power Co.
Indiana & Michigan Electric Co.
Indiana-Kentucky Electric Corp.
Indianapolis Power & Light Co.
Interstate Power Co.
Iowa Electric Light & Power Co.
Iowa-Illinois Gas & Electric Co.
Iowa Power & Light Co.
Iowa Public Service Co.
Iowa Southern Utilities Co.
James River-New Hampshire Electric Co.
Jersey Central Power & Light Co.
Kansas City Power & Light Co.
Kansas Gas & Electric Co.

[1] Annual charges are to be assessed based only on those sales under rate schedules on file with the Commission. For FERC purposes of Reporting Requirement No. 582, this company should identify the jurisdictional nature of the kilowatt-hour transactions taking place

Kansas Power & Light Co.
Kentucky Power Co.
Kentucky Utilities Co.
Kingsport Power Co.
Lake Superior District Power Co.
Lockhart Power Co.
Long Island Lighting Co.
Louisiana Power & Light Co.
Louisville Gas & Electric Co.
Madison Gas & Electric Co.
Maine Electric Power Co.
Maine Public Service Co.
Maine Yankee Atomic Power Co.
Massachusetts Electric Co.
Metropolitan Edison Co.
Michigan Power Co.
Minnesota Power & Light Co.
Mississippi Power & Light Co.
Mississippi Power Co.
Missouri Power & Light Co.
Missouri Public Service Co.
Missouri Utilities Co.
Monongahela Power Co.
Montana Dakota Utilities Co.
Montana Power Co.
Montaup Electric Co.
Mt. Carmel Public Utility Co.
Nantahala Power & Light Co.
Narragansett Electric Co.
Nevada Power Co.
New England Electric Trans. Corp.
New England Power Co.
New Orleans Public Service, Inc.
New York State Electric & Gas Corp.
Niagara Mohawk Power Corp.
North Central Power Company, Inc.
Northeast Nuclear Energy Co.
Northern Indiana Public Service Co.
Northern States Power Co. (Minn)
Northern States Power Co. (Wis)
Northwestern Public Service Co.
Ohio Edison Co.
Ohio Power Co.
Ohio Valley Transmission Corp.
Oklahoma Gas & Electric Co.
Orange & Rockland Utilities, Inc.
Otter Tail Power Co.
Pacific Gas & Electric Co.
Pacific Power & Light Co.
Pennsylvania Electric Co.
Pennsylvania Power & Light Co.
Pennsylvania Power Co.
Philadelphia Electric Co.
Philadelphia Electric Power Co.
Portland General Electric Co.
Potomac Edison Co.
Potomac Electric Power Co.
Public Service Co. of Colorado
Public Service Co. of Indiana
Public Service Co. of New Hampshire
Public Service Co. of New Mexico
Public Service Co. of Oklahoma
Public Service Electric & Gas Co.
Puget Sound Power & Light Co.
Rochester Gas & Electric Co.
Rockland Electric Co.
Safe Harbor Water Power Corp.
San Diego Gas & Electric Co.
Savannah Electric & Power Co.
Sierra Pacific Power Co.
South Beloit Water, Gas & Electric Co.
South Carolina Electric & Gas Co.
South Carolina Generating Co.
Southern California Edison Co.
Southern Company Services, Inc.
Southern Electric Generating Co.
Southern Indiana Gas & Electric Co.
Southwestern Electric Power Co.
Southwestern Public Service Co.
St. Joseph Light & Power Co.
Superior Water, Light & Power Co.
Systems Energy Resources, Inc.
Tampa Electric Co.
Tapoco, Inc.
Texas Utilities Electric Co.[2]
Texas-New Mexico Power Co.
Toledo Edison Co.
Tucson Electric Power Co.
UGI Corp.
Union Electric Co.
Union Light, Heat & Power Co.
United Illuminating Co.
Unitil Power Corp.
Upper Peninsula Generating Co.
Upper Peninsula Power Co.
Utah Power & Light Co.
Utilicorp United Inc.
Vermont Electric Power Co., Inc.
Vermont Yankee Nuclear Power Corp.
Virginia Electric & Power Co.
Warm Springs Power Enterprises
Washington Water Power Co.
West Penn Power Co.
West Texas Utilities Co.
Western Massachusetts Electric Co.
Wisconsin Electric Power Co.
Wisconsin Power & Light Co.
Wisconsin Public Service Corp.
Wisconsin River Power Co.
Yadkin, Inc.
Yankee Atomic Electric Co.
York Haven Power Co.

2. List of Cooperatives to be Assessed Annual Charges: Golden Spread Electric Cooperative, Inc.

3. List of the five Power Marketing Agencies to be Assessed Annual Charges:

Alaska Power Administration
Bonneville Power Administration
Southeastern Power Administration
Southwestern Power Administration
Western Area Power Administration

[FR Doc. 87–12550 Filed 6–4–87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74 and 81

[Docket No. 83C–0127]

D&C Red No. 8 and D&C Red No. 9; Permanent Listing for Use in Ingested Drug and Cosmetic Lip Products and Externally Applied Drugs and Cosmetics; Confirmation of Effective Date and Further Treatment

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date and further amendment.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has completed its evaluation of objections it received to the permanent listing of D&C Red No. 8 and D&C Red No. 9 as color additives for use in ingested drug and cosmetic lip products and externally applied drugs and cosmetics. In response to the objections, FDA is modifying several aspects of the manufacturing process specified in the permanent listing regulation. This document incorporates those modifications and confirms the effective date of January 6, 1987, for the regulation listing D&C Red No. 8 and D&C Red No. 9. This document also amends the color additive regulations by removing D&C Red No. 8 and D&C Red No. 9 from the color additive provisional list.

DATES: Effective date confirmed for the December 5, 1986, final rule (51 FR 43877): January 6, 1987; effective date of the amendment in this document is July 7, 1987, except as to any provisions that may be stayed by the filing of proper objections; objections by July 6, 1987.

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

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION:

1. Background

In the **Federal Register** of December 5, 1986 (51 FR 43877), FDA permanently listed D&C Red No. 8 and D&C Red No. 9 for use in ingested drug and cosmetic lip products in amounts not exceeding 0.1 percent by weight of the finished product and externally applied drugs and cosmetics in amounts consistent with current good manufacturing practice. That action responded to a petition filed by the Cosmetic, Toiletry and Fragrance Association, Inc. The final rule also amended 21 CFR 81.1(b), 81.25, and 81.27 by removing the entries for D&C Red No. 8 and D&C Red No. 9. The final rule revised 21 CFR 81.10 and 81.30 by adding new paragraphs (t) and (s), respectively, which terminated the provisional listings and cancelled the certificates issued for D&C Red No. 8 and D&C Red No. 9 for use in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products. The final rule also revised 21 CFR 82.1308 to state that: (1) D&C Red No. 8 must conform in identity and specifications to the requirements of 21

[2] *See supra* note 1.

CFR 74.1308 (a)(1) and (b) and (2) the lakes of D&C Red No. 8 must be made only from certified batches of D&C Red No. 8. The final rule also revised 21 CFR 82.1309 to state that (1) D&C Red No. 9 must conform in identity and specifications to the requirements of § 74.1309 (a)(1) and (b) and (2) the lakes of D&C Red No. 9 must be made only from certified batches of D&C Red No. 8 or D&C Red No. 9. The final rule (51 FR 43877), corrected January 9, 1987 (52 FR 902), FDA gave interested persons until January 6, 1987, to file objections.

In a separate final rule published in the **Federal Register** of December 5, 1986 (51 FR 43899), FDA extended the closing date for the provisional listing of D&C Red No. 8 and D&C Red No. 9 until February 3, 1987, to provide time for the receipt and evaluation of any objections submitted in response to the final rule for these color additives. Six objections were submitted in response to the listing order. The agency extended the closing date on February 3, 1987 (52 FR 3224) to April 6, 1987, and again on April 6, 1987 (52 FR 10882) to June 5, 1987, to provide time to properly respond to these objections.

The objections are on file in the Dockets Management Branch (address above) under the docket number found in the heading of this document. FDA also received one comment in support of its regulation from the Cosmetic, Toiletry and Fragrance Association that has also been placed on file under the same docket number. No requests for a hearing were received in response to the listing regulation. The objections and the agency's responses to them are summarized below.

II. Objections and the Agency's Response

A. Interpretation of the Delaney Clause

1. Public Citizen Litigation Group (PCLG) objected to the final rule permanently listing D&C Red No. 8 and D&C Red No. 9 on the ground that, because D&C Red No. 8 and D&C Red No. 9 are animal carcinogens, the Delaney Clause (21 U.S.C. 376(b)(5)(B)) prohibits the agency from approving their use in drugs and cosmetics. PCLG stated, "that, as the agency has also admitted, if the Delaney Clause is interpreted to prohibit the approval of color additives which are animal carcinogens, then the agency may not approve D&C Red Nos. 8 and 9." PCLG incorporated by reference the basis for its interpretation of the Delaney Clause discussed in the legal memoranda filed in *Public Citizen* v. *Department of Health and Human Services*, and *Public Citizen* v. *Young*, No. 1548 (D.C. Cir.).

In the judicial proceedings noted above, the agency has opposed PCLG's interpretation of the Delaney Clause. In response to PCLG's objection, the agency incorporates in this document the legal memoranda filed on behalf of FDA in the same proceedings. The agency also incorporates in this document the notices that appeared in the **Federal Register** of February 19, 1987 (51 FR 5081 and 5083), and that clarified the agency's explanation of its interpretation of the Delaney Clause. As discussed in the final rule permanently listing D&C Red No. 8 and D&C Red No. 9, it remains the agency's position that, under any reasonable standard, D&C Red No. 8 and D&C Red No. 9 are safe for use in ingested drug and cosmetic lip products and externally applied drugs and cosmetics and that the Delaney Clause does not bar the permanent listings of these color additives. All scientific, legal, and policy discussions set forth in the preamble to the December 5, 1986 (51 FR 43877), final rule for these two color additives are applicable in this document.

B. Lakes of D&C Red No. 8 and D&C Red No. 9

1. Manufacture of Lakes From Previously Certified Straight Color Additives

Several objections complained that the requirement that lakes of D&C Red No. 8 and D&C Red No. 9 be manufactured from certified straight color additives unnecessarily imposes a technically infeasible burden upon the manufacturer. The objections contended that analytical methodologies currently employed for enforcement of chemical specifications in the straight color additives were equally applicable for determining compliance with chemical specifications for lakes of the color additives. The objections were not supported or accompanied by any data.

As discussed in the preamble to the final listing regulations, the agency was concerned about the possible role of unsulfonated subsidiary colors in producing the carcinogenic effects observed in the National Cancer Institute study of D&C Red No. 9. The preamble also discussed possible variation in the amount of this type of impurity that may be present in a given batch of the color additive. Thus, to the extent that this type of impurity may contribute to the observed effect, the level of risk presented by any given batch of D&C Red No. 8 or D&C Red No. 9 could vary depending upon the concentration of unsulfonated subsidiary colors in the batch. For these and other reasons, the agency set specifications restricting the permissible levels of unsulfonated subsidiary colors and other impurities in batches of D&C Red No. 8 or D&C Red No. 9 to levels below or comparable to those found in the animal-tested batch, as discussed in the final rule. See 51 FR 43891–43892.

The analytical methodologies available for enforcing all of these specifications during certification are reliable and accurate only for the straight color additives, not for the lakes of the color additives. The agency is unaware of data or information that establishes the propriety of using any methodology to enforce all of the chemical specifications for impurities in all of the permitted forms of lakes of the straight color additives. The objections to the final rule failed to submit any information or analytical data on this issue. Accordingly, the final rule has not been changed and continues to require that lakes of either D&C Red No. 8 or D&C Red No. 9 be manufactured from a certified straight color additive.

The contention that it is technically infeasible to manufacture the lakes in the manner required by the listing regulation is, in the agency's view, not substantiated. Although this requirement is new, it does not appear infeasible. To manufacture a straight color additive, one must combine certain chemical intermediates. This results in a relatively insoluble color additive. When it forms, the color additive precipitates immediately in the reaction vat. Isolation of the precipitated color additive as the sodium salt yields D&C Red No. 8 straight color additive. Soluble barium is used primarily to treat the precipitated color additive after the reaction to form the barium salt of the color additive. When isolated, this salt yields D&C Red No. 9.

As discussed in the preamble to the final rule, intermediates, subsidiary colors, and other impurities present in the reaction vat will also be precipitated at this time. The agency has set specifications for some of these components. If the color additive is allowed to precipitate in the presence of a laking substratum, the components for which specifications have been established could be present in the lakes of the color additives at higher levels than permitted by the specifications. The agency, however, does not have adequate methods for the detection of these components in lakes. Accordingly, the final rule requires that D&C Red No. 8 or D&C Red No. 9 be isolated and certified after formation of the straight color additive before the laking process can be continued (normally, the laking process is essentially a one-step, in situ

process). Other than this one intervention, the final rule does not specify a particular method of manufacture for the lakes. While admittedly difficult, this process is not infeasible and it is the least burdensome process that the agency is aware of that will ensure the manufacture of a color additive that meets the specifications set forth in the final rule.

2. Two objections to the final rule stated that § 82.1051 *Lakes (D&C)* of the color additive regulations and the definition of lakes in § 70.31(e) are confusing and need revision.

In the final rule, the agency discussed the advance notice of proposed rulemaking concerning lakes and its intention to propose general regulations concerning the definition of lakes and the safety and chemical specifications for lakes. As discussed also in the final rule, the agency finds that these actions on lakes should be discussed separately in a future **Federal Register** document. FDA finds that these issues need not be resolved first before FDA takes the action discussed in the December 5, 1986, final rule on D&C Red No. 8 and D&C Red No. 9.

2. Technical Objections Concerning the Laking Process

3. One manufacturer declared that the final rule requires an impossibility: The manufacture of D&C Red No. 9 barium lake from dry straight D&C Red No. 9. In addition, the manufacturer pointed out that a precipitant is used to remove excess soluble barium during the manufacture of D&C Red No. 9 and that, in fact, this straight color additive is isolated as a lake or, at least, laked on the precipitant used.

The agency agrees that it would be difficult to manufacture D&C Red No. 9 barium lake from dry straight D&C Red No. 9. The agency notes, however, that the final rule does not restrict manufacture of D&C Red No. 9 lakes to dry certified straight D&C Red No. 9. There are ways to overcome the dry state of the straight color additive and successfully manufacture the lake. For example, the new regulation permits the processing of certified D&C Red No. 8 straight color additive into D&C Red No. 9 lake by returning the certified straight color additive D&C Red No. 8 to a solution suitable for processing into a lake of D&C Red No. 9. The objection contained no data to show why other potential ways could not be used to make the lake.

The agency points out that neither the presence of small amounts of excess soluble barium in D&C Red No. 9 as a result of the manufacturing process nor the isolation of D&C Red No. 9 in the presence of a precipitant prevents the agency from certifying D&C Red No. 9 as a straight color additive. Straight color additives are those color additives that meet the specifications as prescribed by the final rule, and D&C Red No. 9 has a specification for excess barium. This, in combination with the other specifications, helps to define D&C Red No. 9 straight color additive. The agency, therefore, intends to certify as straight color additives any batches of color additives that meet the new identity description and chemical specifications regarding subsidiary colors, chemical intermediates, and other impurities.

4. Two objections questioned the general description of the manufacturing process for D&C Red No. 9 straight color additive contained in § 74.1309(a) (identity). The objections noted it is necessary during manufacture to treat the color additive to reduce soluble barium in D&C Red No. 9 to levels that meet the chemical specification for soluble barium described in § 74.1309(b).

The agency finds that these objections have merit and has decided to amend the identity section of the final rule to clarify the use of barium chloride and sulfate ion in the manufacture of the straight color additive. Barium chloride is added during the manufacture of the color additive to produce the color additive as a barium salt. Gross removal of the excess of barium chloride will help to reduce the levels of soluble barium and subsequent levels of barium sulfate that may form in the color additive when it is treated with sulfate ion. The reagent typically used to reduce soluble barium during manufacture of the color additive is sodium sulfate. The use of this reagent causes excess soluble barium to be converted to insoluble barium sulfate.

The agency is amending the identity section to provide for the removal of gross excess soluble barium (usually in the form of barium chloride) and then to allow for the use of sulfate ion for the removal of the final residues of soluble barium to the specification level or below.

The agency finds that precipitation of soluble barium as barium sulfate occurs as part of the manufacturing process for D&C Red No. 9 and that this color additive is isolated with residual barium sulfate, which is a lake substratum. However, the agency does not consider the isolation of D&C Red No. 9 in this manner to be a lake.

While agreeing that this use of sulfate ion, to the extent necessary to reduce soluble barium levels, is consistent with the appropriate manufacturing process for a straight color additive, the agency is concerned that the manufacturing process not result in the formation of excessive levels of precipitated barium sulfate. This concern is based primarily on the potential interference of excess barium sulfate with agency analytical methods used to enforce other specification levels for this straight color additive. Thus, the agency recommends that residual levels of barium sulfate be kept to a minimum, consistent with appropriate manufacturing practice.

The agency lacks the analytical methodology and sufficient data on the straight color additive to set a specification for barium sulfate in D&C Red No. 9. This may be considered in a **Federal Register** document when data on the levels of barium sulfate in straight D&C Red No. 9 become available. The agency has amended § 74.1309(a), however, to indicate that barium chloride should be removed to the fullest extent possible and that sulfate ion may be added during manufacture of D&C Red No. 9 to further reduce levels of soluble barium after gross removal of barium chloride to attain a straight color additive in its final form.

5. Two objections stated that setting the level of use of D&C Red No. 8 and D&C Red No. 9 at 0.1 percent rendered these color additives no longer useful as straight color additives.

The agency explained in its final rule (51 FR 43890 and 43891) that establishing a level of use for these color additives at 0.1 percent was appropriate from a risk estimate and safety standpoint and that, at the 0.1 percent concentration, the additive remained useful in imparting color to some products. The agency recognizes that this level is much lower than originally requested, and that at the lower level, the color additives may no longer be capable of imparting sufficient color for many former uses. Regardless, the agency continues to believe that the reduction is appropriate, and the comments submitted no new data or information on this issue.

6. One objection concerned the listing of two previously unspecified impurities, chloroform extractable unsulfonated subsidiary colors and the sodium or barium (1:2) salts of 5-chloro-2-[4-hydroxy-1-naphthalenyl]azo]-4-methylbenzene sulfonic acid, on the grounds that FDA did not provide written, validated test methods for their determination. The objection requested that a 180-day extension of the provisional list be granted to test the methods to determine what problems if any it will have with standard products, and to take appropriate remedial technical action.

The final rule listing D&C Red No. 8 and D&C Red No. 9 published on December 5, 1986 (51 FR 43877). The objector has thus, in effect, had the necessary time requested to test the methods in question. Accordingly, the agency is denying the objections. However, the agency recognizes the manufacturers' concerns with the new methodologies, and will work closely with any manufacturer that experiences difficulties in this area.

7. One objection asked that the agency reconsider the level set for the 50 parts per million (ppm) specification for chloroform extractable unsulfonated subsidiary colors because data available to the agency showed its level to be much higher in the toxicology samples.

The agency gave an extensive discussion as to why it selected this low value for the chloroform extractable colors. In brief, although the agency has data on the levels of combined unsulfonated subsidiary colors present in D&C Red No. 9, it does not have reliable data on the levels of all of the individual subsidiary colors present in the toxicology sample. The levels of these individual colors may vary significantly from batch to batch. The agency, therefore, reasoned that the combined levels of these unsulfonated colors should not be permitted above FDA's ability to detect their presence in D&C Red No. 8 and D&C Red No. 9. This level is 50 ppm and it represents a tenfold to fifteenfold reduction in the levels found in the toxicology samples. This across-the-board decrease in the level of unsulfonated subsidiary colors would not be selective but would reduce the presence of each subsidiary color. This requirement is technically achievable for manufacturers and would ensure that the levels of unsulfonated subsidiary colors present in future certified batches of these color additives would not be greater than the levels in the toxicology sample. The objection failed to substantially address the agency's concerns on this issue. The agency has no basis upon which to rule that the 50 ppm specification for chloroform extractable colors should be changed. Accordingly, the agency rejects the objection.

III. Conclusion

The agency has completed its evaluation of the objections and concludes that a continuation of the stay of the regulations is not warranted in response to the objections. FDA also concludes that the objection concerning the manufacturing process is correct and the agency is modifying § 74.1309 accordingly. Additionally, there was no request for a hearing in conjunction with the objections that were submitted. Therefore, this document confirms the effective date of January 6, 1987, for all portions of the final rule except the description of the manufacturing process modified in this final rule for D&C Red No. 9.

Objections to or requests for a public hearing on the modifications in § 74.1309(a) as set forth in this document may be submitted under 21 CFR 12.20 through 12.22. The amended portions of § 74.1309(a) shall become effective on July 7, 1987, except as to any provisions that may be stayed by the filing of proper objections. Until that time, the identity prescribed by the listing regulation of December 5, 1986 (51 FR 43877), is in effect. This document also amends the color additive regulations by removing D&C Red No. 8 and D&C Red No. 9 from the color additives provisional list on June 5, 1987.

IV. Objections

Any person who will be adversely affected by the amendment to § 74.1309 regarding the manufacturing process may at any time on or before July 6, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register.**

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the transitional provisions of the Color Additive Amendments of 1960, and under authority delegated to the Commissioner of Food and Drugs, Parts 74 and 81 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. In § 74.1309 by revising paragraph (a)(1) to read as follows:

§ 74.1309 D&C Red No. 9.

(a) *Identity.* (1) The color additive D&C Red No. 9 is principally the barium salt (1:2) of 5-chloro-2-[(2-hydroxy-1-naphthalenyl)azo]-4-methylbenzenesulfonic acid (CAS Reg. No. 5160–2–1). To manufacture the additive, 2-amino-5-chloro-4-methylbenzenesulfonic acid is diazotized using sodium nitrite and hydrochloric acid and coupled with 2-naphthalenol. The resultant color additive is converted to the barium salt with barium chloride acting as a precipitant and excess barium chloride is removed to the fullest extent possible. Sulfate ion may then be added for the purpose of further removing excess soluble barium. The color additive is isolated as the barium salt.

* * * * *

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

3. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 as amended (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

4. Part 81 is amended in § 81.1 *Provisional lists of color additives* by removing the entries for "D&C Red No.

8" and "D&C Red No 9" in paragraph (b).

§ 81.27 [Amended]

5. In § 81.27 *Conditions of provisional listing* by removing the entries for "D&C Red No. 8" and "D&C Red No. 9" in paragraph (d).

Dated: May 31, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-12798 Filed 6-4-87; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 266

[SW FRL-3213-6]

Hazardous Waste Management System; Definition of Solid Waste; Technical Corrections

AGENCY: Environmental Protection Agency.

ACTION: Technical corrections to definition of solid waste rulemaking.

SUMMARY: On January 4, 1985, EPA promulgated final rules defining the statutory term "solid waste" and adopting regulations for hazardous wastes that are recycled. EPA has since identified two provisions that require correction or clarification. This notice makes those changes.

EFFECTIVE DATE: June 5, 1987.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9436 or (202) 382-3000. For technical information contact Michael Petruska, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460, (202) 382-4761.

SUPPLEMENTARY INFORMATION:

I. Technical Corrections to Rule

1. On January 4, 1985, as part of the final rule defining "solid waste", EPA amended § 261.33 to state that commercial chemical products are solid wastes when they are "discarded" as defined in § 261.2(a)(2)(i) (*i.e.* by being abandoned), or when recycled by burning, use in fuel production, or placement on the land when this is not the material's normal manner of use. See 50 FR at 665. This provision correctly reflected the Agency's intent. The provision was amended in the course of codifying certain of the 1984 RCRA amendments, however, and this amendment (51 FR at 28744, July 15, 1985) inadvertently changed the meaning of the provision to say that these materials are wastes when recycled in any manner (because, under the July 15 amendment, the term "discarded" was no longer limited to its meaning of § 261.2(a)(2)(i)). EPA did not intend this change, 50 FR at 618, nor did the Congress (see, e.g. RCRA section 3004(q)(1), final sentence). Accordingly, we are correcting the rule by restoring the regulatory language that was inadvertently deleted from the January 4, 1985 rule.

2. Subpart C of Part 266 applies to hazardous wastes that are recycled by being placed on or applied to the land, a practice termed 'used in a manner constituting disposal.' The rules apply when hazardous wastes are applied directly to the land, and when hazardous wastes are first mixed or otherwise combined with any other substance (or substances) before being applied to the land. See § 266.20(a). The rules further indicate that certain waste-derived products that are placed on the land are not presently subject to regulation, namely those that are produced for the general public's use and that undergo a chemical reaction in the course of production so that the hazardous waste component is inseparable by physical means. See § 266.20(b). (Waste-derived fertilizers produced for the general public's use also are exempt. *Id.*)

These rules contain an unintended redundancy. Language in § 266.20(b), exempting certain waste-derived products from regulation, is also cited in § 266.20(a) which states the overall applicability of the section, and so applies not only to waste-derived products but also to the hazardous wastes themselves before being incorporated into the products. We are correcting the redundancy by removing the langauge exempting products from § 266.20(a), so that § 266.20(a) (as intended) sets out the jurisdictional applicability of Subpart C of Part 266, and § 266.20(b) sets forth exemptions from regulation (again, as intended). This change will not only remove redundant regulatory language but indicate more clearly that hazardous wastes are *always* subject to regulation prior to being used in a manner that constitutes disposal (*i.e.*, in the transportation and storage phases of management, even if a waste-derived products' actual application is presently exempt.) The Agency, in the preamble to the final rule, stated explicitly that such wastes are regulated before being incorporated into waste-derived products. See 50 FR 629/1 (Jan. 4, 1985).

II. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Since this notice makes technical corrections and does not change the previously approved final rule, this rule is not major and no Regulatory Impact Analysis is required.

List of Subjects in 40 CFR Parts 261 and 266

Hazardous material, Waste treatment and disposal, Recycling.

Dated: May 29, 1987.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. Section 261.33 is amended by revising the introductory paragraph to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in § 261.2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF WASTE MANAGEMENT FACILITIES

3. The authority citation for Part 266 continues to read as follows:

Authority: Sec. 1006, 2002(a), 3008, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6095, 6912(a), 6925, and 6934].

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

4. Section 266.20 is amended by revising paragraphs (a)(2) and by removing paragraph (a)(3) as follows:

§ 266.20 Applicability.

(a) * * *

(2) after mixing or conmbination with any other substance(s). These materials will be referred to throughout this subpart as "materials used in a manner that constitutes disposal."

* * * * *

[FR Doc. 87-12827 Filed 6-4-87; 8:45am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Public Land Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) in the Department of the Interior (DOI) is revising its rules at 43 CFR Part 4, Subpart E, by adding a provision to establish a 60-day limit on the filing of requests for reconsideration of decisions in public land appeals and to make clear that action on such a request does not affect the effectiveness of finality of the decision of which reconsideration is sought.

EFFECTIVE DATE: July 6, 1987.

FOR FURTHER INFORMATION CONTACT: James R. Kleiler, Attorney-Adviser, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203; Telephone: (703) 235-3750.

SUPPLEMENTARY INFORMATION:

I. Discussion of Rule

OHA published its proposed regulation concerning the reconsideration and finality of decisions of the Interior Board of Land Appeals (IBLA) on pages 36414-15 of the **Federal Register** of October 10, 1986, indicating that comments would be accepted through November 10, 1986. Five letters containing comments from the public were received.

Prior to the effective date of this rule, reconsideration of IBLA's decisions has been governed by 43 CFR 4.21(c). This regulation has presented two problems. First, it sets no definite time limitation on the filing of petitions for reconsideration; a petition had only to be "filed promptly." Because of the vagueness of this standard, IBLA has taken time to evaluate the merits of petitions that could have been summarily denied as untimely if a definite time limitation had been in effect.

The second problem presented by 43 CFR 4.21(c) concerns whether a decision issued by the Board constitutes final agency action, so that the filing and disposition of a request for reconsideration does not affect the finality of the decision for which reconsideration is sought. This is particularly important in actions for which Congress has enacted a statute limiting the time in which a suit for judicial review may be filed, such as 30 U.S.C. 226-2 (1982), which provides: "No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within ninety days after the final decision of the Secretary relating to such matter."

A court is the ultimate arbiter of its jurisdiction, but it is the responsibility of the agency to assist the court by indicating when its action is final and when it is not. Although 43 CFR 4.21(c) provides that IBLA decisions are final and that the "filing and pendency of a request for reconsideration shall not operate to stay the effectiveness of the decision," Federal courts have differed in their interpretations of this language. One court interpreted the quoted language as was intended by the Department: "The clear and imperative language of the regulation states that an IBLA decision is final for the purpose of beginning the . . . appeal period for judicial review unless a stay has been ordered by the Director or the Appeals Board." *Geosearch, Inc.* v. *Andrus*, 494 F. Supp. 978, 979 (D. Wyo. 1980). This view was adopted in *Geosearch, Inc.* v. *Hodel*, 801 F.2d 1250 (10th Cir. 1986), a case which involved the same plaintiff but a different oil and gas lease application. Nevertheless, a contrary view was set forth in *Lowey* v. *Andrus*, No. 79-3314 (D.D.C. July 28, 1980). Accordingly, the new rule makes it clear that the date of issuance of the decision of which reconsideration is sought is the effective date of final agency action, with the result that neither the filing of a request for reconsideration nor its denial will toll the time during which a party may seek judicial review of an IBLA decision.

II. Discussion of Comments

The proposed rule would have required petitions to be filed within 30 days after the date of issuance of an IBLA decision. Several comments have convinced us that this period is too short, especially in Alaska, where a decision might not be delivered until 10 days after issuance. One comment suggested that the 30-day period run from the date of receipt of the decision rather than the date of issuance. Other comments suggested extending the period to 60 or 90 days. The final rule provides that a petition for reconsideration shall be filed within 60 days after the date of a decision.

In response to another comment, we have added a provision that a petition for reconsideration may include a request that the Board stay the effectiveness of the decision for which reconsideration is sought.

This provision complements the penultimate sentence of the rule which makes clear that there is no stay unless so ordered by the Board.

One comment notes that the proposed rule retained the provision of 43 CFR 4.21(c) that limits reconsideration to "extraordinary circumstances where . . . sufficient reason appears." The comment recommends deletion of the phrase "extraordinary circumstances" and suggests that sufficient reason should be enough to justify reconsideration even if the circumstances are all quite common. Nevertheless, we have retained this provision because the Board does not intend to enlarge the scope of its reconsideration practice to make it a routine feature of adjudication. This provision reinforces the Board's expectation that parties will make complete submissions in a timely manner during the appeal, not afterward on reconsideration. This expectation is justified because almost all those who petition for reconsideration have already had two full opportunities to present their cases to the Department: once before the initial decisionmaker and again before the Board. In general, the Board does not give favorable consideration to a petition for reconsideration which merely restates arguments made previously or which contains new material with no explanation for the petitioner's failure to submit such material while the appeal was pending. Because parties recognize their obligations in this regard, relatively few petitions for reconsideration are ever filed. Even so, the Board rarely finds it necessary to grant them, and even more rarely reverses itself.

One comment suggests that the final regulation provide for responsive briefing to a petition for reconsideration. Because the Board rarely grants petitions for reconsideration, we see no reason why adverse parties should

consider it necessary to file a response whenever a peititon for reconsideration is filed. The final rule provides that no answer to a petition for reconsideration is required unless so ordered by the Board. Ordinarily, however, the Board does not consider granting a petition until answers have been solicited and received.

One comment suggests that in order to make it clear that the reconsideration process is not to be protected by a succession of filings, the final rule should make clear that the petition shall, *at the time of its filing,* state with particularity the error claimed and include all arguments and supporting documents. This suggestion is adopted.

Several comments suggest that the Board's decision remain inoperative during the period in which a petition for reconsideration could be filed. We recognize that petitioners may feel some uncertainty that a deadline for judicial review might expire or that BLM might implement the Board's decision before a petition is considered, but this uncertainty is no greater than under the existing regulation. *See, e.g., Geosearch, Inc.* v. *Hodel,* 801 F.2d 1250 (10th Cir. 1986); *see also Winkler* v. *Andrus,* 614 F.2d 707, 709 (10th Cir. 1980). Moreover, any such uncertainty can be readily resolved by the petitioner himself. As noted in one comment from an attorney in private practice submitted in support of the proposed rule, most prudent practitioners would, even without the revised regulation, treat the Board's decision as final and file petitions for judicial review accordingly.

Furthemore, implementation of the above suggestion would be contrary to the motivating purpose of this rulemaking. Its adoption would require delaying the efficacy or finality of all of IBLA's decisions, a result which cannot be justified to accommodate the rare case in which delay may be advisable. Although the Board does not preclude parties from filing petitions for reconsideration, the Board does not wish the reconsideration process to become a device for merely protracting administrative litigation.

One comment suggests that if the rule is promulgated as proposed, IBLA adopt an internal policy to expedite action on petitions for reconsideration in order to minimize the possibility of unnecessary and costly Federal lawsuits. We have not revised the rule to establish a time limit for the consideration of petitions for reconsideration, but the Board does seek to give prompt consideration to such requests.

III. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined this rule according to the criteria of Executive Order 12291 [Feb. 17, 1981] and has determined that it is not major and does not require a regulatory impact analysis because the rule only concerns the reconsideration and finality of IBLA decisions.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* that this rule will not have a significant economic effect on a substantial number of small entities because the rule simply concerns the reconsideration and finality of IBLA decisions.

National Environmental Policy Act

The DOI has determined, on the basis of the categorical exclusion of regulations of a procedural nature set forth at 516 DM 2 Appendix 1, § 1.10, that this rule will not significantly affect the quality of the human environment.

Drafting

This rule was drafted by James R. Kleiler, an attorney-adviser with the Interior Board of Land Appeals in OHA.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure.

Dated: April 6, 1987.

Earl Gjelde,

Chief Operating Officer.

Accordingly, 43 CFR Part 4, Subpart E, is amended as follows:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The authority citation for Part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

2. Section 4.403 is added to 43 CFR Part 4, Subpart E, to read as follows:

§ 4.403 Finality of decision; reconsideration.

A decision of the Board shall constitute final agency action and be effective upon the date of issuance, unless the decision itself provides othewise. The Board may reconsider a decision in extraordinary circumstances for sufficient reason. A petition for reconsideration shall be filed within 60 days after the date of a decision. The petition shall, at the time of filing, state with particularity the error claimed and include all arguments and supporting documents. The petition may include a request that the Board stay the effectiveness of the decision for which reconsideration is sought. No answer to a petition for reconsideration is required unless so ordered by the Board. The filing, pendency, or denial of a petition for reconsideration shall not operate to stay the effectiveness or affect the finality of the decision involved unless so ordered by the Board. A petition for reconsideration need not be filed to exhaust administrative remedies.

[FR Doc. 87-12814 Filed 6-4-87; 8:45 am]

BILLING CODE 4310-79-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-281; FCC 86-79]

Nighttime Operation on Canadian, Mexican and Bahamian AM Clear Channels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In its February 3, 1986, action on reconsideration, the FCC revised the rules governing the operation of daytime-only stations during nighttime hours on the foreign clear channels: 540 kHz, 690 kHz, 730 kHz, 740 kHz, 800 kHz, 860 kHz, 900 kHz, 990 kHz, 1010 kHz,, 1050 kHz, 1220 kHz, 1540 kHz, 1570 kHz, and 1580 kHz. This action provides requisite domestic implementation of revised agreements between the United States and neighboring countries. It will permit expanded operation, by U.S. daytime-only AM radio broadcast stations, during nighttime hours, on the 14 above-listed channels.

DATES: The effective date of this action was March 24, 1986. Despite the delay in the **Federal Register** publication of this action, there is no need to alter the dates mentioned in § 73.3571(d)(4) (i) through (iii) as they relieve an earlier restriction.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, FCC, (202) 254-3394.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order (Proceeding Terminated)

Adopted: February 3, 1986.
Released: February 21, 1986.

By the Commission:

1. The Commission has before it petitions for reconsideration of the *Report and Order* in this proceeding (50 FR 24515, Public June 11, 1985), filed by Chabin Communications Corporation ("CCC") and by Communications Investment Corporation ("CIC"). Neither petition disputes the basic judgments made by the Commission in this proceeding regarding the nighttime use of the foreign clear channels. Rather, as set forth below, CCC and CIC seek reconsideration of only limited aspects of the decision.

2. The Commission's *Notice of Proposed Rule Making* in this proceeding proposed additional nighttime operations on the group of 14 AM frequencies which, under international agreements, had been designated as Canadian, Mexican or Bahamian Class I–A Clear Channels.[1] Under the North American Regional Broadcasting Agreement ("NARBA") the nighttime use of Canadian Clear Channels within 650 miles of the border with Canada and the use of the Bahamian Clear Channel anywhere within 650 miles of any point in the Bahamas has been precluded. The 1968 Bilateral Agreement with Mexico was even more restrictive. It precluded the nighttime use of the Mexican Clear Channels anywhere in the United States. However, new agreements which had been or were being negotiated were expected to remove these barriers to nighttime operations. With this in mind, the Commission sought comments on how best to use this soon-to-be-available spectrum.

3. The *Notice of Proposed Rule Making* suggested treating these foreign clear channels in much the same way as the Commission had treated the U.S. Clear Channels some five years earlier. There the Commission permitted additional nighttime operations on frequencies, some of which had been reserved for the exclusive use of the Class I–A station on the channel. Proposals for such new nighttime operations were acceptable for filing if they met applicable interference criteria and could demonstrate service to unserved or underserved areas or communities or the application was filed by a minority or noncommercial applicant. A substantial number of such applications had been filed on the U.S. Clear Channels. In anticipation of a similarly large number of filings for these channels, the Commission proposed the use of similar application acceptance criteria. Nonetheless, comments also were invited on alternative approaches on how to use this spectrum.

4. By far the greatest expression of interest came from existing daytime-only stations on the foreign clear channels who urged the Commission to use this opportunity to authorize nighttime operation for their stations. However, these operators opposed the acceptance criteria proposed by the Commission since their use would preclude many of these daytime-only stations from being able to file for nighttime operation. The National Black Media Coalition ("NBMC"), on the other hand, argued that there continued to be unmet need for minority-owned stations and that the Commission should use this opportunity to respond to this need. For this reason, it urged the Commission to employ the same acceptance criteria as it had adopted in the domestic clear channel proceeding. Several parties, however, questioned whether there would be significant opportunities for new stations on these frequencies.

5. In responding to the questions presented, the Commission began by determining the potential of these frequencies for additional nighttime use. As noted in the *Report and Order*, this determination was a product of extensive studies in which the Commission calculated the preclusive effect of the existing stations on these frequencies. This process consisted of examining the effect of the existing stations on these frequencies to determine if space were available to establish new stations without causing prohibited interference. Essentially, the process employed by the Commission was as follows: Using standard computer programs, the Commission depicted the protected daytime contours of all existing stations on each channel in question as well as on the first adjacent channels above and below the channel. This involved computing and then plotting the contours of hundreds of stations which were superimposed on one another to show the areas in which new stations could not be established because any such station would necessarily involve prohibited overlap with existing co-channel or first adjacent station operations.[2]

6. These studies established that as a result of the extensive daytime use of these foreign clear channels by existing broadcast stations, there would be few opportunities for the establishment of new full-time stations. Moreover, most of these opportunities would arise in the more remote areas of the country. This finding corroborated comments to the same effect submitted by a number of parties to the proceeding.[3] With this in mind, the Commission developed a method for providing nighttime operation by existing daytime-only stations. Under the rules adopted by the Commission, all daytime-only stations were to be given an opportunity to operate at night with a maximum power of 500 watts with their existing daytime antenna systems, reduced as necessary to avoid interference to existing foreign and domestic fulltime stations on these channels.[4] Those not obtaining 500 watts would be able to file for higher power up to the 500 watt limit so long as they modify their facilities to provide full protection. After five years, the limit is raised to 1000 watts, but protection is to be provided to all stations (including former daytime-only stations which operate at night with a power of 250 watts or more).

7. The Commission also made provision for the establishment of new stations in those few areas where it was possible. These, too, were subject to the power limit of 500 watts and also could increase to the 1000 watts level after expiration of the five-year period. Initially, the Commission contemplated the use of application acceptance criteria to foster the filing of applications in the areas of the country

[1] The North American Regional Broadcasting Agreement designates seven frequencies (540 kHz, 690 kHz, 740 kHz, 860 kHz, 990 kHz, 1010 kHz, and 1580 kHz) as Canadian Clear Channels and one frequency (1540 kHz) as a Bahamian Clear Channel. The 1968 United States/Mexican Bilateral AM Agreement designates seven frequencies (540 kHz, 730 kHz,800 kHz, 900 kHz, 1050 kHz, 1220 kHz and 1570 kHz) as Mexican Clear Channels. Because the frequency 540 kHz appears on both the Canadian and Mexican lists, the total of frequencies involved is 14.

[2] Although these computer-derived maps showed the applicable station contours, they were not released because they were not in a readily understandable form. Instead, in order to exemplify the results, the Commission prepared a simpler version reflecting the same information and included it as Appendix C to the *Report and Order*. Because of the interest which has been expressed in these calculations, we are releasing the draft material from which Appendix C was derived.

[3] *See, e.g.*, comments submitted by Associated Communications Corporation and United Broadcasting Company of Eastern Maryland, Inc.; du Treil-Rackley; and National Radio Broadcasters Association.

[4] Stations operating with less than 500 watts during the day were limited to that power at night as well. The Commission is to calculate the power and to advise the station of this power. Unless the station objects, its license is to be modified to specify nighttime operation at this power. Notifications have been sent to all stations on the Canadian channels, and will be sent to the stations on the Bahamian and Mexican Clear Channels as soon as the necessary agreements are in place.

that lacked adequate service or where the application was filed by a minority or noncommercial applicant. As indicated earlier, however, the Commission's studies, and the evidence submitted, showed that few opportunities for the establishment of new stations were possible. Moreover, most of these opportunities were in unserved and underserved areas as a result of the substantial number of existing stations already operating on the foreign clear or adjacent channels. Accordingly, the Commission concluded that there was no *need* to channel growth to these areas through adoption of the non-technical criteria applicable to service in underserved areas in the foreign clear channel proceeding. The studies indicated that few, if any, opportunities were available for establishment of new stations outside of unserved or underserved areas. Thus, the Commission concluded that these foreign clear channels did not offer a meaningful opportunity for minority or noncommercial applicants to bring new radio services to well-populated areas through the creation of new full-time stations.[5] In short, the Commission's action found that application of the Commission's non-technical acceptance criteria to the foreign clear channels was not necessary to promote growth to unserved or underserved nor would establishment of special provisions for minorities measurably serve to create new full-time radio opportunities for minorities in well-served areas.

Discussion

8. Before we address the matters raised by the instant petitions for reconsideration, we believe it is necessary to clarify the original *Report and Order*. On April 12, 1985, NBMC filed a petition for review challenging the Commission's action. *National Black Media Coalition v. FCC, appeal docketed*, No. 85–4121, 2d Cir. Although it has declined to file a petition for reconsideration in this proceeding, NBMC, in its appeal, has alleged, *inter alia*, that the Commission's studies as depicted by Appendix C clearly show that new stations can be established in well-populated areas. It should be emphasized, however, that Appendix C was not intended to show conclusively where stations could be established. Rather, they depicted the areas where stations could *not* be established because of co-channel and first adjacent channel limitations. In addition to these restrictions, there are second and third adjacent channel limitations which also form a part of the interference rules under § 73.37. Although we did not expressly state this in our *Report and Order*, these nighttime protection requirements go beyond co-channel and first adjacent channel limitations and include consideration of second and third adjacent channel requirements regarding the establishment of new stations. In doing the calculations mentioned earlier, we foresaw no need to study the second and third adjacent channels because the striking results of the studies performed on co-channel and first adjacent channels indicated that opportunities for establishment of new stations were very limited in number and would be even further circumscribed if the additional studies were performed. However, these additional studies would have required adding four channels to be studied for each channel in question. These studies were not undertaken because they would have required substantial resources and, as indicated above, would have added very little to the final conclusions reached.[6]

9. Turning to the petitions for reconsideration filed herein, we note that they raise two relatively simple issues. The CCC petition seeks clarification regarding the obligation of former daytime-only stations to provide adjacent channel protection during their new nighttime operation. CCC objects to any abandonment of such protection requirements. We can assure it that no such change was contemplated by the Commission. The CIC petition deals with the situation faced by station KALL in Salt Lake City. It operates on 910 kHz, one channel removed from 900 kHz, one of the Mexican Clear Channels. CIC points out that it operates with a directional antenna which was designed to meet service requirements of the 1940's and which has remained essentially unchanged since then. Apparently, this antenna does not permit the station to serve the additional population in areas both north and south of the station. According to CIC, no cure for this problem is possible on the station's current frequency. Thus, it urges the Commission to permit it to change frequency to 900 kHz and to allow it to operate with 1000 watts at night. According to CIC, doing so would not preclude the other possible uses of 900 kHz contemplated by the Commission.

10. Our review of the CIC request has caused us to reevaluate that part of the *Report and Order* where we concluded that it would be appropriate to permit existing daytime-only stations which operate on one of the foreign clear channels to propose use of another such channel but concluded against allowing other stations to move to a foreign clear channel for fear that it might disrupt effective use of these frequencies at night. We do not believe special provision should be made to allow existing daytime-only stations on a foreign clear channel to change to another such channel. As the comments and the studies show, for the most part, the opportunity to change from one foreign clear to another would exist only in the remote areas where new stations could be establised. Thus, because of its limited utility, this special provision does not appear to be necessary. Moreover, because ample opportunity already has been provided for these stations to improve their facilities on their current channels, little additional benefit is provided by allowing such channel changes.

11. By the same token, however, we believe that a *permanent* prohibition on channel change applications by all other stations would be overly broad. In our view the best way to deal with this

[5] In *Report and Order in MM Docket No. 85–39 (In the Matter of Deletion of AM Application Acceptance Criteria in § 73.37(e) of the Commission's Rules*, FCC 85–586 (released December 12, 1985), the Commission deleted the non-technical acceptance criteria for AM stations including the special provisions for the acceptance of minority or noncommercial applications on the 25 U.S. I–A clear channels. However, as indicated in that *Report and Order*, at para. 25, our action did not affect the preference or enhancement factor minorities may receive in a comparative license proceeding for integration of minority ownership into the overall management of a station. Nor does our action here directly affect that preference.

[6] However, because it is a relatively easy administrative chore to determine whether a new station can be established in a particular location without interference as opposed to performing the elaborate studies necessary to show where these few new stations *might* be possible, we have undertaken an examination of all the areas where, NBMC alleges, new stations can be located. As indicated above, although establishment of these stations would not be precluded based upon the analysis depicted in Appendix C by co-channel and first adjacent considerations, they would be precluded by the second or third adjacent channel requirements under the interference rules in § 73.37 if NBMC had properly taken them into account. Thus, these second and third adjacent calculations establish that 540 kHz is not available in El Paso, Texas, or San Diego, California. Similarly, 740 kHz is not available in Seattle, Washington, nor is 1050 kHz available in El Paso or Bakersfield, California. Likewise, 1580 kHz is not available in Santa Rosa, California, in Minneapolis, Minnesota, or in Buffalo, Syracuse, or Rochester, New York, or in Boston, Massachusetts, or Salt Lake City, Utah. Although we cannot, and do not, rule out completely some possibility for new full-time stations in well-populated areas if a complete study of all the additional channel adjacencies were performed, we believe we can say with a very high degree of enginering confidence that, realistically, the opportunities for such stations is exceedingly small.

situation is to allow during an initial two-year period only proposals for new stations or power increases by existing daytime-only stations already operating on foreign clear channels. A two-year prohibition on channel changes will permit us to focus on the categories of applications for which there is the greatest need. Under this arrangement, daytime-only stations would be given ample opportunity to improve their facilities, a major purpose underlying the new rules, but, at the end of the two-year period, applications for channel changes by any station meeting applicable interference criteria could be accepted. However, it should be emphasized that these filings would be subject to the same terms and conditions as apply to the former daytime-only stations or the newly established stations on these frequencies. This means that they must provide full protection to existing foreign and domestic full-time stations and that nighttime power cannot exceed 500 watts. If the station's current power exceeds 500 watts, it must reduce its power to this level. In addition, any such proposal must be filed with the understanding that the station will not be given nighttime protection during the remainder of the five-year implementation period specified by the rules. Therefore, even if the station had such protection on its current channel, it will not be given nighttime interference protection against proposals for new stations or power increases by existing stations on its new channel. Finally, as with new applicants on these frequencies, a minimum nighttime power of 250 watts is to be specified, but city coverage requirements will not apply at night.[7]

12. While this arrangement does not provide an immediate answer to CIC's request, it can be expected to offer relief in the near future if the allocation situation is as CIC describes. The only other way to act on such requests earlier would be through waiver requests, but that would require the Commission to conduct an extensive *ad hoc* study for every request that was filed. Such a procedure would be time consuming and would introduce an unacceptable burden on applicant and Commission alike. Thus, it is preferable to follow a system which provides the certainty of being able to file acceptable proposals in the future while at the same time protecting the basic purposes for which the rule itself was developed.[8]

13. Accordingly, it is ordered that the above petitions for reconsideration are granted to the extent indicated and in all other respects are denied.

14. It is further ordered, that, pursuant to section 4(i), 303 and 307(b) of the Communications Act of 1934, as amended, the Commission's rules are amended as set forth below.

15. It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

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

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

2. Section 73.21 is amended by revising paragraphs (a)(2)(iii)(B) to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

(a) * * *

(2) * * *

(iii) * * *

(B) Class II–C stations authorized after June 3, 1985, on the 14 channels listed in § 73.25(c) or which operate for the first time on one of such channels after that date.

* * * * *

3. Section 73.3571 is amended by revising paragraph (d)(4) to read as follows:

§ 73.3571 Processing of AM Broadcasting stations applications.

* * * * *

(d) * * *

(4) Special procedures apply to the 14 frequencies listed in § 73.25(c). The same procedures will be applied to each of the three frequencies or group of frequencies which are included in the above category. There are three stages to these procedures. In the first Stage, each Class II–D station will receive an Order to Show Cause why its license should not be modified to specify operation at night with the power calculated by the Commission and as shown on said Order. Stations accepting this modification will be redesignated as Class II–C if the nighttime power is 0.25 kW or more or as Class II–S if that power is below 0.25 kW. During Stage two, stations in both groups will be given five years within which to file an application to increase this power to a maximum of 0.5 kW or their daytime power, whichever is lower. During the entire period, applications for new Class II–C stations with power up to a maximum of 0.5 kW also can be filed and will be granted without regard to the nighttime interference caused to other Class II–C or the Class II–S stations, but new Class II–C stations will be required to protect foreign and domestic Class II–B full-time stations on these frequencies. In addition, after two years of the five-year period have elapsed, applications for major changes proposing to change channel to one of these frequencies will be accepted for filing. Such applications must meet all requirements and limitations applicable to Class II–C stations and will not receive nighttime protection until expiration of the five-year period. Finally, in Stage three, which occurs when the five-year period above comes to an end, Class II–C and II–S stations will be able to file applications to increase their nighttime power to 1 kW or their daytime power, whichever is lower. Applications for new Class II–C stations can also be filed specifying a maximum nighttime power of 1 kW. However, any application in either category must protect existing Class II–C stations (including Class II–S stations that increased power during Stage two and were redesignated as Class II–C during this period). The five-year periods of Stage two applicable to the three groups of frequencies are set forth below:

(i) 690 kHz, 740 kHz, 860kHz, 990kHz, 1010kHz, and 1580kHz: Stage 2 begins on June 3, 1985 and ends on May 31, 1990; Stage 3 begins on June 1, 1990.

(ii) 1540 kHz [to be established]

(iii) 540 kHz, 730 kHz, 800 kHz, 900 kHz, 1050 kHz, 1220 kHz, and 1570 kHz,: Stage 2 begins on August 28, 1986 and ends on August 27, 1991; Stage 3 begins on August 28, 1991.

* * * * *

[FR Doc. 87–12704 Filed 6–4–87 8:45 am]

BILLING CODE 6712–01–M

[7] Because so few existing stations would be able to change to a foreign clear channel, we believe that the additional constraints that these stations might place on ability of former day-time only stations to improve their facilities on foreign clear channels should be minimal.

[8] Because of a delay in publication in the **Federal Register**, our *Report and Order*, and the rules adopted thereunder, became effective on July 11, 1985, rather than upon the June 3, 1985, date we had specified in our *Report and Order*. However, to avoid confusion over this matter, we have decided to continue use of the June 3, 1985 date specified in the *Report and Order* for purposes of computing the two year and five year interim periods prescribed herein. In all other respects, the effective date in changed to July 11, 1985. Thus, any applications filed prior to July 11, 1985, will be processed under the previous rules.

Proposed Rules

Federal Register
Vol. 52, No. 108
Friday, June 5, 1987

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-15-AD]

Airworthiness Directives; Beech 65, 70, 80, 88, 90, 99, 100, 200, 300 and 1900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Beech 65, 70, 80, 88, 90, 99, 100, 200, 300 and 1900 Series airplanes which would require repetitive inspections of the nose landing gear fork assembly to detect fatigue cracking. Reports have been received of cracks developing in the nose landing gear fork around the edge of the weld. The inspection specified in this proposed action will detect critical cracks prior to failure.

DATES: Comments must be received on or before September 1, 1987.

ADDRESSES: Beech Service Bulletin No. 2102, Revision I, dated April 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 672001-0085; Telephone (316) 681-9111. This information may be examined at the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-15-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. Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-15-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received an increasing number of reports of cracks developing in the nose landing gear (NLG) fork around the edge of the weld on Beech 90, 100, 200, and 300 airplanes. In February 1985, the NLG fork broke on a Model 200 during ground roll, causing severe damage to the airplane. All the Beech airplanes in the "heavy twin" series utilize the same NLG design. This design uses a welded fork assembly which connects the lower strut to the axle. The fork is a curved tube which is welded to a collar, which is pressfitted on the strut tube. In July 1986, Beech issued Service Bulletin No. 2102, of which Part II pertains to cracking of the NLG fork. Part I of the Bulletin pertains to slippage of the joint where the fork collar is pressed onto the strut tube.

Beech has issued Revision I to Service Bulletin No. 2102, dated April 1987, which eliminates the time period before initial inspection, expands the serial number effectivity, and reduces the allowable crack length from 1.25 inch to 0.75 inch. Beech is also developing an improved NLG fork which will be more fatigue resistant. The improved forks will not be available in quantity for quite some time, so inspections per the revised bulletin must be relied on to ensure safety in the interim period.

Since the condition described is likely to exist or develop in other Beech 65, 70, 80, 88, 90, 100, 200, 300 and 1900 Series airplanes of the same design, the AD would require inspection of NLG forks per Beech Service Bulletin No. 2102, Revision I, dated April 1987. If a crack along the edge of the weld is found to exceed 0.75 inch length, the NLG fork must be replaced with a serviceable part prior to further flight. When the improved NLG fork is available, the AD, if issued, may be amended at a later date to permit installation of the new improved fork in lieu of the repetitive inspections. The FAA has determined there are approximately 4,200 airplanes affected by the proposed AD. The cost of inspecting these airplanes as required by the proposed AD is estimated to be $2,250.00 per airplane over the life of the airplane. The total cost of this inspection is less than the threshold for a significant economic impact.

Therefore, I certify that this action: (1) Is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

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

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:

Beech: Applies to all Models 65, 65-80, A65, A65-8200, 70, 65-A80, 65-A80-8800, 65-B80, 65-88, 65-90, 65-A90, 65-A90-1, 65-A90-2, 65-A90-3, 65-A90-4, B90, C90, C90A, E90, H90, F90, 100, A100, B100, 99, 99A, A99A, B99, C99, 200, 200C, 200CT, 200T, A200, A200C, A200CT, B200, B200C, B200CT, B200T, 300, 1900, and 1900C (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the nose landing gear (NLG) fork due to undetected fatigue cracking, accomplish the following:

(a) Within 200 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS for airplanes in the 65 Series, 70 Series, 80 Series, 99 Series and 1900 Series, and 150 hours TIS for airplanes in the 90 Series, 100 Series, 200 Series and 300 Series, inspect the NLG fork using fluorescent penetrant method in accordance with the instructions in Part II of Beech Service Bulletin No. 2102, Revision I, dated April 1987.

Note.—Inspection for slippage of the NLG fork collar on the strut tube per Part I of the Service Bulletin is recommended but not required by this AD.

(1) If no cracks are found, the airplane may be returned to service.

(2) If a crack is detected at the tip of the weld, is not more than 0.75 inches in length, and does not branch out into the unwelded tube wall (See Figure 1 of Figure 2 as applicable), thereafter at intervals not to exceed 25 hours TIS, inspect the NLG fork per paragraph (a) above until replaced with a serviceable part. The replacement part is immediately subject to the conditions of this AD.

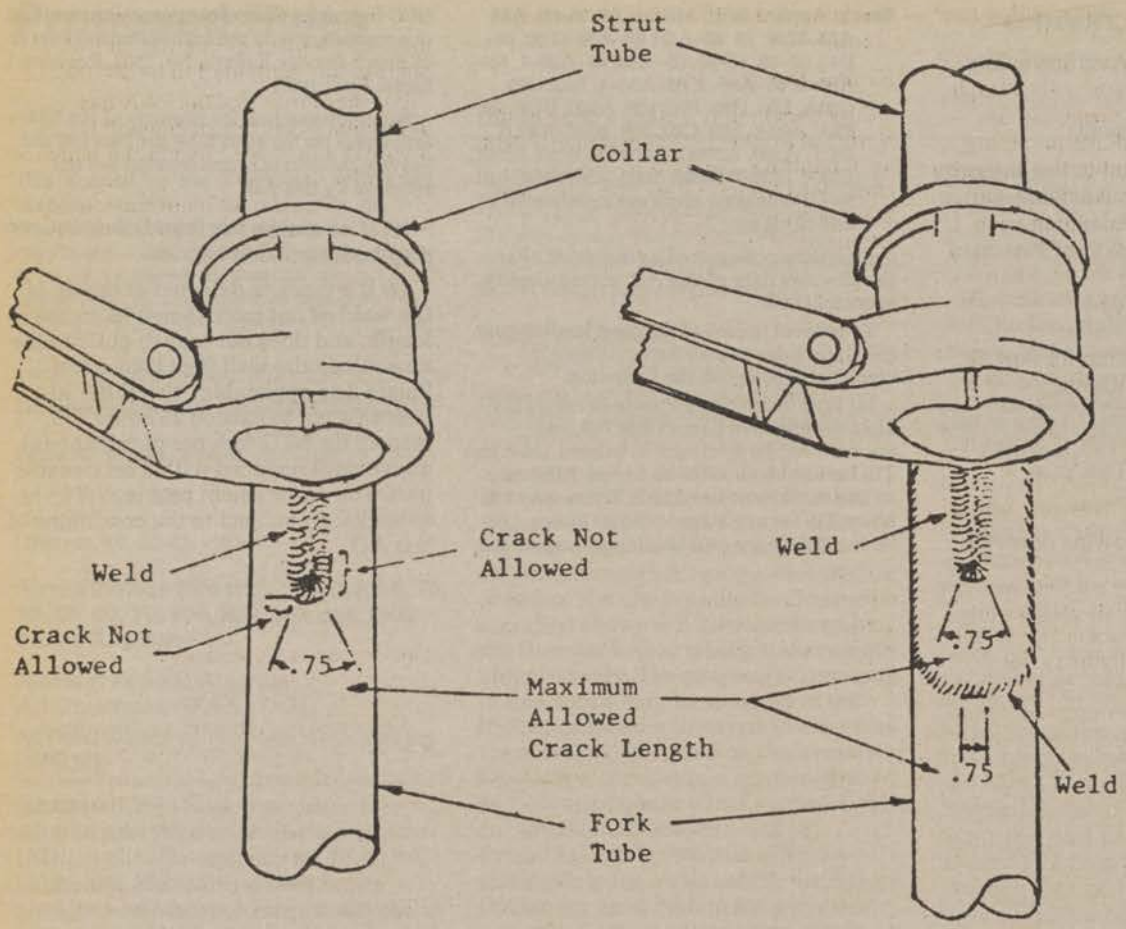


FIGURE 1 FIGURE 2

Left Side Views of Nosegear Fork Assembly
Two Configurations Currently in Use

(3) If a crack is detected that exceeds the limits of paragraph (a)(2), prior to further flight, replace the NLG fork with a serviceable part. The replacement part is immediately subject to the conditions of this AD.

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

(c) The repetitive inspection intervals required by this AD may be adjusted up to 10 percent of the specified interval so as to coincide with other scheduled maintenance.

(d) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine the documents referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 19, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87-12787 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

(Docket No. 87-NM-48-AD)

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require replacement of the original main landing

gear (MLG) downlock crank with a new steel part, and inspection and replacement, if necessary, of the MLG manual extension support yoke attach bolts. This proposal is prompted by several reports of incidents involving difficulty in properly extending the main landing gear, and a recent re-evaluation of the MLG lock system, which identified a history of failure of certain components. Failure of the aluminum MLG downlock crank or MLG manual extension support yoke attach bolts could lead to the inability to properly extend the MLG, which could result in wheels-up landing.

DATES: Comments must be received not later than July 27, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-48-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-48-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Following several reported incidents involving difficulty in properly extending the main landing gear (MLG) on Boeing Model 727 series airplanes, a re-evaluation of the MLG lock system was conducted by the FAA. That evaluation identified two components of the MLG assembly that have a history of failure: The aluminum MLG downlock crank and the MLG manual extension support yoke attach bolts. Failure of these components has been responsible for the inability to properly extend the main landing gear. This condition, if not corrected, could result in a wheels-up landing.

Boeing Service Bulletins 727-32-237, Revision 3, dated September 19, 1980, and 727-32-286, Revision 1, dated December 12, 1980, describe procedures for replacement of the aluminum MLG downlock crank with stronger steel cranks. On aircraft that have a main landing gear door safety bar installed, in accordance with Boeing Service Bulletin 727-32-275, dated March 28, 1980, it is possible to safely extend the landing gear after failure of the aluminum MLG downlock crank. Therefore, aircraft that have been modified by the installation of the safety bar would not be required to install the steel MLG downlock crank.

Boeing Service Bulletin 727-32-251 dated March 11, 1977, describes procedures for inspection and replacement, if necessary, of the MLG manual extension support yoke attach bolts with larger bolts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the installation of the steel MLG downlock crank and inspection and replacement, if necessary, of the MLG manual extension support yoke attach bolts in accordance with the previously mentioned Boeing service bulletins.

It is estimated that 100 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts is estimated to be $250 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $65,000.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes through Line Number 1607, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent main landing gear (MLG) failure to extend properly as a result of structural failure in the lock system, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 727-32-251, dated March 11, 1977: Within the next 3,000 landings after the effective date of this AD inspect the MLG manual extension support yoke attach bolts (2 on each gear) for size and condition and replace with larger bolts, if necessary, in accordance with Boeing Service Bulletin 727-32-251, dated March 11, 1977, or later FAA-approved revision.

B. For airplanes listed in Boeing Service Bulletin 727-32-237, Revision 3, dated September 19, 1980, that have not been modified in accordance with Boeing Service Bulletin 727-32-275, dated March 28, 1980, or later FAA-approved revisions: Prior to the accumulation of 25,000 landings or within one year after the effective date of this AD, whichever occurs later, replace the aluminum MLG downlock cranks with new steel cranks

in acordance with Boeing Service Bulletin 727-32-237, Revision 3, dated September 19, 1980, or later FAA-approved revision.

C. For airplanes listed in Boeing Service Bulletin 727-32-286, Revision 1 dated December 12, 1980, that have not been modified in accordance with Boeing Service Bulletin 727-32-275, dated March 28, 1980, or alter FAA-approved revisions: Prior to the accumulation of 25,000 landings or within one year after the effective date of this AD, whichever occurs later, replace the aluminum MLG downlock cranks with new steel cranks in accordance with Boeing Service Bulletin 727-32-286, Revision 1, dated December 12, 1980, or later FAA-approved revision.

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

E. Special flight permtis may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections an/or modifications required by this AD.

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

Issued in Seattle, Washington, on May 26, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-12788 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-15]

Establishment of Glendale, AZ, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a control zone at Glendale, Arizona. This will provide controlled airspace for aircraft on instrument flight rules (IFR) flight plans and allow special VFR operations when visibility is less than 3 statute miles.

DATES: Comments must be received on or before July 15, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 87-AWP-15, Air Traffic Division, P.O. Box 90027, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the 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 identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge recept of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closng 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 the 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 § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone at Glendale, Arizona. Sections 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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, Control zones.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.17 [Amended]

2. Section 71.171 is amended as follows:

Glendale, Arizona [New]

Within a 3-mile radius of Glendale Municipal Airport (lat. 33°31'38" N., long. 112°17'40" W.) excluding that portion west of a line beginning at lat. 33°34'03" N., long. 112°16'14" W. to lat. 33°33'00" N., long. 112°18'05" W. to lat. 33°29'32" N., long. 112°19'25" W. This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport-Facility Directory.

Issued in Los Angeles, California, on May 19, 1987.

James Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-12789 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Proposed Rules Regarding Fees Under the Freedom of Information Act

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains Proposed Fee Rules which would implement certain provisions of the Freedom of Information Reform Act of 1986, Pub. L. 99-570, in accordance with guidelines published by the Office of Management and Budget (52 FR 10012 March 27, 1987)) and by the United States Department of Justice. The proposed fee rules amend § 201.20 of the Commission's Rules of Practice and Procedure, 19 CFR 201.20. The proposed rules establish standards for the imposition of review, search and duplicating fees for FOIA requests.

DATES:

Public Comment period: Public comment on the proposed rules is requested. The proposed rules shall be subject to public comment for thirty (30) days following June 5, 1987, after which time the Commission shall review the public comments and publish final rules.

ADDRESS: Comments must be filed with the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons, III, Esq., Office of the General Counsel, telephone 202-523-0493. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986, Pub. L. 99-570, requires agencies to adopt rules regarding fees to be charged for requests for documents under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and for the waiver of fees in accordance with provisions of the Freedom of Information Reform Act. In accordance with the statutory requirements, the Commission has promulgated proposed rules for public comment that provide for the assessment and collection of the full allowable direct costs for FOIA requests.

PART 19—[AMENDED]

1. The authority citation for Subpart C of 19 CFR Part 201 is revised to read as follows:

Authority: The Freedom of Information Act, 5 U.S.C. 552, as amended.

2. It is in proposed to revise § 201.20 to read as follows:

§ 201.20 Fees.

(a) *Definitions.* For purposes of these rules, the following definitions shall apply:

(1) All the terms defined in the Freedom of Information Act (FOIA) shall apply. For purposes of these rules the term Act refers to the FOIA.

(2) The term "direct costs" means those expenditures which the Commission actually incurs in searching for and duplicating (and in the case of commercial use requesters, reviewing) documents to respond to a FOIA request.

(3) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(4) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(5) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise propare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(6) The term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Secretary will determine the use to which a requester will put the documents requested. If the Secretary has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Secretary will seek additional clarification before assigning the request to a specific category.

(7) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(8) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(6) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(9) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations, broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news" who make their products available for purchase or subscription by the general public). These examples are not intended to be all-inclusive. Moreover as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the

clearest proof, but the Secretary may also look to the past publication record of a requester in making this determination.

(b) *Fees to be charged*—(1) *General Requirements.* (i) The Secretary will determine the full allowable direct costs incurred by the Commission to process a request for documents under the FOIA, and will assess and recoup the full allowable direct costs in accordance with the statute. The Secretary will determine and use the most efficient and least costly method to process a request for documents.

(ii) The Secretary will assess charges for processing of each request for information. The Secretary will determine the time spent searching and reviewing documents and will assess charges for such search and review when no records are located within the scope of the request or when located records are determined to be exempt from disclosure.

(2) *Record Search, Review and Duplication*—(i) *Manual Search for Records.* The charge for actual search time will be computed at a rate of $12.00 per hour for agency personnel at grades GS–2 through GS–10 and a rate of $24.00 per hour for agency personnel at grades GS–11 and above. Charges will be computed in quarter hour increments.

(ii) *Computer Search for Records.* The charge for actual direct cost of computer searches will be assessed. Charges for computer operating time directly attributable to the search for records will be computed at a rate of $5.00 per computer minute. Costs for operator/programmer time will be computed as listed in paragraph (b)(2)(i) of this section.

(iii) *Review of Records.* Commercial use requesters shall be charged for the time spent in the initial review of records to determine if a specific exemption under the statute is applicable to a particular record or portion of a record. The charge for actual review time will be computed at as listed in paragraph (b)(2)(i) of this section.

(iv) *Duplication of Records.* The Secretary will assess the actual direct cost for the duplication of records as follows:

(A) The charge for reproduction, duplication or copying of paper records by the Commission will be $.10 per page.

(B) The charge for reproduction, duplication or copying of microfilm or microfiche records will be $.50 per piece.

(C) The charge for reproduction, duplication or copying of computer tapes will be $25.00 per tape.

(3) *Computing Charges.* The Secretary will compute the charge for search, review and duplication of records in accordance with the requirements of the FOIA, as follows:

(i) In accordance with the provisions of subsection (a)(4)(A)(ii) of the Act, the Commission will charge commercial use requesters for the full direct costs of search, review and duplication of records. The Commission will charge educational and non-commercial requesters and representatives of the news media the costs for duplication of records. The Commission will charge all other requesters full direct costs for search and duplication of records.

(ii) In accordance with subsection (a)(4)(A)(ii)(II) or (III) of the Act, for any FOIA request described under those provisions, no fee will be charged by the Commission for the first two hours of search time or for the first one hundred pages of duplication of paper records, or the number of pieces of microfilm or microfiche, or computer tape equivalent to one hundred pages of paper records.

(iii) The Commission has determined that the cost of routine collection and processing of fees is $25.00 and accordingly, no charge will be imposed when the total charge for search, review and/or reproduction of records does not exceed $25.00

(4) *Requests for Records.* (i) In addition to the requirements of § 201.17 of subpart C, requests for records must reasonably describe the records sought.

(ii) Requests shall indicate into which of the four identified categories of requesters (commercial use requester, educational and non-commercial scientific institution requester, representative of the news media, or other requester) the person making the request is to be categorized for the purpose of charging fees.

(iii) The Secretary will determine the use to which a requester will put the requested documents for the purpose of assessing and charging fees. The Secretary will take into account representations and documentation to support inclusion into a particular category made by a requester for the purpose of charging fees. In the event that the Secretary has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Secretary will seek additional clarification prior to assigning the request to one of the four listed categories.

(iv) Unless a request for information specifically states that all applicable fees are acceptable and that the requester agrees in advance to pay them, or states a specified limit as to the amount of fees the requester agrees to pay, a request that is expected to involve assessment of fees in excess of $25.00 or the specified limit will not be deemed to have been received until the requester is advised of the anticipated costs and agrees to bear them. Such notice will offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the use for which the records are sought at the lowest cost.

(5) Administrative Action to Improve Collection and Assessment—

(i) *Interest Charges.* Beginning on the 31st day following the day on which the bill was sent to a requester, the Commission will assess interest charges on unpaid FOIA requests pursuant to rates found at section 3717 of Title 31 of the United States Code.

(ii) *Aggregating Requests.* If the Commission receives multiple requests for documents at the same or proximate times from the same requester or requesters acting in concert, the Secretary will determine if the requests are for the purpose of avoiding or evading payment of fees. In such event the Secretary may aggregate such requests and charge for documents in accordance with the schedule of fees in this paragraph.

(iii) *Advance Payment.* In accordance with paragraph (a)(4)(A)(ii) of the Act, the Commission may not require advance payment of fees unless the requester has previously failed to pay fees in a timely fashion (within 30 days of the date of billing) or the Commission has determined that the fees shall exceed $250.00.

(iv) When the Secretary determines that advance payment is required, the administrative time limits contained in section (a)(6) of these rules begin only upon receipt of advance payment.

(v) The Secretary shall be responsible for overseeing the collection of all debts in connection with requests for records under the FOIA, in accordance with the Debt Collection Act of 1932, Pub. L. 97–365.

(c) *Waiver of fees.* (1) In determining whether to waive fees in accordance with section (a)(4)(A)(iii) of the FOIA, the Secretary will consider the following:

(i) *The subject of the request:* Whether the subject of the requested records concerns the operations or activities of the government;

(ii) *The informative value of the information to be disclosed:* Whether the disclosure is "likely to contribute" to the understanding of government operations or activities;

(iii) *The contribution to an understanding by the general public*

likley to result from disclosure: Whether disclosure of the reqeuested information will contribute to "public understanding";

(iv) *The significance of the contribution to public understanding:* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(v) *The existence and magnitude of a commercial interest:* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(vi) *The primary interest in disclosure:* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(2) *Procedure for Requests for Waiver of Fees.*

(i) In accordance with the procedures outlined in § 201.18 of these rules, requests for information that contain a request for waiver of fees shall be clearly indicated on the envelope and the letter containing the request.

(ii) The request for waiver shall include justification and reasons to support the waiver of fees.

(iii) The request for waiver of fees shall state whether, in the event that the Secretary denies the request for waiver of fees, the requester agrees in advance to pay fees or agrees to pay fees up to a specified limit.

(3) *Denial of Request for Waiver of fees.* A written request for waiver of fees will be denied only by the Secretary or Acting Secretary. Denials of requests for waiver of fees will be in writing and will specify the reason therefor, and will advise the requester of the right to appeal the denial to the Commission.

Issued: May 28, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-12617 Filed 6-4-87; 8:45 am]

BILLING CODE 7020-02-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2640 and 2646

Reduction or Waiver of Partial Withdrawal Liability

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation proposes to establish rules for reducing or waiving the liability of an employer that has partially withdrawn from a multiemployer pension plan and subsequently increases its contribution base units or reenters the plan for the facility or under the bargaining agreement that gave rise to the liability. The Employee Retirement Income Security Act of 1974, as amended, directs the PBGC to issue some of these rules and authorizes it to issue the others. The regulation is needed to provide relief to employers that incur partial withdrawal liability and subsequently increase covered operations to a level that would have resulted in no withdrawal liability if it had been maintained consistently. The regulation requires plans to waive or reduce the employer's obligation to make withdrawal liability payments under certain circumstances and provides guidance for implementing reductions in payments required by ERISA. It also provides procedures under which plans may adopt additional rules for the reduction or waiver of partial withdrawal liability, subject to PBGC approval.

DATE: Comments must be received on or before August 4, 1987.

ADDRESSES: Comments may be mailed to the Corporate Policy and Regulations Department (35100), 2020 K Street, NW., Washington, DC 20006. Comments may be hand-delivered to Suite 7300 at the above address between 9:00 a.m. and 5:00 p.m. Written comments will be available for inspection at the above address, Suite 7100, between 9:00 a.m. and 4:00 p.m. Each comment should include the commenter's name and address, identify the proposed regulation, and give reasons for any recommended change. This proposal may be changed based on the comments received.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (35100), 2020 K Street, NW., Washington, DC 20006; (202) 778-8850 (202-778-8859 for TTY and TDD). [These are not toll-free numbers.].

SUPPLEMENTARY INFORMATION:

Statutory Provisions

Under section 4205(a) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, (ERISA or the Act), an employer is deemed to have partially withdrawn from a multiemployer pension plan on the last day of a plan year in which: (1) There is a 70-percent contribution decline, or (2) there is a partial cessation of the employer's contribution obligation. Section 4205(b)(1) provides that a 70-percent contribution decline occurs in a plan year if, during that plan year and each of the two preceding plan years (together, the "3-year testing period"), the employer's contribution base units do not exceed 30 percent of the employer's contribution base units for the high base year. The number of contribution base units for the high base year is the average number of units for the two plan years for which the employer's contributon base units were the highest within the five plan years immediately preceding the beginning of the 3-year testing period (section 4205(b)(1)(B)(ii)).

Under section 4205(b)(2)(A), there is a partial cessation of the employer's contribution obligation for the plan year if, during that year—

(i) The employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location, or

(ii) An employer permanently ceases to have an obligation to contribute under the plan with respect to work performed at one or more but fewer than all of its facilities, but continues to perform work at the facility of the type for which obligation to contribute ceased.

A cessation of obligations under one collective bargaining agreement because of the substitution of another agreement that requires contributions to the plan is not considered a partial cessation of the employer's contribution obligation.

Section 4205(c) provides a special partial withdrawal rule for the retail food industry. Section 4208(d) also provides special partial withdrawal rules for the construction and entertainment industries. All of the withdrawal liability rules apply to withdrawals after September 25, 1980.

The amount of an employer's liability for a partial withdrawal is calculated under section 4206(a). That section provides that partial withdrawal liability is equal to the unfunded vested benefits allocable to the employer for a complete withdrawal multiplied by a fraction. The fraction is 1 minus a fraction—

(A) The numerator of which is the employer's contribution base units for the plan year following the plan year in which the partial wtihdrawal occurs, and

(B) The denominator of which is the average of the employer's contribution base units for the 5 plan years immediately preceding the plan year in which the partial withdrawal occurs (or the 5 plan years immediately preceding the beginning of the 3-year testing period in the case of a partial withdrawal caused by a 70-percent contribution decline).

The allocable unfunded vested benefits are determined as of the date of the partial withdrawal, or, in the case of a 70-percent contribution decline, as of the last day of the first plan year in the 3-year testing period.

This formula results in liability equal to the liability that the employer would have had for a complete withdrawal multiplied by the percent decline in the employer's contribution base units from the average in the five years preceding the partial withdrawal to the number in the year following the partial withdrawal. Under section 4219(c)(1)(E), the annual payment of partial withdrawal liability is calculated by multiplying the annual payment that would have been required for a complete withdrawal by the same fraction used in section 4206(a) to determine partial withdrawal liability.

Seciton 4206(b) provides special rules for adjusting the liability of an employer that partially or completely withdraws from the plan after its initial partial withdrawal. Under section 4206(b)(1), an employer's liability for the subsequent withdrawal is reduced by the amount of any liability for the earlier partial withdrawal (less any waiver or reduction of the earlier liability). Section 4206(b)(2) gives the PBGC authority to issue regulations adjusting the reduction prescribed by section 4206(b)(1) so that the employer's liability for the subsequent withdrawal properly reflects its share of liability to the plan. This regulation deals only with section 4206(b)(1); rules under section 4206(b)(2) will be issued at a later date.

Section 4208(a)(1) eliminates the partial withdrawal liability of an employer that had a 70-percent contribution decline if, for any two consecutive years following the partial withdrawal year, the number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute in the high base year, as defined in section 4205(b)(1)(B)(ii). The liability is waived beginning with the first plan year after the two consecutive years; liability for delinquent payments, however, is not waived. Under section 4208(a)(2), an employer may furnish the plan a bond in lieu of paying its partial withdrawal liability due for the second year if the employer's contribution base units for the previous plan year are at least equal to its contribution base units for the high base year. The amount of the bond, which is determined by the plan sponsor, may not exceed 50 percent of the annual payment otherwise required. If the employer subsequently satisfies the requirements of section 4208(a)(1), the bond is cancelled. If the employer does not satisfy those requirements, the bond is paid to the plan, and the employer must pay the outstanding amount of liability due with respect to the plan year for which the bond was posted and continue making withdrawal liability payments as they become due.

Section 4208(b) relieves employers of the obligation to make partial withdrawal liability payments (other than delinquent payments) if for two consecutive plan years following a 70-percent contribution decline—

(1) The number of contribution base units with respect to which the employer has an obligation to contribute for each year exceeds 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for the high base year, and

(2) The total number of contribution base units with respect to which all employers under the plan are obligated to contribute is not less than 90 percent of the total number of contribution base units for which all employers were obligated to contribute in the partial withdrawal plan year.

Under section 4208(c), an employer's partial withdrawal liability payment is reduced pro rata in any plan year following a 70-percent contribution decline if the number of contribution base units with respect to which the employer has an obligation to contribute for that year equals or exceeds 110 percent (or such other percentage as the plan may provide by amendment and that is not prohibited by PBGC regulations) of the number of contribution base units with respect to which the employer had an obligation to contribute in the partial withdrawal year. This provision directs the PBGC to prescribe regulations on implementing the pro rata reduction.

Section 4208(e)(1) gives the PBGC authority to prescribe regulations providing for the reduction or elimination of partial withdrawal liability under any other conditions with respect to which the PBGC determines that reduction or waiver of partial withdrawal liability is consistent with the purposes of the Act. Such regulations may, however, provide for the reduction of withdrawal liability only with respect to subsequent changes in the employer's contributions for the same operations, or under the same collective bargaining agreement, that gave rise to the partial withdrawal. Section 4208(e)(3) directs the PBGC to issue regulations under which plans may adopt rules for the elimination or reduction of partial withdrawal liability under any other conditions, subject to PBGC approval.

The Regulation

Section 2646.1 of the proposed regulation describes the purpose and scope of the regulation. Section 2646.1(b) provides that the regulation shall apply to employers that have partially withdrawn from multiemployer plans after September 25, 1980, and that have not, as of the date on which they satisfy the conditions for reducing or eliminating their partial withdrawal liability, fully satisfied their obligation to pay that partial withdrawal liability. The partial withdrawal liability abatement conditions prescribed by the Act apply, by their terms, to withdrawals and increased contribution base units occurring after September 25, 1980. The PBGC proposes to have the abatement provisions it prescribes also apply to withdrawals and resumed operations occurring after September 25, 1980. Using the same effective date for all of the abatement provisions will simplify the administration of the regulation.

Section 2646.2(a) provides that an employer that satisfies the requirements for abatement in § 2646.3 may apply to the plan for abatement. Since the information necessary to make the abatement determination is readily available to the employer and the employer has an incentive to notify the plan of those facts, this approach should not impose an undue burden on employers. By contrast, requiring the plan to initiate the abatement process would force it to constantly monitor information that may not be readily available to it.

The application must identify the employer eligible for abatement, the withdrawn employer (if different), the date of withdrawal, and the basis on which the employer qualifies for reduction or waiver of its partial withdrawal liability. Section 2640.7

defines "eligible employer" as the employer as it existed on the date of the partial withdrawal. As in the PBGC's regulation on waiver or reduction of complete withdrawal liability (51 FR 10300, March 25, 1986), an eligibile employer continues to be eligible for abatement notwithstanding the occurrence of a merger, acquisition or internal corporate change, so long as all entities (or their successors) liable for the partial withdrawal remain in the controlled group.

Section 2646.2(b) requires the plan sponsor to determine whether the employer satisfies the abatement requirements under § 2646.3 within 60 days after the employer applies for abatement. That paragraph also requires the plan sponsor to notify the employer of its determination. If the employer furnished a bond or established an escrow account (as permitted under § 2646.4), the sponsor must also send a copy of the notice to the bonding or escrow agent.

The consequences of qualifying for abatement under § 2646.3 are described in § 2646.2(c). Under that paragraph, an employer that qualifies for waiver of its partial withdrawal liability under § 2646 (a) or (b) is relieved of its obligation to make future withdrawal liabilty payments to the plan with respect to its partial withdrawal. An employer that qualifies for reduction of its partial withdrawal liability under § 2646.3(c) is liable only for the amount determined under § 2646.5. An employer that qualifies for abatement under § 2646.3 (a), (b) or (c) would have its liability for a subsequent withdrawal determined in accordance with § 2646.6. If an employer that qualifies for waiver or reduction of its partial withdrawal liability has furnished a bond under § 2646.4, the bond is cancelled. If the employer has put funds in escrow under § 2646.4, they are to be refunded to the employer. If the employer made any withdrawal liability payments due after the conditions for abatement were satisfied in excess of the periodic amount due after that date, the plan sponsor shall credit the excess to any future withdrawal liability payments owed by the employer. If the credit is greater than the outstanding amount of the employer's partial withdrawal liability, the plan sponsor must refund the excess to the employer. The plan is required to issue a revised payment schedule reflecting the credit or make the refund within 60 days after receiving the information necessary to determine the employer's qualification for abatement. The plan must add interest at the rate prescribed under Part 2644 (relating to the notice and collection of withdrawal liability) to the credit or refund if it fails to comply with this requirement.

Section 2646 (d) and (e) sets forth the consequences of the plan sponsor's determination that the employer does not qualify for abatement. Section 2646.2(d) provides that the rules of Part 2644 apply with respect to payments that the employer is required to make after the sponsor determines that it is not eligible for abatement. These include payments with respect to which the bond/escrow was furnished and partial withdrawal liability payments coming due after the determination.

Section 2646.2(d)(1) requires the bonding or escrow agent to pay the bond or escrow to the plan. Under § 2646.2(d)(2), the employer must pay to the plan an amount equal to the difference between the amount of the withdrawal liability payment or payments with respect to which the employer furnished a bond or escrow and the amount of the bond or escrow. Both the bond or escrow and the employer's payment must be paid to the plan within 30 days after receipt of the plan sponsor's notice that the employer does not qualify for abatement. If the employer fails to make this payment, interest under Part 2644 begins to accrue on the 31st day. Finally, § 2646.2(d)(3) requires the employer to resume making its partial withdrawal liability payments to the plan as they become due.

Section 2646.2(e) allows the employer to seek plan review under section 4219(b)(2) and arbitration under section 4221 and Part 2641 of the plan sponsor's determination that the employer does not qualify for abatement under § 2646.3 and of the amount of reduction determined under § 2646.5. Section 2646.2(e) also establishes the consequences of a determination by an arbitrator or plan sponsor on review that the employer is entitled to abatement or to a larger reduction of the annual payment. If the employer's partial withdrawal liability is waived, § 2646.2(e)(1) requires the plan sponsor to refund any withdrawal liability payments made under § 2646.2(d)(2) and (d)(3) and any bond or escrow paid to the plan under § 2646.2(d)(1). The plan sponsor must also add interest, determined in accordance with § 2644.2(d), to the refund for each of these payments.

If the employer's annual payment of partial withdrawal liability is reduced, § 2646.2(e)(2) requires the plan sponsor to immediately credit future withdrawal liability payments owed by the employer with the payments made pursuant to § 2646.2(d)(1)–(d)(3). The sponsor must also add interest, determined in accordance with § 2644.2(d) as if the payments were overpayments of withdrawal liability, to the employer's credit for each of those payments. Section 2646.2(e)(2) also requires the plan sponsor to refund to the employer, with interest determined under § 2644.2(d), any credit remaining under § 2646.2(e)(2) after the total amount of the employer's outstanding partial withdrawal liability has been satisfied.

Section 2646.3 contains the conditions for abatement of partial withdrawal liability. Section 2646.3(a) restates the provisions in section 4208(a)(1) and (b) for waiving partial withdrawal liability resulting from a 70-percent contribution decline.

Section 2646.3(b) provides rules under section 4208(e)(1) establishing additional conditions under which an employer's partial withdrawal liability must be waived. Under § 2646.3(b), an employer that incurred partial withdrawal liability as a result of a partial cessation of its contribution obligation shall have no obligation to make additional payments with respect to that withdrawal (other than delinquent payments) if it satisfies the following three conditions for two consecutive plan years:

(1) The employer must resume contributions for the same facility or under the same agreement that gave rise to the partial withdrawal;

(2) The employer's contribution base units for that facility or under that agreement must exceed 30 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year; and

(3) The total number of contribution base units with respect to which the employer has an obligation to contribute to the plan in each year must equal at least 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for its base year.

The number of contribution base units with respect to which the employer had an obligation to contribute for the base year is the average of the two highest years within the five plan years immediately preceding the partial withdrawal. Under § 2646.3(d), only the number of contribution base units for the reentered facility or agreement are used to determine whether the employer satisfies the 30-percent test; the employer's total contribution units are used to determine whether the employer satisfies the 90-percent test.

Section 2646.3(c) contains the conditions for reducing an employer's

annual partial withdrawal liability payment. Section 2646.3(c)(1) implements the reduction of partial withdrawal liability payment provisions of section 2408(c). Under § 2646.3(c)(1), a plan must reduce an employer's annual partial withdrawal liability payment for a plan year if, in that plan year, the contribution base units for which the employer has an obligation to contribute to the plan exceed the greater of (1) 110 percent (or such lower number as the plan may, by amendment, adopt) of the number of contribution base units with respect to which the employer had an obligation to contribute in the partial withdrawal year, or (2) the number of contribution base units with respect to which the employer had an obligation to contribute in the year following the partial withdrawal year.

The proposed regulation does not allow plans to increase the contribution base units required to qualify for reduction of the annual payment under this test, because the PBGC believes that any more stringent requirement would normally be inconsistent with Congress' intent, as expressed in section 4208(c). The PBGC recognizes, however, that a higher percentage may be appropriate when the requirements of § 2646.3(c)(1) would result in a reduction in the employer's annual payment that is so small that it is exceeded by the administrative costs of implementing it. The PBGC, therefore, requests comments on the desirability of adding an exception to § 2646.3(c)(1) that would allow the plan to adopt more stringent standards when the proposed requirements would necessitate administrative costs that exceed the reduction in the employer's annual withdrawal liability payment. Comments should address the need for such an exception and the best method for assuring that it is available only under the conditions stated.

Under § 2646.3(c)(2), an employer that resumes the obligation to contribute with respect to a facility or collective bargaining agreement that gave rise to a partial withdrawal under section 4205(a)(2) shall have its annual partial withdrawal liability payment reduced for any plan year in which the total number of contribution base units with respect to which the employer has an obligation to contribute equals at least the sum of: (1) The number of contribution base units for the reentered facility or agreement in that plan year plus (2) the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the year following the partial withdrawal year.

Section 2646.4 would allow an employer that satisfied the requirements of section 4208(a)(2) or § 2646.3(b) for one plan year with respect to all partial withdrawals that it incurred in a single plan year to provide a bond or establish an escrow account in lieu of making scheduled withdrawal liability payments for those withdrawals, until the plan sponsor determines whether the employer is entitled to abatement under § 2646.3(a) or (b). An employer that chooses not to provide a bond/escrow would be required to continue making withdrawal liability payments as they become due. An employer that applies for abatement but neither provides a bond/escrow nor makes its withdrawal employer liability payments remains eligible for abatement but may be sued for the overdue employer liability payments.

The amount of the bond or escrow shall be 50 percent of the withdrawal liability payments that would otherwise be due. An employer that chooses to provide a bond or escrow must furnish it before the due date of the payment to which it relates. An employer may provide a single bond or escrow for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow must provide that it will be paid to the plan sponsor upon notice to the bonding or escrow agent from the plan sponsor that the employer does not satisfy the requirements of § 2646.3 for abatement of its partial withdrawal liability.

Concurrently with posting a bond or establishing an escrow account under § 2646.4, the employer must, under § 2646.4(c), notify the plan sponsor of the amount of the bond or escrow, the scheduled payment or payments with respect to which it is being furnished and the name and address of the bonding or escrow agent.

Section 2646.4(d) allows the plan, by amendment, to reduce the amount of the bond or escrow allowed by § 2646.4. The amendment must be consistent with the purposes of the Act, *i.e.*, it must not create an unreasonable risk of loss to the plan. The plan is not permitted to alter any of the other requirements in § 2646.4 relating to the bond/escrow.

Under § 2646.4(e), the plan sponsor must determine whether an employer that provided a bond/escrow under § 2646.4 satisfied the requirements of § 2646.3(a) or (b) for the second consecutive plan year within 60 days after the end of that plan year. The plan sponsor must then notify the employer and the bonding or escrow agent of its determination and of the consequences of its determination, as set forth in § 2646.2(c) or (d) and (e), as appropriate.

Section 2646.5 contains rules for computing and implementing the reduction in the annual partial withdrawal liability payment provided for in § 2646.3(c). Under § 2646.5(a), the reduced amount would be calculated by adjusting the numerator of the fraction described in section 4206(a)(2)(A). (The fraction described in section 4206(a)(2)(A) and (a)(2)(B) is subtracted from one in order to obtain the section 4206(a)(2) fraction. This latter fraction is used in section 4219(c)(1)(E) to compute the annual payment for the partial withdrawal liability. An increase in the section 4206(a)(2)(A) numerator has the effect of decreasing the annual amount.) When the employer qualifies for abatement under § 2646.3(c)(1), the employer's contribution base units in the plan year in which it satisfies the requirements are substituted for the number of contribution base units in the year following the partial withdrawal year (§ 2646.5(a)(1)). Then the employer qualifies for abatement under § 2646.3(c)(2), the contribution base units for the reentered facility or agreement in the plan year in which the employer satisfies the requirements are added to the employer's contribution base units in the year following the partial withdrawal year (§ 2646.5(c)(2)). Thus, under both adjustments, for every contribution base unit the employer adds in the plan year in which it qualifies for abatement over the number of units in the year following the partial withdrawal, it will receive a commensurate reduction in its annual partial withdrawal liability payment.

It would be impossible to reduce the employer's payment in the year in which it qualifies for the reduction, because the amount of the reduction cannot be determined until after the end of that plan year. Section 2646.5(b), therefore, requires the plan sponsor to credit the account of the employer with the amount of the annual withdrawal liability payment that it made in excess of the amount determined under § 2646.5(a)(1) or (a)(2). The credit would be applied to future withdrawal liability payments owed by the employer. If the credit exceeds the employer's outstanding balance, the plan must refund to the employer the credit remaining after satisfaction of the full amount of the withdrawal liability. If the plan fails to issue the revised payment schedule (required by § 2646.(c)) or make the required refund within 60 days after receipt of the employer's abatement application, interest on the

credited amount at the rate specified in Part 2644 shall accrue from the 61st day.

Section 2646.6 implements section 4296(b)(1) of the Act, which requires the plan to reduce any partial or complete withdrawal liability of an employer that has previously been assessed partial withdrawal liability by that plan. This adjustment is necessary because the employer remains liable for the earlier partial withdrawal to the extent that liability has not been abated. Without the adjustment, the employer could be assessed double liability for the contribution base units affected by the earlier partial withdrawal. However, where liability for a prior partial withdrawal is reduced or waived, the statute requires a reduction of the adjustment so as not to provide an unwarranted credit to the employer. The amount of the adjustment is the partial withdrawal liability assessed against the employer for all previous withdrawals, less the present value of any payments with respect to that liability that have been waived and the amount of the reduction of any of those payments, calculate as of the date on which the employer's earlier partial withdrawal liability was determined.

Section 2646.7 contains a number of rules for employers that have more than one partial withdrawal in the same plan year. Section 2646.7(a) provides the general rule that the rules of § 2646.3 shall be applied, as modified by § 2646.7, to an employer that partially withdraws from the same multiemployer plan on two or more occasions during the same plan year. Under § 2646.7(b), an employer that has partial withdrawals as a result of both a 70-percent contribution decline and a partial cessation of its contribution obligation is not eligible for abatement under the PBGC-established conditions in § 2646.3 (b) and (c)(2). This result is based on Congress' intent to have the rules governing 70-percent contribution declines apply in those cases (*Congressional Record*, pp. S10115–10116, July 29, 1980). Thus, the PBGC-established conditions for abatement apply only when all partial withdrawals within a plan year are caused by partial cessations of the employer's contribution obligation. An employer that has partial withdrawals as a result of a 70-percent contribution decline and a partial cessation of its contribution obligation would remain eligible for abatement under the conditions in § 2646.3 (a) and (c)(1) and any plan rules adopted pursuant to § 2646.8.

Section § 2646.7(c) provides special rules for an employer that ceases operations at two or more facilities or under two or more collective bargaining agreements in the same plan year. These rules supersede the test contained in § 2646.3 (b)(2); § 2646.3 (b)(1) and (b)(3) continues to apply in this situation. If the employer resumes contributions for all of the facilities and under all of the collective bargaining agreements, § 2646.7(c)(1) provides that its liability for those partial withdrawals will be completely eliminated if for two consecutive plan years its total contribution base units for those facilities and under those agreements exceed 30 percent of the number of contribution base units that it was required to contribute for those facilities and under those agreements in the base year.

Section § 2646.7(c)(2) provides special rules for an employer that resumes contributions for one or more but fewer than all of the facilities and collective bargaining agreements that gave rise to the partial withdrawal liabilities in the same plan year. Under this paragraph, the employer is entitled to a reduction in the total liability owed for the reentered facilities and agreements (assuming, as noted above, that the test in § 2646.3(b)(3) is satisfied) if for two consecutive plan years, the number of contribution base units with respect to which the employer has an obligation to contribute for the reentered facility or agreement exceeds 30 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or agreement in the base year.

The reduced amount of withdrawal liability is calculated under § 2646.7(c)(2)(i) by adding the average number of contribution base units with respect to which the employer had an obligation to contribute for that facility or agreement for those two consecutive years to the numerator of the fraction described in section 4206(a)(2)(A). Section 2646.7(c)(2)(ii) requires the employer to pay this reduced amount over the schedule originally established by the plan sponsor starting with the first payment due after the revised payment schedule is issued under § 2646.2(c)(4). The amount of the annual payment is also reduced by adjusting the numerator of the fraction described in section 4206(a)(2)(A) in the manner set forth in paragraph (c)(2)(i).

For purposes of the abatement tests in § 2646.7(c), the base year contribution base units are defined as the average number of contribution base units that the employer was required to contribute for the reentered facilities and under the reentered agreements for the two plan years in which its contributions for those facilities and under those agreements were highest within the five plan years immediately preceeding the partial withdrawal year. The two highest years for each facility and agreement are used. Thus, different years may be used for different facilities and agreements.

Section 2646.8 of the proposed regulation contains rules under which plans may adopt amendments under section 4208(c)(3) providing additional conditions under which partial withdrawal liability will be abated. Section 2646.8(a) provides that plans may, subject to PBGC approval, adopt rules for the reduction or elimination of partial withdrawal liability under conditions other than those in § 2646.3. Those rules must be adopted by plan amendment and may not be put into effect until the amendment is approved by the PBGC. Once approved by the PBGC, the rules may apply retroactively.

Section 2646.8(a) requires the plan to apply to the PBGC for approval of any such plan amendment. The plan must also obtain PBGC approval of any subsequent modification of the amendment, other than a repeal of the amendment. A request for approval may be filed with the PBGC only after the amendment is adopted by the plan. Section 2646.8(b) requires the request to be filed by the plan sponsor or a duly authorized representative acting on behalf of the plan sponsor.

Section 2646.8(c) provides the address for filing a request for approval. Section 2646.8(d) lists the information that must be included in a request for approval of a plan amendment. The request must include information identifying the plan, a copy of the executed amendment, and a certification that the plan has notified all contributing employers and employee organizations representing covered employees of the request.

Section 2646.8(e) allows the plan to include any additional information that it believes is pertinent to its request for approval of the plan amendment. That section also allows the PBGC to require the plan sponsor to submit any other information that the PBGC determines that it needs to review a request under § 2646.8.

Under § 2646.8(f), the PBGC will approve a plan amendment establishing additional conditions for the abatement of partial withdrawal liability only if it determines that the amendment is consistent with the purposes of the Act. This standard requires the amendment to base elimination or reduction of the employer's partial withdrawal liability, in whole or in part, on increases in the employers contribution base units or in

the plan's overall contribution base units after the year following the partial withdrawal year. It also requires that the rules provide an adjustment to the reduction of liability for a subsequent partial or complete withdrawal provided by section 4206(b)(1) to reflect the amount of the abatement.

Executive Order 12291 and Regulatory Flexibility Act

The PBGC has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation will reduce costs that would otherwise be imposed by ERISA.

Under section 605(b) of the Regulaory Flexibility Act, the Pension Benefit Guaranty Corporation certifies that this rule will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The proposed regulation affects only multiemployer plans covered by the PBGC. Defining "small plans" as those with under 100 participants, they represent less than 14 percent of all mulitemployer plans covered by the PBGC (346 out of 2485). Approximately 500,000 employers contribute to multiemployer plans, most of them small employers (under 100 employees). The PBGC estimates that fewer than 10,000 (2 percent) of these employers will be required to pay partial withdrawal liabilty in any year, and an even smaller percentage will subsequently increase their participation under a plan and thereby become subject to these rules. Therefore, the PBGC waives compliance with sections 603 and 604 of the Regulatory Flexibility Act.

The collection of information requirements contained in this proposed regulation have been submitted to the Office of the Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

Public Comments

The PBGC invites interested parties to submit comments on this proposed regulation. Comments on the collection of information requirements may be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. Other comments should be addressed to the Director, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The PBGC will make written comments available for public inspection at the above addresss, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each comment should include the commenter's name and address, identify this proposed regulation, and give reasons for any recommendation. The PBGC may change this proposal in light of the comments it receives.

List of Subjects in 29 CFR Parts 2640 and 2646

Employee benefit plans, Pensions and reporting requirements.

In consideration of the foregoing, the PBGC proposes to amend Subchapter F of Chapter XXVI, Title 29, Code of Federal Regulations as follows:

PART 2640—[AMENDED]

1. The authority for Part 2640 continues to read as follows:

Authority: Sec. 4002(b)(3), Pub. L. 93–406, as amended by sec. 403(1), Pub. L. 96–364, 94 State. 1208, 1302 (1980) (29 U.S.C. 1302(b)(3)).

2. Part 2640 is amended by redesignating § 2640.6 as § 2640.8 and adding a new § 2640.6 to read as follows:

§ 2640.6 Reduction or waiver of partial withdrawal liability.

For purposes of Part 2646—

"Eligible employer" means the employer, as defined in section 4001(b) of the Act, as it existed on the date of its initial partial withdrawal. An eligible employer shall continue to be an eligible employer notwithstanding the occurence of any of the following events:

(1) A reorganization involving a mere change in identity, form or place of organization, however effected.

(2) A reorganization involving liquidation into a parent corporation.

(3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer.

(4) An acquisition by or of, or a merger or combination with another trade or business.

"Partial withdrawal" means a partial withdrawal as described in section 4205 of the Act.

"Partial withdrawal year" means the third year of the 3-year testing period in the case of a partial withdrawal caused by a 70-percent contribution decline, or the year of the partial cessation in the case of a partial withdrawal caused by a partial cessation of the employer's contribution obligation.

3. A new Part 2646 is added to read as follows:

PART 2646—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

Sec.

2646.1 Purpose and scope.
2646.2 Abatement.
2646.3 Conditions for abatement.
2646.4 Withdrawal liability payments during pendency of abatement determination.
2646.5 Computation of reduced annual partial withdrawal liability payment.
2646.6 Adjustment of withdrawal liability for subsequent withdrawals.
2646.7 Multiple partial withdrawals in one plan year.
2646.8 Plan rules for abatement.

Authority: Secs. 4002(b)(3), 4206(b)(2), and 4208(c) and (e), Pub. L. 93–406, as amended by secs. 403(1) and 104(2), Pub. L. 96–364, 94 Stat. 1302, 1222 and 1224 (1980) (29 U.S.C. 1302(b)(3), 1386(b)(2), and 1381(c) and (e)).

§ 2646.1 Purpose and scope.

(a) *Purpose.* The purpose of this regulation is to establish rules for reducing or waiving the liability of certain employers that have partially withdrawn from a multiemployer pension plan. Section 4208 of the act establishes certain conditions under which an employer's partial withdrawal liability will be waived or reduced and authorizes the PBGC to prescribe rules setting forth additional conditions under which partial withdrawal liability will be waived or reduced. That section also directs the PBGC to establish a procedure by which a plan may, subject to PBGC approval, adopt rules for the reduction or elimination of partial withdrawal liability under other conditions. This regulation establishes procedures for eliminating the partial withdrawal liability of an employer that satisfies the conditions of section 4208(a) or (b) and rules and procedures for reducing or eliminating partial withdrawal liability under other specified conditions. It provides procedures for plans to apply to the PBGC for approval of plan amendments that reduce or waive partial withdrawal liability under conditions other than those specified in section 4208 and this part. The regulation also includes rules for reducing the annual payment of partial withdrawal liability by an employer that satisfies the requirements of section 4208(c) and for adjusting the liability of an employer for a subsequent partial or complete withdrawal, as required by section 4206(b)(1).

(b) *Scope.* This part applies to multiemployer pension plans covered under section 4021(a) of the Act and not excluded by section 4021(b) and to employers that have partially withdrawn from such plans after September 25, 1980, and that have not, as of the date on which they satisfy the conditions for reducing or eliminating their partial withdrawal liability, fully satisfied their obligation to pay that partial withdrawal liability. This rule shall not negate reasonable actions taken by plans prior to the effective date of this part under plan rules implementing section 4206(b)(1) or 4208 that were validly adopted pursuant to section 405 of the Multiemployer Act.

§ 2646.2 Abatement.

(a) *General.* Whenever an eligible employer that has partially withdrawn from a multiemployer plan satisfies the requirements in § 2646.3 for the reduction or waiver of its partial withdrawal liability, it may apply to the plan for abatement of its partial withdrawal liability. Applications shall identify the eligible employer, the withdrawn employer (if different), the date of withdrawal, and the basis for reduction or waiver of its withdrawal liability. Upon receiving a complete application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 2646.3. If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* Within 60 days after an eligible employer that partially withdrew from a multiemployer plan applies for abatement, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 2646.3 and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 2646.4 of this part, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under § 2646.3, then—

(1) The employer's partial withdrawal liability shall be eliminated or it annual partial withdrawal liability payment shall be reduced in accordance with § 2646.5, as applicable;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 2646.6;

(3) Any bonds furnished under § 2646.4 shall be cancelled and any amounts held in escrow under § 2646.4 shall be refunded to the employer; and

(4) Any withdrawal liability payments originally due and paid after the end of the plan year in which the conditions for abatement were satisfied, in excess of the amount due under this part after that date shall be credited to future withdrawal liability payments, if any, owed by the employer. If the credited amount is greater than the outstanding amount of the employer's partial liability, the amount remaining after satisfaction of the liability shall be refunded to the employer. Interest on the credited amount at the rate prescribed in Part 2644 of this subchapter (relating to notice and collection of withdrawal liability) shall be added if the plan sponsor does not issue a revised payment schedule reflecting the credit or make the required refund within 60 days after receipt by the plan sponsor of an abatement application that provides the information necessary for determining the employer's qualification for abatement. Interest shall accrue from the 61st day.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability under § 2646.3, then the employer shall take or cause to be taken the actions set forth in paragraphs (d)(1)–(d)(3), of this section. The rules in Part 2644 shall apply with respect to all payments required to be made under paragraphs (d)(2) and (d)(3), of this section. For this purpose, a payment required under paragraph (d) (2) of this section shall be treated as a withdrawal liability payments due on the 30th day after the date of the plan sponsor's notice under paragraph (b) of this section.

(1) Any bond or escrow furnished under § 2646.4 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section.

(2) The employer shall pay to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow.

(3) The employer shall resume making its partial withdrawal liability payments as they are due to the plan.

(e) *Review of non-abatement determination.* A plan sponsor's determination that the employer does not satisfy the requirements for abatement under § 2646.3 and of the amount of reduction determined under § 2646.5 shall be subject to plan review under section 4219(b)(2) of the Act and to arbitration under section 4221 of the Act and Part 2641, within the times prescribed by those provisions. For this purpose, the plan sponsor's notice under paragraph (b) of this section shall be treated as a demand under section 4219(b)(1) of the Act. If the plan sponsor or an arbitrator determines that the employer satsifies the requirements for abatement of its partial withdrawal liability under § 2646.3, the plan sponsor shall immediately refund the amounts described in paragraph (e)(1) of this section if the liability is waived, or credit and refund the amounts described in paragraph (e)(2) of this section if the annual payment is reduced.

(1) *Refund for waived liability.* If the employer's partial withdrawal liability is waived, the plan sponsor shall refund to the employer the payments made pursuant to paragraphs (d)(l)–(d) (3) of this section (plus interest determined in accordance with § 2646.2(d) of this subchapter as if the payments were overpayments of withdrawal liability).

(2) *Credit for reduced annual payment.* If the employer's annual partial withdrawal liability payments is reduced, the plan sponsor shall credit the payments made pursuant to paragraphs (d)(l) through (d) (3) of this section (plus interest determined in accordance with § 2644.2(d) of this subchapter as if the payments were overpayments of withdrawal liability) to future withdrawal liability payments owed by the employer, beginning with the first payment that is due after the determination, and refund any credit (including interest) remaining after satisfaction of the outstanding amount of the employer's partial withdrawal liability.

§ 2646.3 Conditions for abatement.

(a) *Waiver of liability for a 70-percent contribution decline.* An employer that has incurred a partial withdrawal under section 4205(a)(1) shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second

consecutive plan year in which the conditions of paragraph (a)(1) or (a)(2) of this section are satisfied for each of the two years:

(1) The number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section).

(2) The conditions of this paragraph are satisfied if both the conditions specified in paragraphs (a)(2)(i) and (a)(2) (ii) of this section exist.

(i) The number of contribution base units with respect to which the employer has an obligation to contribute for each year exceeds 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section).

(ii) The total number of contribution base units with respect to which all employers under the plan have obligations to contribute in each of the two years is not less than 90 percent of the total number of contribution base units for which all employers had obligations to contribute in the partial withdrawal year.

(b) *Waiver of liability for a partial cessation of the employer's contribution obligation.* Except as provided in § 2646.7, an employer that had incurred partial withdrawal liability under section 4205(a)(2) shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year in which all of the following conditions are satisfied for each of the two years:

(1) The employer resumes contributions for the same facility or under the same collective bargaining agreement that gave rise to the partial withdrawal.

(2) The employer's contribution base units for that facility or under that agreement exceed 30 percent of the contribution base units with respect to which the employer had an obligation to contribute for the facility or under the agreement for the high base year (as defined in paragraph (d) of this section).

(3) The total number of contribution base units with respect to which the employer has an obligation to contribute to the plan equals at least 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the high base year (as defined in paragraph (d) of this section).

(c) *Reduction in annual partial withdrawal liability payment.*

(1) *Partial withdrawals under section 4205(a)(1).* An employer shall be entitled to a reduction of its annual partial withdrawal liability payment for a plan year if the number of contribution base units with respect to which the employer had an obligation to contribute during the plan year exceeds the greater of—

(i) 110 percent (or such lower number as the plan may, by amendment, adopt) of the number of contribution base units with respect to which the employer had an obligation to contribute in the partial withdrawal year; or

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the plan year following the partial withdrawal year.

(2) *Partial withdrawals under section 4205(a)(2).* An employer that resumes the obligation to contribute with respect to a facility or collective bargaining agreement that gave rise to a partial withdrawal, but does not qualify to have that liability waived under paragraph (b) of this section, shall have its annual partial withdrawal liability payment reduced for any plan year in which the total number of contribution base units with respect to which the employer has an obligation to contribute equals or exceeds the sum of—

(i) The number of contribution base units for the reentered facility or agreement during that year; and

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the year following the partial withdrawal year.

(d) *High base year.* For purposes of paragraphs (a) and (b)(3) of this section, the high base year contributions are the average of the total contribution base units for the two plan years for which the employer's total contribution base units were highest within the five plan years immediately preceding the partial withdrawal year. For purposes of paragraph (b)(2) of this section, the high base year contributions are the average number of contribution base units for the facility or under the agreement for the two plan years for which the employer's contribution base units for that facility or under that agreement were highest within the five plan years immediately preceding the partial withdrawal.

§ 2646.4 Withdrawal liability payments during pendency of abatement determination.

(a) *Bond/Escrow.* An employer that has satisfied the requirements of § 2646.3(a)(1) without regard to "90 percent of" or § 2646.3(b) for one year with respect to all partial withdrawals it incurred in a plan year may, in lieu of making scheduled withdrawal liability payments in the second year for those withdrawals, provide a bond to, or establish an escrow account for, the plan that satisfies the requirements of paragraph (b) of this section or any plan rules adopted under paragraph (d) of this section, pending a determination by the plan sponsor of whether the employer satisfies the requirements of § 2646.3(a) or (b) for the second consecutive plan year. An employer that applies for abatement and neither provides a bond/escrow nor pays its withdrawal liability payments remains eligible for abatement.

(b) *Amount of bond/escrow.* The bond or escrow allowed by this section shall be in an amount equal to 50 percent of the withdrawal liability payments that would otherwise be due. The bond or escrow relating to each payment shall be furnished before the due date of that payment. A single bond or escrow may be provided for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow agreement shall provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability under § 2646.3, the bond or escrow shall be paid to the plan upon notice from the plan sponsor to the bonding or escrow agent. A bond provided under this paragraph shall be issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Act.

(c) *Notice of bond/escrow.* Concurrently with posting a bond or establishing an escrow account under this section, the employer shall notify the plan sponsor. The notice shall include a statement of the amounts of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow is being furnished, and the name and address of the bonding or escrow agent.

(d) *Plan amendments concerning bond/escrow.* A plan may, by amendment, adopt rules decreasing the amount of the bond or escrow specified in paragraph (b) of this section. A plan amendment adopted under this paragraph may be applied only to the extent that it is consistent with the purposes of the Act. An amendment

satisfies this requirement only if it does not create an unreasonable risk of loss to the plan.

(e) *Plan sponsor determination.* Within 60 days after the end of the plan year in which the bond-escrow is furnished, the plan sponsor shall determine whether the employer satisfied the requirements of § 2646.3(a) or (b) for the second consecutive plan year. The plan sponsor shall notify the employer and the bonding or escrow agent in writing of its determination and of the consequences of its determination, as described in § 2646.2(c) or (d) and (e), as appropriate.

§ 2646.5 Compution of reduced annual partial withdrawal liability payment.

(a) *Amount of reduced payment.* An employer that satisfies the requirements of § 2646.3(c)(1) or (c)(2) shall have its annual partial withdrawal liability payment for that plan year reduced in accordance with paragraph (a)(1) or (a)(2) of this section, respectively.

(1) The reduced annual payment amount for an employer that satifies § 2646.3(c)(1) shall be determined by substituting the number of contribution base units in the plan year in which the requirements are satisfied for the number of contribution base units in the year following the partial withdrawal in the numerator of the fraction described in section 4206(a)(2)(A)

(2) The reduced annual payment for an employer that satisfies § 2646.3(c)(2) shall be determined by adding the contribution base units for which the employer is obligated to contribute with respect to the reentered facility or agreement in the year in which it qualifies to the numerator of the fraction decribed in section 4206(a)(2)(A).

(b) *Credit for reduction.* The plan sponsor shall credit the account of an employer that satisfies the requirements of § 2646.3(c)(1) or (c)(2) with the amount of annual withdrawal liability that it paid in excess of the amount described in paragraph (a)(1) or (a)(2) of this section, as appropriate. The credit shall be applied to the remaining partial withdrawal liability payments owed by the employer, beginning with the first payment due after the revised payment schedule is issued under § 2646.2(c)(4). If the credit exceeds the remaining partial withdrawal liability payments owed by the employer, the plan sponsor shall refund the excess amount to the employer. Interest on the credited amount at the rate prescribed in Part 2644 of this subchapter shall be added if the plan sponsor does not issue a revised payment schedule reflecting the credit or make the required refund within 60 days after receipt by the plan sponsor of an abatement application that provides the information necessary for determining the employer's qualification for abatement. Interest shall accrue from the 61st day.

§ 2646.6 Adjustment of withdrawal liability for subsequent withdrawals.

The liability of an employer for a partial or complete withdrawal from a plan subsequent to a partial withdrawal from that plan in a prior plan year shall be reduced by the excess of the total of all partial withdrawal liability of the employer for partial withdrawals in prior years over the present value of each waiver of or reduction in that prior partial withdrawal liability, calculated as of the date on which that prior partial withdrawal liability was determined.

§ 2646.7 Multiple partial withdrawals in one plan year.

(a) *General Rule.* If an employer partially withdraws from the same multiemployer plan on two or more occasions during the same plan year, the rules of § 2646.3 shall be applied as modified by this section.

(b) *Partial withdrawals under section 4205 (a)(1) and (a)(2) in the same plan year.* If an employer partially withdraws from the same multiemployer plan as a result of a 70-percent contribution decline and a partial cessation of the employer's contribution obligation in the same plan year, the employer shall not be eligible for abatement under § 2646.3 (b) or (c)(2) or under paragraph (c) of this section. The employer may qualify for abatement under § 2646.3 (a) and (c)(1) and under any rules adopted by the plan pursuant to § 2646.8.

(c) *Cessation of the employer's contribution obligation for more than one facility or collective bargaining agreement in the same plan year.* If an employer permanently ceases to have an obligation to contribute for more than one facility, under more than one collective bargaining agreement, or for one or more facilities and under one or more collective bargaining agreements in the same plan year, the following rules shall supersede the abatement rule in § 2646.3(b)(2):

(1) If the employer resumes contributions for all of the facilities and under all of the collective bargaining agreements that gave rise to partial withdrawal liability in the same plan year, the employer shall have its liability with respect to those cessations completely eliminated if for each of two consecutive plan years the employer's total contribution base units for those facilities and agreements exceed 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for those facilities and under those agreements for the base year.

(2) If the employer resumes contributions for one or more but fewer than all of the facilities and collective bargaining agreements with respect to which the employer withdrew in the same plan year, the employer's withdrawal liability shall be partially waived as follows:

(i) If, for two consecutive plan years, the employer's contribution base units for any reentered facility or agreement exceed 30 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year, the employer's partial withdrawal liability shall be reduced. The reduced amount of withdrawal liability shall be determined by adding the average number of contribution base units that the employer is required to contribute for those two consecutive years for those facilities or agreements to the numerator of the fraction described in section 4206(a)(2)(A).

(ii) The amount of partial withdrawal liability, if any, remaining after this abatement shall be paid over the schedule originally established starting with the first payment due after the revised payment schedule is issued under § 2646.2(c)(4). The employer's annual partial withdrawal liability payment shall be reduced by adjusting the numerator of the fraction described in section 4206(a)(2)(A) in the manner prescribed in paragraph (c)(2)(i) of this section.

(d) *Base Year.* For purposes of this section, the base year contribution base units for a reentered facility(ies) or under a reentered agreement(s) are the average number of contribution base units for the facility(ies) or under the agreement(s) for the two plan years for which the employer's contribution base units for that facility(ies) or under that agreement(s) were highest within the five plan years immediately preceding the partial withdrawal.

§ 2646.8 Plan rules for abatement.

(a) *General rule.* A plan may by amendment, subject to the approval of the PBGC, adopt rules for the reduction or waiver of partial withdrawal liability under conditions other than those specified in § 2646.3. The request for approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the amendment, other than a repeal of the amendment. A plan amendment under

this section may not be put into effect until it is approved by the PBGC. An amendment that is approved by the PBGC may apply retroactively.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be addressed to the Case Classification and Control Division (25420), Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the Internal Revenue Service and the three-digit Plan Identification Number (PIN) assigned to the plan by the plan sponsor, and, if different, also the EIN–PIN last filed with the PBGC. If an EIN–PIN has not been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) The date on which the amendment was adopted;

(ii) The proposed effective date;

(iii) The full text of the rules on the reduction or waiver of partial withdrawal liability; and

(iv) The full text of the rules adjusting the reduction in the employer's liability for a subsequent partial or complete withdrawal, as required by section 4206(b)(1) of the Act.

(4) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this part has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines that it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment providing for the reduction or waiver of partial withdrawal liability under conditions other than those provided in § 2646.3 if it determines that the rules are consistent with the purposes of the Act. Rules satisfy this standard only if—

(1) The rules base waiver or reduction of the employer's partial withdrawal liability, in whole or in part, on increases in the employer's contribution base units or in the plan's overall contribution base units after the years following the partial withdrawal year; and

(2) The rules provide an adjustment to the reduction of the employer's liability for a subsequent partial or complete withdrawal from that plan, as required by section 4206(b)(1) of the Act.

Issued at Washington, DC, on this 21st day of May, 1987.

William E. Brock,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving this proposed regulation and authorizing its chairman to issue same.

Gary M. Ford,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 87-12804 Filed 6-4-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 750

Availability of Petition; Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands; Performance Standards

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

ACTION: Notice of availability of petition to initiate rulemaking and request for comments.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) seeks comments regarding a petition submitted by the Peabody Coal Company, pursuant to the Surface Mining Control and Reclamation Act (the Act), to amend OSMRE's existing regulations concerning the applicable performance standards for surface coal mining and reclamation operations on Indian lands. The suggested rule change would authorize existing surface coal miming operations on Indian lands that have not yet been permitted under the Federal program for Indian lands, to comply with OSMRE's permanent program regulation at 30 CFR 816.95 governing stabilization of surface areas. Presently, such operations are required, pursuant to 30 CFR 750.16, to adhere to the performance standards codified at 25 CFR Part 216, Subpart B, including the regulation at 25 CFR 216.105(i)—Regarding or stabilizing rills and gullies. The petitioner maintains that the requirements of 25 CFR 216.105(i) are unnecessarily stringent and that the general performance standard promulgated by OSMRE at 30 CFR 816.95 should apply uniformly to all surface coal mining operations on Indian lands, including existing operations not yet permitted under OSMRE's Federal program for Indian lands.

OSMRE is requesting comments on the merits of the petition and the rule change suggested in the petition. Such comments will assist the Director of OSMRE in making a decision to grant or deny the petition.

DATES: OSMRE will accept written comments on the petition until 5:00 p.m. Eastern Daylight Time on July 6, 1987.

ADDRESSES: Written comments must be mailed to the Administrative Record, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240, or hand-delivered to the Administrative Record, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Room 5131, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Hudak, Division of Regulatory Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone: (202) 343–5144.

SUPPLEMENTARY INFORMATION

I. Public Comment Procedures

Written Comments

Written comments on the suggested rule changed should be specific, should be confined to issues pertinent to the petition, and should explain the reasons for the comment. Comments received after the close of the comment period [see "DATES"] may not necessarily be considered or included in the administrative record on the petition. OSMRE cannot ensure that written comments received or delivered during the comment period to any location other than that specified under **"ADDRESSES"** above will be considered and included in the administrative record on this petition.

Availability of Copies

Additional copies of the petition and copies of 30 CFR Part 750 are available for inspection and copying at the location listed under **"ADDRESSES."**

Public Meetings

OSMRE will not hold a public hearing on the petition; however, OSMRE personnel will be available to meet with the public during business hours, 8:00 a.m. to 4:00 p.m., during the comment period. In order to arrange such a meeting, call or write to the person listed above under **"FOR FURTHER INFORMATION CONTACT."**

II. Background and Substance of Petition

OSMRE received a letter dated April 30, 1987, from Mr. Kenneth R. Moore, President of the Western Division of the Peabody Coal Company, enclosing a petition for rulemaking to revise the regulations found at 30 CFR 750.16.

The final rule at 30 CFR 750.16 sets forth the performance standards for surface coal mining and reclamation operations on Indian lands by cross-referencing the relevant provisions of 25 CFR or 30 CFR Chapter VII, as applicable. Compliance with the provisions of 30 CFR Parts 816, 817, 819, 822, 823, 824, 827, and 828 is required for existing Indian lands operations that have been issued an OSMRE permit, whereas new operations, or existing operations not yet permitted under OSMRE's Federal program for Indian lands, must adhere to the performance standards codified at 25 CFR Part 216, Subpart B—Surface Exploration, Mining, and Reclamation of Lands—Coal Operations.

The petitioner seeks to amend 30 CFR 750.16 to provide an exception to the regulatory requirements of 25 CFR 216.105(i) for existing operations still subjects to the provisions of 25 CFR Part 216. The suggested rule change would authorize such operations to comply with the general performance standard for stabilization of surface areas promulgated by OSRME at 30 CFR 816.95, rather than the erosion control and surface stabilization design criteria specified under 25 CFR 216.105(i). The text of the petition appears an an appendix to this notice.

Pursuant to section 201(g) of the Act, any person may petition for a change in OSMRE's permanent program rules. The Act allows for a period of 90 days within which to decide to grant or deny a petition [section 201(g)(4); 30 U.S.C. 1211(g)(4)]. Under the applicable regulations for rulemaking petitions (30 CFR 700.12), this notice seeks public comments on the merits of the petition and on the rule change suggested in the petition. At the close of the comment period, a decision will be made to grant or deny the petition. If a decision is made to grant the petition, rulemaking proceedings will be initiated in which public comment will again be sought before any final rulemaking. If a decision is made to deny the entire petition, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step prior to commencement of the rulemaking process. If a decision is made to grant the petition, a rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order No. 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4322(2) (C), is needed.

List of Subjects in 30 CFR Part 750

Indians-lands, Reporting and recordkeeping requirements, Surface mining.

Dated: June 2, 1987.

Robert E. Boldt,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

Appendix

The text of the petition dated April 30, 1987 is as follows:

Petition To Initiate Rulemaking

Petitioner:

Peabody Coal Company,
1300 S. Yale, Flagstaff, Arizona 86001.

1. Summary

Pursuant to the Administrative Procedures Act, 5 U.S.C. 553(e), the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1211(c)(2) and (g) and regulations of the Office of Surface Mining Reclamation and Enforcement (OSMRE), 30 CFR 700.12, Peabody Coal Company, Western Division, petitions the Director, OSMRE, for a change in regulation 30 CFR 750.16 which established performance standards for surface coal mining and reclamation operations on Indian lands. The proposed change will enable operators on Indian lands to comply with the performance standard regarding stabilization of surface areas adopted by the OSMRE on January 10, 1983 and applicable to surface coal mining and reclamation operations not conducted on Indian lands.

2. Description of Petitioner

Petitioner, Peabody Coal Company, the nation's largest coal producer, operates surface and underground coal mines in 11 states. More specifically, the Western Division of Peabody operates five surface coal mines in the states of Montana, Colorado, and Arizona. Two of these mines, the Black Mesa and Kayenta Mines, are located in northeastern Arizona on the Navajo Indian Reservation. Collectively, these two mines produce approximately 12 million tons of coal annually. The Black Mesa and Keyenta Mines began production in 1970 and 1972, respectively.

3. Proposed Amendment

Petitioner requests promulgation of the following amendment to 30 CFR 750.16 which established performance standards applicable to operations on Indian lands. Specific new language is underlined.*

§ 750.16 Performance Standards

After OSM issues a permit under this part, a person conducting surface coal mining operations on Indian lands shall do so in accordance with Parts 816, 817, 819, 822, 823, 824, 827, and 828 of this chapter. Prior to that time, the person conducting surface coal mining operations shall adhere to the performance standards of 25 CFR Part 216, Subpart B *except § 216.105(i). Stabilization of surface areas shall be governed by 30 CFR 816.95.*

4. Justification for Proposed Amendment

The regulation at 25 CFR 216.105(i) is unnecessarily stringent and only applicable to operators on Indian lands. The OSMRE determined that a separate design criteria for rills and gullies is not needed to assure erosion stabilization and that erosion should be governed by the general performance standard promulgated at 30 CFR 816.95 (48 FR 1161). On the basis of this finding, the OSMRE eliminated the nine-inch design criterion for operations not located on Indian lands on January 10, 1983.

In promulgating 30 CFR 750.16, the OSMRE decided to apply the performance standards found in 30 CFR 816 to new surface coal mining operations on Indian lands and existing surface coal mining operations on Indian lands once an initial administrative decision has been rendered regarding the Permit Application Package (PAP) required by 30 CFR 750.11. Prior to that decision, the performance standards in 25 CFR 216, Subpart B continue to apply (49 FR 38474). This decision was intended to protect operators from an abrupt dislocation associated with the immediate implementation of a new regulatory program (49 FR 38464). This rationale may have been sound for the majority of the performance standards in 25 CFR 216, Subpart B, but the decision has had a negative impact with regard to surface stabilization.

Peabody's reclamation efforts in the semiarid west have been highly successful with regard to surface stabilization, particularly considering the morphologic, hydrologic, and meteorologic characteristics of semiarid regions. Postmining slopes, revegetation, surface treatments, and increased infiltration in reconstructed mine soil have all contributed to the minimization of rill and gully development. The fact that rill and gully development is minimal is easily demonstrated by aerial or on-the-

* **Editorial Note.**—The new language is italicized in the **Federal Register.**

ground surveys. Locations where minor rills and gullies have occurred are predictable. Most occur where overland flow is concentrated and transported downslope through swales or depressions created during final spoil grading to facilitate drainage in reclaimed areas.

The fact that rills and gullies develop as described above is no surprise. To the contrary, they are expected and represent the initial stages in the evolution of a drainage system in reclaimed areas. Peabody has prepared elements of the reclamation plans for its western mines which allow for the development of drainage systems consistent with the dynamic nature of natural drainage systems. Such plans have been approved for mines not located on Indian lands. At such mines, drainages may develop as a part of the overall, approved reclamation plan insofar as they meet the requirements in 30 CFR 816.95 and the approved reclamation plan.

A plan for the development of a surface drainage system on reclaimed lands has been included in the Permit Application Package for the Black Mesa and Kayenta Mines. That PAP was submitted to the Western Field Operations office in Denver, Colorado pursuant to 30 CFR 750. Peabody has been informed that the PAP will not likely be approved before December, 1988, a full three years following submittal. This inordinately long repermitting schedule for an existing mining complex holding valid permits issued by the OSMRE pursuant to SMCRA is due to the performance of an Environmental Impact Statement (EIS). The EIS is being performed pursuant to an agreement between the OSMRE and the Hopi Tribe, not as a consequence of an environmental assessment indicating a need for an EIS. To the contrary, several environmental assessments have previously been performed to support permitting actions at the Black Mesa complex. None of these environmental assessments identified significant impacts associated with the mining activities.

Representatives of the Albuquerque Field Office, OSMRE, have issued citations to Peabody for rills and gullies nine inches and deeper even though these represenatives admit such rills and gullies do not represent a general failure of the reclamation program at the Black Mesa complex. Often, the repair of such minor rills disturbs a considerable amount of reclaimed lands.

As previously stated, Peabody operates mines in the semiarid west, both on and off Indian lands. In Peabody's experience, there are no environmental circumstances unique to Indian lands that would justify retention of the nine-inch rule contained in 25 CFR 216.105(i) in lieu of the general performance standard applicable elsewhere.

Peabody finds itself caught between an unreasonable regulation arbitrarily applied only to Indian lands and an unduly prolonged permitting process which will not provide the programmed relief from this regulation in a reasonable time frame. The result is counterproductive and costly rework of revegetated areas or receipt of citations for violating a rule abandoned everywhere but on Indian lands.

5. Conclusion

For the foregoing reasons, petitioner urges the OSMRE to commence without delay a rulemaking proceeding to promulgate the amendment to 30 CFR 750.16 as proposed in this petition.

Respectfully submitted,

Kenneth R. Moore,

President, Western Division, Peabody Coal Company.

[FR Doc. 87-12885 Filed 6-4-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BERC-435-P]

Medicare Program; Changes to the Return on Equity Capital Provisions for Outpatient Hospital Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to eliminate the allowance for a return on equity capital for outpatient services furnished by proprietary hospitals effective for cost reporting periods beginning on or after October 1, 1987.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m., August 4, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-435-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-435-P. Comments received timely will be delivered for public inspection as they are received, generally beginning about three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Anthony Coates, (301) 597-2886.

SUPPLEMENTARY INFORMATION:

I. Background

A. Recent Legislation and Rulemaking

Section 1861(v) of the Social Security Act (the Act) defines "reasonable cost" for Medicare purposes and provides that the necessary costs incurred by a provider (both direct and indirect) in the delivery of covered health care services are included in this definition. Currently, as the result of recent legislation and an amendment to regulations, as discussed in greater detail below, a return on equity capital is paid as an allowance in addition to the reasonable cost of covered services furnished to beneficiaries by proprietary hospitals and skilled nursing facilities (SNFs).

On April 7, 1986, the President signed into law the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272). Section 9107 of that law amended sections 1861(v)(1), 1886(a)(4), and 1886(g)(2) of the Act to provide for the following:

Inpatient hospital services

Section 9107(a) of Pub. L. 99-272 amended section 1886(g)(2) of the Act by mandating a phase-out of payments for return on equity capital for inpatient hospital services commencing with cost reporting periods beginning on or after October 1, 1986. Under prior legislation, that is, the Social Security Amendments of 1983 (Pub. L. 98-21) enacted on April 20, 1983, the payment rate for inpatient hospital services for cost reporing years beginning on or after April 20, 1983 was calculated at the 100 percent of the average of the rates of interest on special obligations issued for purchase by the Medicare Part A Trust Fund. The phase-out mandated by section 9107(a) of Pub. L. 99-272 reduces the rate further to the following percentages:

—75 percent for cost reporting periods beginning during fiscal year (FY) 1987.

—50 percent for cost reporting periods beginning during FY 1988.

—25 percent for cost reporting periods beginning during FY 1989.

—Zero percent for cost reporting periods beginning on or after October 1, 1989.

Services other than inpatient hospital services

Section 9107(b)(2) of Pub. L. 99-272 amended section 1861(v)(1)(B) of the Act to provide that, for cost reporting periods beginning on or after October 1, 1985, the rate of the return on equity for SNFs must be equal to the average of the rates of interest on obligations issued for purchase by the Medicare Part A Trust Fund. In addition, section

9107(b)(1) of Pub. L. 99–272 added section 1861(v)(1)(P) to the Act to specify that if payment for a return on equity capital is provided for by regulations for services other than inpatient hospital services, the rate of return to be recognized for determining the reasonable cost of services furnished in a cost reporting period, beginning on or after October 1, 1985, must be equal to the average of the rates of interest on obligations issued for purchase by the Medicare Part A Trust Fund. This latter provision, however, applies only if the Secretary provides in regulations for the payment of a return on equity capital for services other than inpatient hospital services. The Secretary is not required to provide for such payment except for SNFs.

B. Provisions of the 1987 final rule

In a final rule concerning return on equity published on June 4, 1987 (the 1987 final rule), we changed the regulations pertaining to program payment of a return on equity capital for services other than inpatient hospital services. Where the changes were mandated under the provisions of Pub. L. 99–272, they were specifically adopted. Where the statutory language granted the Secretary discretionary authority, we exercised this authority, as discussed below.

SNF services and outpatient hospital services

For cost reporting periods beginning on or after October 1, 1985, program payment of a return on equity capital for SNF services and outpatient hospital services was reduced to equal the average of the rates of interest on obligations issued for purchase by the Part A Trust Fund. This change was mandated for SNFs by section 1861(v)(1)(B) of the Act, as amended by section 9107(b)(2) of Pub. L. 99–272, and authorized for outpatient hospital services by section 1861(v)(1)(P) of the Act, as provided in section 9107(b)(1) of Pub. L. 99–272.

Services of all proprietary providers or health care entities other than hospitals or SNFs

—For cost reporting periods beginning on or after October 1, 1985, but before July 6, 1987 (the effective date of the 1987 final rule), program payment of a return on equity capital for services of all proprietary providers other than hospitals or SNFs was reduced to equal the average of the rates of interest on obligations issued for purchase by the Part A Trust Fund.

These changes conform our regulations to the statutory mandate of section 1861(v)(1)(P) of the Act, as enacted by section 9107(b) of Pub. L. 99–272. As discussed above, this section states that, if the Secretary provides in regulations for a return on equity capital for services other than inpatient hospital services, the rate of return must be equal to the average of the rates of interest on obligations issued for purchase by the Part A Trust Fund.

—For cost reporting periods beginning on or after July 6, 1987 (the effective date of the 1987 final rule), program payment is no longer made for a return on equity capital for services of proprietary providers other than hospitals or SNFs.

II. Proposed Elimination of Return on Equity Capital for Outpatient Hospital Services

We propose to eliminate the allowance for a return on equity captial from payment for outpatient hospital services. As discussed below, the allowance is unnecessary to maintain the availability of hospital outpatient services. In addition, in view of the statutory phase-out of the equity capital allowance for inpatient services under section 1886(g)(2) of the Act, we believe continuation of the allowance for hospital outpatient services to be inappropriate. We intend that the elimination be effective for cost reporting periods beginning on or after October 1, 1987.

Section 7 of the 1966 Amendments to the Social Security Act (Pub. L. 89–713), enacted November 2, 1966, added what is now section 1861(v)(1)(B) of the Act to require the Secretary to prescribe regulations that provide for the recognition of a reasonable return on equity capital for extended care services furnished to Medicare beneficiaries by proprietary facilities (this is, by proprietary SNFs). Section 601(e) of the Social Security Amendments of 1983 (Pub. L. 98–21) amended section 1886 of the Act by adding paragraph (g)(2), which provided that, effective with cost reporting periods beginning on or after April 20, 1983 (the date of enactment of Pub. L. 98–21), the return on equity capital provisions apply to inpatient hospital services. The allowable return for those services was set at a percentage equal to 100 percent of the average of the rates of interest on obligations issued for purchase by the Medicare Part A Trust Fund. This marked the first time that amendments to the Medicare provisions of the Social Security Act had ever explicitly addressed the payment of return on equity capital for proprietary hospitals or any other providers other than SNFs. Nevertheless, under the broad authority granted by sections 1102 and 1871 of the Act, we had already extended the application of return to proprietary providers other than SNFs, and had allowed a return at a rate equal to 150 percent of the average of the rates of interest on obligations issued for purchase by the Medicare Part A Trust Fund. This was consistent with the intent of Congress in enacting section 1861(v)(1)(B) of the Act in 1967. (See, H.R. No. 2317, 89th Cong., 2d Sess. 3 (1966).)

In its passage of section 9107 of Pub. L. 92–272, Congress continued the broad discretion that it previously granted to the Secretary. While Congress mandated specific rules governing return on equity for inpatient hospital services (section 1886(g)(2) of the Act) and SNFs (section 1861(v)(1)(B) of the Act), Congress left to the Secretary the decision of whether to pay a return or equity to other providers under new section 1861(v)(1)(P) of the Act. It is important to note that Congress limited our discretion in allowing a return on equity solely to paying the rate of return, if a return is paid, at the level equal to average of the rates of interest on obligations issued for purchase by the Part A trust fund.

As stated above, under section 1886(g)(2) of the Act as amended by section 9107 of Pub. L. 99–272 in 1986, Congress directed that the return on equity for inpatient hospital services be phased out. At the same time, Congress affirmed under section 1861(v)(1)(P) of the Act that it is within the Secretary's discretionary authority to decide whether return on equity should be paid for other types of services, specifying only the rate at which a return on equity "shall be paid" for these other services if we provide for such a payment. Thus, we have discretionary authority either not to pay a return on equity for outpatient hospital services or to pay it at the 100 percent level. We do not have the authority, however, to reduce the allowance to some level below 100 percent for outpatient hospital services or to phase it out at reduced levels over time.

As stated above, we are proposing to exercise our discretionary authority not to pay return on equity capital for outpatient hospital services. Because hospital capital for outpatient hospital services, we believe it would be inappropriate to continue payment of return on equity for outpatient hospital services while the payment for inpatient hospital services is being phased out. Investors in hospitals should not receive return on equity payments based upon

the setting in which the hospital services are provided; that is, inpatient versus outpatient. Additionally, we believe that the level of other Medicare payments for hospital outpatient services is adequate to maintain the availability for services to beneficiaries without an allowance for return on equity capital. Medicare payments for outpatient hospital services have increased dramatically since implementation of the prospective payment system system. In FY 1983, the year before the prospective payment system began, Medicare payments for outpatient hospital services were $3.36 billion. For FY 1987, Medicare payments for outpatient services are expected to be $6.03 billion, and in FY 1988 we expect there payments to increase to $7.36 billion. Thus, expect that Medicare payments for outpatient hospital services will have increased by almost 120 percent in the five years since implementation of the prospective payment system.

Payment of return on equity capital was originally authorized to encourage private investment in health care facilities by guaranteeing investors a certain return on their investment. However, as shown in our discussion of hospital profit margins contained in the prospective payment system update for Federal fiscal year (FY) 1987 and published in the Federal Register (51 FR 31454) on September 31, 1986, many hospitals have achieved record profits over the past two years. The payments for return on equity capital for outpatient services that we propose to eliminate represent only a very small percentage of the total payments to proprietary hospitals projected for FY 1988. We believe that the high profits to hospitals, even when reduced through the elimination of return on equity capital for outpatient services, should provide a return sufficient to encourage private investment in proprietary hospitals. Accordingly, we have concluded that the elimination of return on equity capiatal for outpatent hospital services is appropriate.

III. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for proposed regulations that would be likely to have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices, or result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

Currently, approximately sixteen percent of all hospitals participating in Medicare are classified as proprietary hospitals. Although a significant number of hospitals. Although a significant number of hospitals would be affected by this proposed rule, we do not believe that this proposed rule would have a substantial economic impact on individual hospitals. We expect that the reduction in payments to proprietary hospitals for outpatient services would range from $15 million in FY 1988 to about $45 million in FY 1992. While some hospitals may be more severely affected than others, we estimate that the average reduction in Medicare revenue for each proprietary hospital would represent about four percent of total payments to proprietary hospitals for outpatient services. We generally do not regard a change in payments of less than five percent as having a substantial impact on the target population.

We do not expect that beneficiary access would be affected, since most hospital outpatient departments are not located in proprietary settings. Futhermore, we believe that any incentives to limit access by proprietary outpatient departments would be more than countered by the more generalized pressures on hospitals to increase the availability of outpatient services in order to maximize the productive capability of their facilities and to provide care in the most cost-effective setting. For example, both the use of outpatient surgical services by Medicare beneficiaries and payments for these services have increased more since the start of the prospective payment system than before.

For these reasons, we have determined that an initial regulatory impact analysis is not required for this proposed rule. In addition, we have determined, and the Secretary certifies, that this proposed rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

Also, we do not expect this proposed rule to produce an impact that would exceed the limit for reductions in payment to hospitals or physicians established by section 9321(d) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509). That provision prohibits the Secretary from issuing any final rule or notice between October 21, 1986 and September 1, 1987 that would result in a $50 million or greater reduction in payments to hospitals or physicians in FY 1988.

IV. Other Required Information

A. Public Comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that final rule.

B. Paperwork Reduction Act

These proposed changes would not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

List of Subjects in 42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

We are proposing to amend 42 CFR Part 413 as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a-1, 1395(b), 1395g, 13951(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

B. Section 413.157 is amended by revising paragraph (b)(3), redesignating paragraph (b)(4) as new paragraph (b)(5), and adding a new paragraph (b)(4) to read as follows:

§ 413.157 Return on equity capital of proprietary providers.

* * * * *

(b) *General rule.* * * *

(3) *Rate of return related to proprietary SNFs.* For cost reporting periods beginning on or after October 1, 1985, the rate used in determining the

return for SNFs is a percentage equal to the average of the rates of interest described in paragraph (b)(1) of this section.

(4) *Rate of return related to outpatient hospital services.* (i) For cost reporting periods beginning on or after October 1, 1985 but before (the effective date of the final rule), the rate used in determining the return for outpatient hospital services is a percentage equal to the average of the rates of interest described in paragraph (b)(1) of this section.

(ii) For cost reporting periods beginning on or after October 1, 1987, there is no allowance for return for outpatient hospital services.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: April 7, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: May 1, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-12722 Filed 6-4-87; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 74, and 94

[General Docket No. 82-243]

Service and Technical Rules for Government and Non-Government Fixed Service Usage of the Frequency Bands 932-935 MHz and 941-944 MHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: This action extends the time for filing reply comments to the *Third Notice of Proposed Rulemaking* in General Docket No. 82-243, 52 FR 11519 (April 9, 1987), concerning usage of the frequency bands 932-935 MHz and 941-944 MHz. The action responds to a *Request for Extension of Time* filed by the Utilities Telecommunications Council (UTC). UTC requested additional time due to an upcoming meeting of its Microwave Committee, which will address the question of multiple address use of the 900 MHz fixed bands.

DATES: Reply comments are now due June 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Telephone (202) 653-8116.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 87-12848 Filed 6-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 2 and 21

[Gen. Docket No. 87-136; FCC 87-166]

Reallocation of the Local Television Transmission Service From the 11.7-12.2 GHz Band to the 14.2-14-4 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action responds to a petition by Chadbourne & Parke, requesting that the local television transmission service (LTTS) be reallocated from the 11.7 GHz band to the 14 GHz band. This action is necessary to avoid the need for frequency coordination with the fixed-satellite service (FSS). The intended effect of this action is to propose measures that would eliminate the burden of frequency coordination for the LTTS and the FSS.

DATES: Comments are due on or before July 9, 1987, and reply comments on or before July 24, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Raymond LaForge, telephone (202) 653-8155.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, Adopted May 1, 1987, Released May 18, 1987.

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

Summary of Notice

1. Chadbourne and Parke has filed a petition (RM-5321) seeking to amend the Commission Rules to reallocate the local television transmission service (LTTS) from the 11.7 GHz band to the 14 GHz band. The fixed-satellite service (FSS) utilizes the 11.7 GHz band for satellite downlinks and the 14 GHz band for satellite uplinks. The petitioner represents several FSS clients who are implementing small-aperture earth-station networks in the FSS. LTTS operates in the 11.7 GHz ban as a secondary user.

2. In the past the Commission has generally required individual licensing of each FSS earth-station. However, with the advent of small-aperture networks, the Commission has recently authorized blanket licensing of networks. As conditions of the license, the Commission required FSS operators to maintain an up-to-date list of earth-stations and to provide a point-of-contact to enable LTTS operators to coordinate their operations. Chadbourne & Parke maintains that by shifting LTTS to the 14 GHz band there would be no need for frequency coordination because the risk of interference would be minimal. All commenters, including LTTS interests, supported the petition.

3. While we agree that the petition has merit, we are concerned that LTTS may not be compatible with services other than FSS that operate in the 14 GHz band. For example, radionavigation is allocated to the 14.0-14.2 GHz band on a primary basis for both Government and non-Government use. While the petitioner suggests that LTTS can simply avoid radionavigation frequencies in coastal areas, this is not a practical solution. Many of the major population areas where LTTS would be most in demand are along coastal areas or major waterways. No information has been presented on what separation distances may be appropriate. Also, there would be an added problem in coordinating with Government stations because it generally takes on the order of 45-60 days to coordinate with Government operations. The LTTS often operates with short lead times to cover fast-breaking news stories.

4. We also see similar problems with the 14.4-14.5 GHz band. The petitioner's statement that there are only four areas where there are Government stations operating in this band apparently stems from footnote US 234 to the Table of Frequency Allocations. However, this footnote deals only with exceptions to the secondary allocation status. US 234 lists four locations where Government fixed and mobile stations required primary status until December 31, 1986. The actual number of Government stations is significantly larger since the actual number includes not just those that are considered primary. Here again, prospects of developing a workable frequency coordination procedure would

be dim, particularly since the Government has mobile operations in this band and it intends to assign additional stations consistent with the secondary allocation status.

5. The 14.2–14.4 GHz band is presently allocated only to the FSS. We believe that a reallocation from the 11.7–12.2 GHz band to the 14.2–14.4 GHz band may have merit. Accordingly, we are proposing to reallocate the local television transmission service from the 11.7 GHz band to the 14.2–14.4 GHz band. We agree with the petitioner and commenters that, provided that appropriate measures are taken to protect satellites in the geostationary arc, the risk of interference from the LTTS to the FSS would be insignificant and no frequency coordination would be necessary. Consistent with the international Radio Regulations we propose that the power output of LTTS operations be limited to +45 dBW EIRP in order to assure that LTTS does not interfere with the FSS. We recognize that a reallocation of the LTTS from the 11.7 GHz band to the 14.2–14.4 GHz band would reduce the available spectrum from 500 MHz to 200 MHz. It appears, however, that in light of the increasing difficulties with LTTS operation in the 11.7 GHz band, the diminished amount of spectrum may prove to be more useful than that now available. We seek comments as to whether 200 MHz of spectrum in the 14 GHz band is sufficient to meet LTTS needs. We note that the LTTS has frequencies available in three other bands.

6. We propose to allow for a three year period from the effective date of the rule changes for LTTS operators to cease operation in the 11.7–12.2 GHz band. We anticipate that new 14 GHz equipment could be made available rapidly since it would be similar to equipment already available in other nearby frequency bands (i.e., the 13.200–13.250 LTTS band). Three years should be sufficient time for LTTS operators to either purchase equipment for operation in the new 14.2–14.4 GHz band or arrange to operate in other LTTS bands. We also believe that with the rapid growth in small-aperture earth-station networks, the problem of frequency coordination in the 11.7 GHz band will become increasingly burdensome, and therefore, there is good reason to effect this reallocation promptly.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–12849 Filed 6–4–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 80 and 87

[PR Docket No. 87–133; FCC 87–159]

Maritime and Aviation Services; Proposed Amendment To Allow the Use of Continuous Wave (CW) and Voice Modulation by Emergency Position Indicating Radiobeacons (EPIRBs) and Emergency Locator Transmitters (ELTs)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule would permit EPIRBs and ELTs to use CW and voice modulation on an optional basis in addition to the current mandatory use of non-voice swept audio signal modulation. This action is initiated in response to a new Federal Aviation Administration (FAA) Technical Standard Order (TSO) TSO–C91a and a request by ARNAV Systems, Inc. (ARNAV). The effect of the proposed rules would be to improve the detection of distress situations and search and rescue operations.

DATES: Comments must be received on or before July 20, 1987, and reply comments must be received on or before August 4, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–7175. Supplementary Information: This is a summary of the Commission's Notice of proposed Rule Making, adopted April 29, 1987, and released May 27, 1987. The full text of this Commission decision including the proposed rule change is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this decision including the proposed rule change may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Commission proposes to amend the rules to allow the use of CW and voice modulation on an optional basis by EPIRBs and ELTs in addition to the compulsory non-voice swept audio modulation. The Commission takes this action in response to the new ELT technical standards contained in TSO–C91a published by FAA and a request by ARNAV. ARNAV has developed an ELT which transmits a digitally synthesized voice signal as well as the non-voice swept audio signal. The voice signal gives pertinent information regarding the aircraft identification, the time the ELT was activated and in some cases the aircraft coordinates. ARNAV requested a waiver of the rules and/or rulemaking to authorize the use of the automatic voice transmissions. The U.S. Coast Guard and U.S. Air Force who are responsible for domestic search and rescue as well as the FAA supported the ARNAV request. As a result the Commission granted the ARNAV request for a waiver. Considering that the technical characteristics and purpose of EPIRBs are identical to those of ELTs the Commission believes that allowing both EPIRBs and ELTs to use CW and voice would improve the detection of distress situations and aid search and rescue operations in the maritime and aviation services.

2. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for the rules governing permissible *ex parte* contacts.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule if promulgated will not have a significant economic impact on a substantial number of small entities because this action only provides for the use of CW and voice modulation by EPIRBs and ELTs on an optional basis.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

5. Pursuant to applicable procedures set forth in § 1.1415 and § 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 20, 1987, and reply comments on or before August 4, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

6. This Notice of Proposed Rule Making is issued under the authority of 47 U.S.C. 154(1) and 303 (g) and (r).

7. A copy of the Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 80

Radio, Emergency position indicating radiobeacons.

List of Subjects

47 CFR Part 87

Radio, Emergency locator transmitters.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Amended Rules

Parts 80 and 87 of Chapter 1 of Title 47 of the Code of Federal Regulations would be amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICE

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.207 paragraph (d), the emission designators under Classes of Emission in the Distress Urgency and Safety frequencies 121.500 MHz and 243.000 MHz are revised to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

Types of stations	Classes of Emission
* * * * *	
Distress, Urgency and Safety [8] [9]:	
500 kHz [10]	A2A and A2B or
2182 kHz [10] [11]	A2B, A3B, H2B, H3E
8364 kHz	A2A, H2A
121.500 MHz	A1A, A3E, A3N
123.100 Mhz	A3E
156.750 and 156.800 MHz.	G3E, G3N
243.000 MHz	A1A, A3E, A3N

* * * * *

3. In § 80.1053 paragraphs (a)(4) and (a)(6) are revised to read as follows:

§ 80.1053 Special requirements for Class A EPRIB stations.

(a) * * *

(4) Use A3N emission on a mandatory basis and A1A and A3E emissions on an optional basis on the frequencies 121.500 MHz and 243.000 MHz;

* * * * *

(6) The types of emissions for EPRIBs must be in accordance with those specified in the Federal Aviation Administration (FAA) Technical Standards Order (TSO) Document TSO–C91a titled "Emergency Locator Transmiter (ELT) Equipment." TSO–C91a incorporates by reference technical standards contained in the Radio Technical Commission for Aeronautics (RTCA) Document No. RTCA/DO–183 titled "Minimumn Operational Performance Standards For Emergency Locator Transmitters." RTCA/DO–183 may be obtained from RTCA at One McPherson Square, 1424 K Street, NW., Suite 500, Washington, DC 20005. TSO–C91a may be obtained from the Department of Transportation, Federal Aviation Administration, Office of Airworthiness, 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

PART 87—AVIATION SERVICES

1. The authority for Part 87 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 145, 303 unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 87.5 the definition for "Emergency locator transmitter" is revised to read as follows:

§ 87.5 Definitions of terms.

* * * * *

Emergency locator transmitter (ELT). A transmitter of an aircraft or survival craft actuated manually or automatically which is used as an alerting and locating aid for survival purposes.

* * * * *

3. In § 87.67(b) Footnote 10 is revised to read as follows:

§ 87.67 Types of emission.

* * * * *

(b) * * *

[10] *A1A for primary use by ELT stations.* A1A and F1B emissions may be used by all other stations provided they do not cause harmful interference to H2B, J3E, J7B, and J9W emissions and the assigned frequency is maintained 1400 Hz above the carrier frequency.

* * * * *

4. In § 87.73 paragraph (h) is revised to read as follows:

§ 87.73 Modulation requirements.

* * * * *

(h) The types of emissions for ELTs must be in accordance with those specified in the Federal Aviation Administration (FAA) Technical Standard Order (TSO) Document TSO–C91a titled "Emergency Locator Transmitter (ELT) Equipment". TSO–C91a incorporates by reference technical standards contained in the Radio Technical Commission for Aeronautics (RTCA) Document No. RTCA/DO–183 titled "Minimum Operational Performance Standards For Emergency Locator Transmitters". RTCA/DO–183 may be obtained from RTCA at One McPherson Square, 1424 K Street, NW., Suite 500, Washington, DC 20005. TSO–C91a may be obtained from the Department of Transportation, Federal Aviation Administration, Office of Airworthiness, 800 Independence Avenue, SW., Washington, DC 20591.

5. In § 87.183 paragraphs (f) introductory text and (l) are revised to read as follows:

§ 87.183 Frequencies available.

* * * * *

(f) *121.5 MHz.* This is a universal simplex clear channel frequency for use by aircraft in distress or emergency condition. Except for use in an ELT, the frequency 121.5 MHz will only be assigned when other frequencies are available for normal aircraft communications. The frequency is available as follows:

* * * * *

(l) *243.0 MHz:* This is an emergency and distress frequency available for use by survival craft stations, ELTs and equipment used for survival purposes which are also equipped to transmit on the frequency 121.5 MHz.

* * * * *

[FR Doc. 87–12703 Filed 6–4–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 86–37]

Amendment Restricting the Use of Radio Transmitters With External Frequency Controls; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On May 20, 1987, the Commission published a Notice of Proposed Rulemaking (52 FR 18935) in this proceeding concerning the restriction of the use of radio transmitters with external frequency controls. The proposed rule changes were omitted. They are shown below.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, Telephone (202) 634–2443.

SUPPLEMENTARY INFORMATION: Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 90.203 is amended by adding paragraphs (e), (f), (g), and (h) to read as follows:

§ 90.203 Type acceptance required.

* * * * *

(e) Except as provided in paragraph (g) of this section, transmitters designed to operate above 25 MHz shall not be type accepted for use under this part if the operator can, by using external controls, program and transmit on unauthorized frequencies.

(f) Except as provided in paragraph (g) of this section, transmitters designed to operate above 25 MHz that have been type accepted prior to (date to be announced), and permit the operator, by using external controls, to program and operate on unauthorized frequencies, shall not be manufactured in, or imported into, the United States as of (date to be announced).

(g) Transmitters with frequency programming capability designed to operate above 25 MHz are exempt from paragraphs (e) and (f) of this section if the design of such transmitters:

(1) Requires equipment using normal operating controls for frequency programming to be modified by a method not normally accessible to the operator in order to be placed in the programmable mode. Further, while in the programmable mode, the equipment shall not be able to transmit. The procedures for making the modification and altering the frequency program shall not be made available with the operating information normally supplied with the equipment; or

(2) Requires equipment to be programmed for frequencies through controls normally inaccessible to the operator; or

(3) Requires equipment to be programmed for frequencies through use of external devices or specifically programmed modules made available only to service/maintenance personnel; or

(4) Requires equipment to be programmed through cloning (copying a program directly from another transmitter) using devices and procedures made available only to service/maintenance personnel.

(h) In order to retain the front panel programming and channel selection capability in equipment utilized in helicopters and fixed wing aircraft, the requirements of paragraphs (e), (f), and (g) of this section are not applicable to equipment designed and manufactured for, and used aboard aircraft for operations authorized pursuant to § 90.423.

3. In § 90.427, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 90.427 Precautions against unauthorized operation.

* * * * *

(b) No person shall program into a transmitter frequencies for which the licensee using the transmitter is not authorized.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-12705 Filed 6-4-87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 108
Friday, June 5, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; Extension of Public Comment Period on Proposed Rental Fees for Electronic Sites

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of the public comment period on proposed rental fees for electronic sites.

SUMMARY: The Regional Forester of the Rocky Mountain Region is extending the comment period on proposed rental fees for most electronic uses. The proposed fee schedule was published Tuesday, March 31, 1987, on page 10245 of the **Federal Register**, Volume 52, No. 61. Comments must now be in writing and received on or before July 1, 1987.

ADDRESS: Mail your comments to Gary E. Cargill, Regional Forester (2700), Rocky Mountain Region, USDA Forest Service, 11177 W. Eighth Avenue, Lakewood, CO 80225.

FOR FURTHER INFORMATION CONTACT: Eugene Ecker (303) 236–9512, P.O. Box 25127, Lakewood, CO 80225.

S.H. Hanks,

Deputy Regional Forester.

[FR Doc. 87–12818 Filed 6–4–87; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Proposed Posting of Stockyards; Bynum Livestock & Commission Co., Inc., et al.

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

AL–176—Bynum Livestock & Commission Co., Inc., Attalla, Alabama
AL–177—Taylor's Stockyard, Nauvoo, Alabama
CA–180—Golden Valley Ranch, Bakersfield, California
IA–261—North Iowa Feeder Pigs, St. Ansgar, Iowa
SC–141—Oconee Livestock, Westminster, South Carolina
SC–142—Hendrix Horse Auction, Hartsville, South Carolina
SD–169—Alexandria Livestock Market, Inc., Alexandria, South Dakota
TX–333—Erath County Sales & Livestock Commission, Stephenville, Texas

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, United States Department of Agriculture, Washington, DC 20250, by June 22, 1987.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 1st day of June, 1987.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 87–12812 Filed 6–4–87; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1988 Dress Rehearsal Census of Eastern Washington, State—List/Enumeration—Listing Operations
Form Number: Agency DX–104, DX–104A, DX–104B, DX–104C, DX–169A; OMB—NA
Type of Request: New collection
Burden: 45,100 respondents; 2,255 reporting hours
Needs and Uses: The Census Bureau is planning to conduct a full-scale Dress Rehearsal of the 1990 Population and Housing Census of 1988. List-enumeration census procedures are necessary to enumerate rural and sparsely populated areas. Respondents will be residents of rural areas located in 8 counties of Eastern Washington State and Colville and Spokane Indian Reservations.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Excecutive Office Building, Washington, DC 20503.

June 1, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–12823 Filed 6–4–87; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Sources and Consequences of Undercount
Form Number: Agency DC–1380; OMB—NA

Type of Request: New collection
Burden: 1,600 respondents; 480 reporting hours
Needs and Uses: This study examines the sources and consequences of coverage error in a more detailed fashion than has previously been possible. The data are used by Census to assess the relative importance of different sources of coverage error and to isolate the effects of each error source on measured census characteristics.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: June 1, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–12824 Filed 6–4–87; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumption or countervailing duty order, finding, or suspended investigation.

SUMMARY: Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review: Not later than June 30, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June, for the following periods:

	Period
Antidumping Duty Proceeding:	
Fireplace Mesh Panels from Taiwan.	06/01/86 to 05/31/87.
Stainless Steel Plate from Sweden.	06/01/86 to 05/31/87.
Fishnetting of Man-Made Fibers from Japan.	06/01/86 to 05/31/87.
Bicycle Tires & Tubes from Taiwan.	06/01/86 to 05/31/87.
Carbon Steel Plate from Taiwan.	06/01/86 to 05/31/87.
Rayon Staple Fiber from Italy.	06/01/86 to 05/31/87.
Sugar from Belgium.	06/01/86 to 05/31/87.
Sugar from France ..	06/01/86 to 05/31/87.
Sugar from West Germany.	06/01/86 to 05/31/87.
Large Power Transformers from France.	06/01/86 to 05/31/87.
Large Power Transformers from Japan.	06/01/86 to 05/31/87.
Large Power Transformers from Italy.	06/01/86 to 05/31/87.
Oil Country Tubular Goods from Canada.	06/01/86 to 05/31/87.
64K DRAMS from Japan.	12/11/86 to 05/31/87.
Oil Country Tubular Goods from Taiwan.	01/07/86 to 05/31/87.
Red Raspberries from Canada.	06/01/86 to 05/31/87.
Strontium Nitrate from Italy.	06/01/86 to 05/31/87.
Precipitated Barium Carbonate from the Federal Republic of Germany.	07/01/86 to 06/31/87.
Elemental Sulphur from Mexico.	06/01/86 to 05/31/87.
Polyvinyl Chloride Sheet and Film from Taiwan.	06/01/86 to 05/31/87.
Countervailing duty proceeding:	
Carbon Black from Mexico.	01/01/86 to 12/31/86.
Nitrocellulose from France.	01/01/86 to 05/31/86.
Oil Country Tubular Goods from Canada.	12/30/85 to 12/31/86.

Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by June 30, 1987.

If the Department does not receive by June 30, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 1, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–12870 Filed 6–4–87; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–091]

Certain Electric Motors From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain electric motors from Japan. The review covers one manufacturer of this merchandise to the United States and the period December 1, 1985 through November 30, 1986.

The manufacturer failed to respond to our questionnaire for the period of review. The Department has preliminarily determined to assess dumping duties using best information available for entries during the period December 1, 1985 through November 30, 1986.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/ 2923.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 15972) the final results of its last administrative review of the antidumping duty order on certain electric motors from Japan (45 FR 84994, December 24, 1980). The petitioner, the National Electric Manufacturers Association, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on January 20, 1987 (52 FR 2123). The Department has now conducted this 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 alternating current, polyphase electric motors of not less than 150 horsepower but not greater than 500 horsepower, not including submersible well pump motors. Such motors are currently classifiable under items 682.4545, 682.4600, 682.5010, and 682.5030 of the Tariff Schedules of the United States Annotated. The review covers one manufacturer/exporter, Toshiba Corporation ("Toshiba"), of certain electric motors and the period December 1, 1985 through November 30, 1986.

Preliminary Results of the Review

Toshiba did not submit a response to our questionnaire for the period of review. We preliminarily determine to assess antidumping duties by using the best information available. The best information available is the rate we determined in our most recent review. We preliminarily determine to assess antidumping duties of 9.3 percent for entries of the merchandise produced by Toshiba during the period December 1, 1985 through November 30, 1986.

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice. Any requests for a hearing must be made within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter.

Interested parties may also submit written comments on these preliminary results within 30 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act and based on the above margin, a cash deposit rate of estimated antidumping duties of 9.3 percent shall be required for all shipments by Toshiba of certain electric motors from Japan. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1986 and who is unrelated to any previously reviewed firm, a cash deposit of 6.3 percent shall be required on shipments of certain electric motors. These deposit requirements are effective for all shipments of certain Japanese electric motors entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

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 § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: June 1, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-12867 Filed 6-4-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-607]

Postponement of Final Antidumping Duty Determination; Fabric and Expanded Neoprene Laminate From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final detemination as to whether sales of fabric and expanded neoprene laminate from Taiwan have occurred at less than fair value until not later than September 28, 1987.

EFFECTIVE DATE: July 6, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis or Charles Wilson, (202-377-4136 or 377-5288), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On January 20, 1987, we published a notice in the **Federal Register** (52 FR 2133) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether fabric and exported neoprene laminate from Taiwan was being, or was likely to be, sold at less than fair value. On February 6, 1987, the International Trade Commission determined that there is a reasonable indication that imports of fabric and expanded neoprene laminate from Taiwan are materially injuring a U.S. industry. On May 14, 1987, we published a preliminary determination of sales at less than fair value with respect to this merchandise (52 FR 18258). The notice stated that if the investigation proceeded normally, we would make our final determination by July 22, 1987.

On May 18, 1987, Shei Chung Hsin Industrial Co., Ltd., respondent in this investigation, requested a postponement of the final determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. Respondent accounts for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request.

We are postponing the date of the final determination until not later than September 28, 1987.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

June 1, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-12868 Filed 6-4-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-085]

Sugar and Syrups From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 22, 1987, the Department of Commerce published the preliminary results of its administrative review on sugar and syrups from Canda. The review covers one manufacturer/exporter of this merchandise to the United States and the period from April 1, 1985 through March 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: June 5, 1987.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 1987, the Department of commerce ("the department") published in the **Federal Register** (52 FR 13267) the preliminary results of its administrative review of the antidumping duty order on sugar and syrups from Canada (45 FR 24126, April 9, 1980). The Department has now completed that adminstrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Canadian sugar and syrups produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar. Sugar and syrups are currently classifiable under items 155.2025, 155.2045, and 155.3000 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer/exporter of Canadian sugar and syrups and the period April 1, 1985 through March 31, 1986.

Final Results of Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review and we determine that no dumping margin exists for Lantic Sugar, Ltd. for the period April 1, 1985 through March 31, 1986. The Department will instruct the Customs Service to not assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, since there was no margin the Department shall not require a cash deposit or estimated dumping duties for Lantic Sugar, Ltd. For any future shipments from the remaining known exporter not covered in this review, a cash deposit shall be required at the rate published in the final results of the last administrative review (52 FR 9322, March 24, 1987).

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1986, and who is unrelated to any reviewed firm, or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian sugar and syrups entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with a section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: August 1, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-12869 Filed 6-4-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket Nos. 7687-01 and 7687-02]

Actions Affecting Export Privileges; Dr. Peter Schuster, Individually and Doing Business as Analytic Optic Lasertechnik

In the matter of: Dr. Peter Schuster, individually and doing business as Analytic Optic Lasertechnik, Respondent; Docket Nos. 7687-01 and 7687-02.

Order

Having reviewed the record and based on the facts addressed in this case, I affirm the following Default Decision and Order of the Administrative Law Judge. This Order constitutes final agency action in this matter.

Dated: June 1, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

In the matter of: Dr. Peter Schuster, Analytic Optic Lasertechnik, Respondent.

Appearance for Respondent: Dr. Peter Schuster, Muellnergasse 6/14, A-1090 Vienna, Austria, Fahrbachstrasse 135, D-7080 Aalen, Federal Republic of Germany, Abelegasse 8, A-1160 Vienna, Austria, Bindergasse 11/20, A-1090 Vienna, Austria.

Appearance for Agency: McGavock Reed, Esq., Ofc of Deputy Chief Counsel for Export Admin., Room H-3329, 14th & Constitution Avenue NW., Washington, DC 20230.

Default Decision and Order

On June 10, 1986, the Acting Director, Office of Export Enforcement, International Trade Administration, United States Department of Commerce (the Agency), issued a Charging Letter alleging that Dr. Peter Schuster individually and doing business as Analytic Optik Lasertechnik (collectively hereinafter referred to as Respondent) had violated Section 387.3 of the Export Administration Regulations (15 CFR Parts 368 through 399) (the Regulations). Respondent acknowledged service on them of the Charging Letter and in a letter of acknowledgement filed on July 28, 1986, Schuster requested "another period of 60 days" to answer. The request was granted to August 18, 1986. Respondent failed to submit a timely response.

Section 388.8 of the Regulations provides:

Default

(a) General

If a timely answer is not filed, the Department shall file with the administrative law judge a proposed order together with supporting evidence for the allegations in the charging letter. The administrative law judge may require further submissions and shall issue any order he deems justified by the evidence of record. Any order so issued shall have the same force and effect as an order issued following the disposition of contested charges.

In accordance with this section, Agency counsel filed such a motion for a default order on March 12, 1987. On April 13, 1987 Respondent Schuster submitted a request that he not be held of default because he did not actually receive the August 8, 1986 extension

until August 22, 1986. This excuse is spurious, for he still has not filed an answer 8 months after the extended time to do so expired.

Facts

In February 1983, Schuster, a Germany businessman, doing business as Analytic Optic Lasertechnik, with offices in Austria and Germany, purchased a U.S.-origin computerized linewidth measurement system (system) from a company in California. The system required a validated export license from the Department of Commerce. Schuster was advised of the export license requirement.

On May 10, 1983, Schuster consigned five cartons containing the system, labeled as "electrical equipment," to a freight forwarder in Jamaica, New York. The system was delivered to the freight forwarder on May 11, 1983. Later that day, federal agents observed Schuster in a station wagon, which contained several cartons, being driven out of a loading bay at the freight forwarding facility. On the evening of May 11, 1983, Schuster, without having obtained a validated export license for the system, loaded one of the cartons as his baggage on a flight from John F. Kennedy Airport, Jamaica, New York, to Frankfurt, West Germany, and on to Vienna, Austria. After Schuster boarded the aircraft, federal agents removed the carton from the aircraft and discovered the carton contained part of the system. Following that discovery, Schuster was arrested by United States Marshals.

Schuster was indicted in the United States District Court for the Eastern District of New York for violating, *inter alia*, section 2410(a) of the Act and § 387.3 of the Regulations by attempting to export the system without having obtained a validated export license. On September 16, 1983, Schuster pled guilty to violating section 2410(a) of the Act, for which he was convicted and sentenced for 2 years' probation and a $5,000 fine.

The facts are not therefore in dispute and Respondent is not entitled to a fact-finding hearing under such circumstances (*Spawr Optical Research, Inc. v. Baldrige*, Civ. No. 86-0880, D.D.C. December 16, 1986; *In the Matter of Spawr*, 51 FR 7477 through 7479, 7481 (1986). Cf. also, Order in Gregg (52 FR 13279 (1987), wherein an Agency subaltern denied that individual and a related person export privileges for 10 years without notice or opportunity to comment or be heard, under the Export Administration Act for a violation of the Arms Export Control Act. A procedure proposed to be made applicable to convictions for violations of the Export Administration Act as well, under present congressional consideration).

Based on the foregoing, I find that Respondent violated § 387.3 of the Regulations, as alleged in the charging letter. I find that an Order denying export privileges to the Respondent for a period ending 5 years after the date a final order is entered in this proceeding as recommended by Agency counsel is reasonably necessary to protect the public interest and to achieve effective enforcement of the Export Administration Act, and the Regulations.

Accordingly, pursuant to the authority delegated to me by Part 388 of the Regulations, it is therefore:

Ordered

I. For a period of 5 years from the date this Order becomes final, Respondent: Dr. Peter Schuster, individually and doing business as Analytic Optic Lasertechnik, with addresses at: Fahrbachstrasse 135, D-7080 Aalen, Federal Republic of Germany; *and* Muellnergasse 6/14, A-1090 Vienna, Austria; *and* Abelegasse 8, A-1160 Vienna, Austria; *and* Bindergasses 11/20, A-1090 Vienna, Austria, all 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 from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. All outstanding validated export licenses in which Respondent or any related party 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 Respondent's privileges of participating in any manner or capacity, in any special licensing procedure, including but not limited to, distribution licenses are hereby revoked.

III. Without limitation of the generality of the foregoing, participating prohibited in any such transaction, either in the United States or abroad, shall include but not be limited to participation: (i) As a party or as a representative of a party to a validated export license application; (ii) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (iii) in obtaining or using any validated or general export license or other export control document; (iv) 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 (v) in the 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 that are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial may also 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 export trade or related services.

V. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization 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, transhipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to or for respondent or 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.

VI. This Order shall become effective upon entry of the Secretary's final amendments action in the proceeding pursuant to this Act (50 U.S.C. App. 2412(c)(1)).

Dated: April 30, 1987.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 87-12871 Filed 6-4-87; 8:45 am]

BILLING CODE 3510-DT-M

Test Application of Harmonized System of Tariff Classification

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Test Application of Harmonized System of Tariff Classification.

SUMMARY: Congress is considering legislation to convert the United States to an internationally harmonized system of tariff classifications by January 1, 1988. In view of this, the Department of Commerce will ordinarily provide both the appropriate TSUS item numbers and the appropriate Harmonized System item numbers with the product descriptions in its notices of antidumping and countervailing duty actions, on a test basis pending Congressional approval of the Harmonized System. Additionally, the Department will require all new petitions to include both sets of item numbers.

EFFECTIVE DATE: June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke, Office of Policy, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–4412.

SUPPLEMENTARY INFORMATION: The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert to this Harmonized System ("HS") by January 1, 1988. Pending Congressional approval of the system, the Department of Commerce ("the Department") will ordinarily include in the product descriptions of antidumping and countervailing duty actions, on a test basis, both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written product description remains dispositive of the scope of the proceeding.

Parties filing petitions with the Department after the date of publication of this notice should include both the TSUSA and the HS item numbers in the petitions. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, Washington, DC 20230. All Customs offices have reference copies. Parties may also contact the Import Specialist at their local Customs office to consult the HS schedule.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 2, 1987.

[FR Doc. 87–12872 Filed 6–4–87; 8:45 am]

BILLING CODE 3510–DS–M

National Bureau of Standards

[Docket No. 70465–7065]

Continuation of Fire Research Grants Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcing continuation of fire research grants program.

SUMMARY: The purpose of this notice is to inform potential applicants that the Center for Fire Research, National Bureau of Standards, is continuing its Fire Research Grants Program. Previous notices of this research grant program were published in the **Federal Register** on February 20, 1981 (46 FR 13250), November 19, 1984 (49 FR 45636) and May 6, 1986 51 FR 16730. (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.")

Closing Date for Applications: Proposals must be received no later than close of business September 30, 1987.

ADDRESS: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 as referenced under the provisions of OMB Circular A.110 to: Center for Fire Research, Attn: Sonya Cherry, National Bureau of Standards, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Sonya Cherry, (301) 975–6854

Eligibility: Academic institutions, Non–Federal agencies, and independent and industrial laboratories.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NBS Center for Fire Research conducts directly and through grants and cooperative agreements, a basic and applied fire research program. This program has been in existence for several years at approximately the same funding level. No increase in funds has taken place. All grant proposals submitted must be in accordance with the programs and objectives listed below.

Program Objectives:

(a) Polymer Combustion Reserach—Chemical and physical processes associated with ignition, flame spread and smoldering of polymeric materials.

(b) Smoke Dynamics Research Group—Develop scientifically sound principles, metrology, data, and predictive methods for the formation/evolution of smoke components in flames for use in understanding and modeling general fire phenomena.

(c) Flammability and Toxicity Measurement—Measurement of the acute toxicity of fire gases, development of test methods and safety criteria, research into additive or synergistic acute effects of multiple gaseous toxicants, and development of behavior models for incapacitation. Development of laboratory size tests and measurements that are of use in predicting the performance of combustible items (including heat release rate, toxic gas production, and smoke production in full scale fire).

(d) Fire Performance and Validation—Obtaining and analyzing experimental data from full scale tests for input to model development. Evaluation of mathematical models and methodology for quantitatively assessing the correlation between the models and full-scale test data.

(e) Hazard Analysis—Development and evaluation of mathematical smoke and toxic species transport models for large, complex structures. Methods to calculate hazard development vs. time. Methods to simulate the operation and impact of ventilation systems and components under conditions created by unwanted fires. Some research is carried out into the behavior of persons at risk in fire to calculate how rapidly persons can evacuate the structure or otherwise find refuge.

(f) Fire Growth and Extinction—Research into the physics and chemistry of fire processes such as burning rate, flame spread, fire gas flows, fire suppression, and the development of an understanding of the relationship between these processes as they contribute to compartment fire growth and spread, fire suppression system performance and smoke transport in buildings.

(g) Compartment Fire Modeling Research—The development, improvement and validation of: (1) "benchmark" compartment fire model computer codes, and (2) their submodel algorithm components which describe individual fire compartment processes.

Application Requirements

The Fire Research Grants Program is limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will be provided for only the first year of the program. Funding for the remaining years of the program is contingent on satisfactory performance and subject to the availability of funds, but no liability shall be assumed by the government because of non-renewal or non-extension of a grant. Applicant's proposals should provide:

1. A Brief Statement of the Basic Objectives and Research Plan

a. State concisely the objectives of the proposal research. Describe the present state of knowledge of the problem. An exhaustive review is not needed, but the discussion should show a familiarity with past and current work in the area and demonstrate how the proposed work will advance our understanding of the problem.

b. Describe how the work will be accomplished. Indicate, where appropriate, the range of variables to be explored, the number of tests to be performed, and the method of presenting the results. Describe any unusual techniques, apparatus, or special facilities to be employed in the program.

2. Statement of Work

State concisely just what will accomplished during the program.

3. Schedule

Show dates at which major milestones are expected to be attained, including the technical reports, papers, and presentations.

4. Utilization of Results

Show how the results of the proposed research relate to the basic Center for Fire Research objective of providing the technical base for reducing the nation's fire loss. Describe how the results will be utilized for this purpose. This may range from the publication of basic data to the development of improved materials and systems to the introduction of findings into regulations and codes.

5. Program Organization

Identify the principal professional staff members who will participate in the program and describe their roles and level of effort.

6. For Clarity of the Program Objectives, you may Contact Dr. Andrew J. Fowell, (301) 975–6850

Proposal Review Process: All proposals are assigned to the appropriate group leader of the seven programs listed above for review, including external peer review, and recommendations on funding. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Center Director. Applicants should allow up to 60 days processing time.

Proposals are evaluated for technical merit by at least three professionals from NBS, the Center for Fire Research, or technical experts from other interested government agencies and in the case of new proposals, experts from the fire research community at large.

Evaluation Criteria:	Points
Rationality	0–20
Qualification of Technical Personnel	0–20
Resources Availability	0–20
Technical Merit of Contribution	0–40

The results of these evaluations are transmitted to the head of the appropriate research unit in the Center for Fire Research who prepares an analysis of comments and makes a recommendation. The Center for Fire Research unit head will also consider compatibility with programmatic goals and financial feasibility.

Paper Reduction Act

The Paperwork Reduction Act of 1980 does not apply since this notice does not impose any additional burdens, such as reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public. The reporting requirements will be those contained in OMB Circular A–110.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipients/applicants who have an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Administrative questions pertaining to the grant process may be directed to the Grants Specialist, Sharon Green, National Bureau of Standards, Bldg. 301, Room B–158, Gaithersburg, Maryland 20899, telephone number (301) 975–6328.

Dated: June 1, 1987.

Ernest Ambler,

Director.

[FR Doc. 87–12797 Filed 6–4–87; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Acme Fill Corporation From an Objection by San Francisco Bay Conservation and Development Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dismissal of Appeal.

On March 9, 1984, Acme Fill Corporation (Acme) filed a Notice of Appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal was taken from an objection by the San Francisco Bay Conservation and Development Commission (BCDC) to Acme's consistency certification for U.S. Army Corps of Engineers Permit Application No. 13881E59, proposing a 97-acre expansion of Acme's existing 125-acre sanitary landfill in Contra Costa County. The appeal was stayed for several years pending a decision in a lawsuit filed by Acme in California state court challenging BCDC's jurisdiction. The California Court of Appeal held for BCDC in that case on December 11, 1986.

On February 25 and 27, 1987, respectively, BCDC and Acme signed a stipulation requesting the Secretary to dismiss the appeal because BCDC is withdrawing its objection to the permit application. In light of the stipulation, the Secretary has dismissed the appeal for good cause pursuant to 15 CFR 930.128.

FOR FURTHER INFORMATION CONTACT: Stephanie S. Campbell, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Washington, DC 20235; telephone (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration);

Dated: June 2, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87–12854 Filed 6–4–87; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1987 military resale commodities and services produced or provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: July 6, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 11, 1987 and March 31, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (51 FR 39702, 52 FR 10251 and 52 FR 11529 Correction) of additions to and deletion from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the military resale commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact or any contractors for the military resale commodity and service listed.

c. The action will result in authorizing small entities to provide the military resale commodities and services procured by the Government.

Accordingly, the military resale commodities and service are hereby added to Procurement List 1987.

Military Resale Item Nos. and Names

No. 506 Air Deodorizer, Push-Up Type, Floral Spring.

No. 507 Air Deodorizer, Push-Up Type, Lemon.

Service

Repair of Small Hand Tools: Robins Air Force Base.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

Service

Commissary Warehousing Service, Columbus Air Force Base, Mississippi.

C.W. Fletcher,

Executive Director.

[FR Doc. 87–12825 Filed 6–4–87; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1987; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions and deletions to Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1987 a commodity and services produced or provided by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: July 6, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Services

Janitorial Service,
Federal Records Center,
9700 Page Boulevard,
Overland, Missouri

Janitorial Service,
Federal Building, Post Office and Courthouse,
200 East Broadway,
Missoula, Montana.

Janitorial/Custodial,
Hale Boggs Federal Bldg, U.S. Courthouse,
500 Camp Street,
New Orleans, Louisiana

Deletions

It is proposed to delete the following commodity and service from Procurement List 1987, November 3, 1986 (51 FR 39945):

Commodity

Brush, Scrub, Nail and Hand,
7920–00–619–9162

Service

Janitorial Service,
Smith Building (New Wing Only),
900 W. Grand Avenue,
Porterville, California

C.W. Fletcher,

Executive Director.

[FR Doc. 87–12826 Filed 6–4–87; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Agency Information Collection Activities Under OMB Review

ACTION: 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 for whom a copy of the information proposal may be obtained.

Extension

Uniform Tender of Rates and/or Charges for Transportation Services; MT–HQ Forms 43 and 43–2 (OMB Control Number 0702–0018)

The Military Traffic Management Command evaluates bids for transportation service and determines which carriers to utilize so that the government pays the lowest rate for moving personal property.

Businesses or other for-profit, and small businesses or organizations.

Responses: 6,400.

Burden Hours: 4,033.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, 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.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, SAIS–ADR, Room 1C638, The Pentagon, Washington, DC 20310–0107, telephone (202) 694–0754.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 2, 1987.

[FR Doc. 87–12846 Filed 6–4–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Bilingual Vocational Instructor Training Program; FY 1987 Inservice Training Projects

AGENCY: Department of Education.

ACTION: Notice of priority for fiscal year 1987.

SUMMARY: The U.S. Secretary of Education (Secretary) establishes an absolute priority to reserve funds for inservice training projects for the Fiscal Year 1987 grant competition under the Bilingual Vocational Instructor Training Program.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ron Castaldi, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education (Room 519, Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732–2359.

SUPPLEMENTARY INFORMATION:

Program Information

The Bilingual Vocational Instructor Training (BVIT) program was established in 1976, as one of three Bilingual Vocational Training programs. The two other programs are the Bilingual Vocational Training (BVT) and Bilingual Vocational Materials, Methods and Techniques (BVMMT) programs. The BVIT program provides financial assistance to conduct training programs for instructors of bilingual vocational education and training programs for individuals with limited English proficiency.

To date, the majority of applications submitted and funded under the BVIT program have been for preservice programs. Most of these have been four-year, baccalaureate-level programs. Discussions with local BVT program directors, however, indicate that there is a shortage of well-trained personnel in BVT programs, and that quality inservice training for BVT program personnel is needed on an ongoing basis. As it currently operates, the BVIT program does not meet this need for inservice training.

The purpose of reserving funds for inservice training projects under the BVIT program is to address the need for trained personnel in BVT programs, thereby increasing the effectiveness of BVT programs.

A "Notice of Proposed Priority for Fiscal Year 1987" was published in the **Federal Register** on February 26, 1987 (52 FR 5928) describing the proposed priority and requesting public comment. Two letters were received in response to this notice. The comments and the Secretary's response are summarized below.

Comment: The commenters were concerned that, as a result of the inservice priority, preservice bilingual vocational instructor training programs no longer would be available. They felt that preservice BVIT programs are a more effective training vehicle, and have a greater impact on vocational education.

Response: No change has been made. While both preservice and inservice training projects are allowable under the BVIT Program, the majority of projects funded in the past have been for preservice training. The priority for inservice training for the fiscal year 1987 grant competition was established to address an immediate need for training vocational personnel currently serving limited English proficient students. The priority for this year's grant competition does not preclude future funding of preservice projects or current funding of preservice projects from other sources.

Priority

In accordance with 34 CFR 75.105(c)(3), the Secretary establishes an absolute priority to reserve funds under the Bilingual Vocational Instructor Training Program in Fiscal Year 1987, for projects that provide inservice training for instructors, aides, counselors, or other ancillary personnel participating in bilingual vocational education and training programs.

(Authority: 20 U.S.C. 2441(b))

Dated: May 20, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–12888 Filed 6–4–87; 8:45 am]

BILLING CODE 4000–01–M

National Institute on Disability and Rehabilitation Research; Funding Priorities for FY 1988

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for Fiscal Year 1988.

SUMMARY: The Secretary of Education proposes funding priorities for some of the research activities to be supported under the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1988. This notice covers those research priorities in physical restoration and rehabilitation in which NIDRR proposes to establish RRTC's in 1988.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before July 6, 1987.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland

Avenue, SW., Room 3070, Switzer Building, Mailstop 2305, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1139). Deaf and hearing impaired individuals may call (202) 732–1198 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the research program of NIDRR is contained in section 204 of the Rehabilitation Act of 1973. Under this program, awards are made to public and private agencies and organizations including institutions of higher education, Indian tribes, and tribal organizations. NIDRR can make awards for up to sixty months.

The purpose of the awards is for planning and conducting research, demonstrations, and related activities which have a direct bearing on the development of methods, procedures, and devices to assist in providing vocational and other rehabilitation services to individuals with handicaps, especially those with the most severe handicaps. NIDRR regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 352.32).

NIDRR supports a program of Rehabilitation Research and Training Centers to conduct programmatic, multidisciplinary, and coordinated research, training, and information dissemination in designated areas of high priority. The following proposed priorities represent areas of research in physical restoration and rehabilitation which the Secretary believes are high priorities for RRTC's for fiscal year 1988. The factors that were considered in selecting these proposed priorities included the extent and severity of the problem; the need for new knowledge to advance solutions to the problem; the appropriateness of the programmatic approach to the issues at this time; the resources and capacity of the field to provide a coordinated research approach to the problem; and the level of other resources available to address the problem.

NIDRR invites public comment on the merits of the proposed priorities both individually and collectively, including suggested modifications to the proposed priorities. Interested respondents also are to suggest the types of expertise which would be needed for independent experts to review and evaluate applications under these proposed priorities.

The final priorities will be established on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. These final priorities will be announced in a notice in the **Federal Register**, and a closing date notice will be published at that time. This Notice of Proposed Priorities does not solicit applications, and Department of Education staff will not review concept papers or other types of pre-applications. The publication of these proposed priorities does not bind the Federal Government to fund RRTC's in any of these areas. Funding of particular RRTC's depends on the final priorities, the availability of funds, and on the number and quality of applications.

The following ten proposed priorities represent areas in which NIDRR proposes to support research and related activities through cooperative agreements in the RRTC program. Rehabilitation Research and Training Centers have been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTC's must be operated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a coordinated program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings as well as for related findings of other studies. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate text and curricula and publishing findings in professional journals. RRTC's also conduct programs of in-service training for rehabilitation practitioners, education at the pre- and postdoctoral levels, and continuing education. Each RRTC will conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers will also conduct state-of-the-art studies in relevant aspects of their priority areas. NIDRR intends to sponsor consensus conferences at which scientists and service providers will be convened for the purpose of resolving differences in rehabilitation treatments based on new scientific findings. NIDRR expects each of the RRTC's to devleop and document at least one new rehabilitation technique or intervention that is suitable for presentation at a consensus conference. Each RRTC will also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews, using NIDRR staff or program peers, of the activities and achievements of each Center. Continued funding depends at all times on satisfactory performance and accomplishment, and is subject to the standards in 34 CFR 75.253.

Proposed Priorities (10)

RRTC In Progressive Neuromuscular Diseases

Progressive neuromuscular diseases constitute a range of chronic, degenerative conditions that are of particular concern for rehabilitation because they result in significant loss of function and impaired ability to perform normal activities of daily living. This group of disorders impairs primarily the motor system, causing paralysis and weakness, as well as significant secondary impairments. Because some neuromuscular diseases affect children and young adults, there may be significant effect on educational and vocational preparation and function.

Neuromuscular diseases include dysfunctions of the anterior horn cells of the motor nerve roots, of peripheral nerves, of neuromusuclar transmission, and of muscles. Serious progressive neuromuscular disorders include spinal muscular atrophy, motor neuron disease, and muscular dystrophy.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore neuromuscular performance and maintain physical function. A critical element of any Center to be funded under this priority will be the involvement of individuals and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for a Center in rehabilitation of progressive neuromuscular diseases that will:

- Evaluate quantitative measure of neuromuscular function leading to improved techniques for assessing physical functioning;
- Evaluate the effects of various therapeutic interventions on the natural course of the disease processes and on functional ability;
- Develop effective rehabilitation interventions to improve vocational,

educational, and independent living options;

• Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and

• Serve as a national resource for information and referral for research scientists, service providers, and affected individuals and their families, on issues related to rehabilitation of progressive neuromuscular disease, develop a central database for research on low-incidence neuromuscular disabilities, and conduct at least one comprehensive state-of-the-art study on a significant facet of rehabilitation on neuromuscular disease.

RRTC in Multiple Sclerosis

Multiple Sclerosis is a chronic, unpredictable disease of the nervous system which affects as many as forty in every one hundred thousand persons in the United States. Because it affects individuals at the onset of their careers and adult responsibilities, the disease has far-reaching implications for family, community, and vocational adjustment.

While there have been considerable recent advances in knowledge about the disease, there is, however, no consensus on appropriate interventions to modify the course of the disease or on the most effective approaches to rehabilitation. A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore and maintain physical, psychological, vocational, and social function. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for a Center in rehabilitation of multiple sclerosis that will:

• Identify the natural course of the disease in order to predict the likelihood and severity of resultant disability, and to develop intervention strategies;

• Determine the best techniques for managing disabling fatigue, cognitive and conceptual effects, impaired motor function, and psychological dysfunction;

• Develop effective vocational rehabilitation approaches, including accommodations at the workplace and auxiliary community support services;

• Develop public education programs to aid patients and their families to cope with the disease and to increase public understanding of the disease;

• Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and

• Conduct at least one comprehensive state-of-the-art study on a significant aspect of vocational rehabilitation in multiple sclerosis.

RRTC in Rehibilitation and Childhood Trauma

Injury is the leading cause of death and disability in childhood. Each year, over 100,000 children become disabled as a result of major trauma. While NIDRR-sponsored researchers have been accumulating information on the natural history of trauma and the consquent disability experienced by children, little is know about the potential for rehabilitation services to improve the health, function, and quality of life of injured children.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore and maintain physical, psychological, family, and social functions for children who have incurred trauma. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for an RRTC in Childhood Trauma that will:

• Establish and maintain a national pediatric trauma data base to study the mechanisms and causes of injury, the relationships between the impairment, disability, and the resultant handicap, the impact of childhood trauma on families, the need for and use of rehabilitative services, and methods of financing rehabilitative care;

• Develop methods to describe and quantify the physical, communicative, sensory, and cognitive functioning of injured children;

• Assess the efficacy of existing physical restoration and rehabilitation interventions, in order to develop improved or new interventions;

• Assess the impact of injury on family members and the role of the family in rehabilitation, and develop interventions to improve the ability of families to cope with childhood trauma;

• Develop and disseminate public education program to prevent the occurrence of injuries in children;

• Assess the influence of childhood trama on the peer relationships, sexual maturation, and career aspirations of injured children;

• Provide educational materials and training programs for health professionals, educators, health care policymakers and families about injury prevention, care, and rehabilitation;

• Develop, evaluate, and disseminate model programs to assist children with handicaps resulting from trauma in the transition from school to work;

• Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and

• Serve as a national resource center for the collection and dissemination of information and conduct at least one state-of-the-art study on a significant aspect of rehabilitation in childhood trauma.

RRTC in Arthritis and Related Musculoskeletal Disabilities

Approximately thirty-seven million Americans have arthritis, and some seven million of those are disabled by the disease. The prevalence of this chronic disease increases by about one million each year, and it incapacitates more people than any other chronic disease. Although arthritis is commonly associated with aging, there are about one-quarter of a million children under age eighteen with the disease. Arthritis affects twenty-three million individuals of employment age, and thus is a leading cause of work absenteeism, activity limitation, and workers' compensation claims.

There is currently a very active biomedical research effort on the causes and treatment of arthritis. There has not been, however, a similar emphasis on scientific investigation and development of techniques of rehabilitation for the preservation and restitution of joint function or for the prevention and management of chronic pain and its associated complications. Additional research is needed to develop improved models of service delivery that facilitate continued employment.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore and maintain physical, psychological, and vocational functioning for individuals disabled by arthritis. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for an RRTC in rehabilitation of arthritis and related musculoskeletal diseases that will:

• Evaluate currently accepted techniques for assessing physical performance and develop and evaluate

improved rehabilitation treatment techniques emphasizing maintenance and restoration of function and reduction of chronic pain;

- Develop and test functional performance appraisal strategies to eveluate new rehabilitation techniques;
- Develop and demonstrate innovative rehabilitation models to promote full participation in work, family, and community life;
- Provide needed education and training to professionals, persons with arthritis, and their families to promote adjustment to community living and work;
- Serve as a national resource for information and referral for scientific researchers, service providers, and affected individuals and their families, and develop a research database on low-incidence musculoskeletal disabilities;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one state-of-the-art study on a significant aspect of rehabilitation of individuals severely disabled by arthritis.

RRTC in Rehabilitation of Moderate Traumatic Brain Injury (TBI)

Traumatic brain injury (TBI) is a problem of major and increasing magnitude. The incidence of hospitalization for head injury in the United States is approximately 200 per 100,000 population. Each year, between 30,000 and 50,000 individuals acquire serious disabilities as a result of brain injuries, and most of these are youth and young adults, with life expectancies of an additional thirty-five to fifty years. Advances in emergency and acute care for head injury have resulted in a dramatic reduction in mortality, thereby creating a large population needing appropriate rehabilitative, educational, social, and independent living services. The cost of long-term care and maintenance for individuals with head injuries can be significant.

Individuals with moderate head injuries, as measured by standard neurological and other techniques, have varying prospects for recovery and function and are likely to require an array of rehabilitative and independent living services over an extended period of time. Because of the specialized needs of the individual with moderate head injuries and the relatively large incidence of moderate injury, a Center is needed in this priority area to provide leadership in the acquisition of new knowledge in medical, neuropsychological, and related areas.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore and maintain physical, psychological, social, independent living, and vocational functioning for individuals disabled by moderate head injury. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for an RRTC in moderate TBI that will:

- Conduct studies on the pathophysiology of brain injury, in order to identify the clinical course of moderate brain injury and the most effective rehabilitation interventions for different phases of neural recovery;
- Develop, test, and validate prognostic measures that accurately predict clinical outcomes and rehabilitation needs;
- Develop and evaluate new methods and techniques of rehabilitation including restoration of physical, communicative, cognitive, sensory, and behavioral functioning;
- Provide training for service providers and family members in approaches to adjustment, independent living, and financing of care;
- Serve as a national resource center for information on research and related innovations in all aspects of rehabilitation and service delivery for individuals with moderate brain injury;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one state-of-the-art study on a significant aspect of moderate traumatic brain injury.

RRTC in Rehabilitation of Severe Traumatic Brain Injury

Severe traumatic brain injury is generally marked by a lengthy period of unconsciousness, a longer period of post-traumatic amnesia than in moderate injury, higher degrees of intracranial pressure, and predicted greater deficts in long-term functioning and adjustment. There is only limited information available on severe head injury, especially on issues related to coma managment, assessment, and rehabilitation. A program of coordinated and interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to restore and maintain physical, psychological, social, independent living, and vocational functioning for individuals disabled by severe head injury. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for an RRTC in severe TBI that will:

- Identify and define the role of rehabilitation in severe brain injury in order to develop and test innovative rehabilitation techniques, including physical restoration to enhance impaired motor function, and techniques for coma arousal, behavioral adjustment, improving communication, and cognitive retraining;
- Develop methods to prevent and treat major secondary complications of severe brain injury, including conditions of altered states of consciousness, in order to assure maintenance of rehabilitation progress;
- Develop and evaluate new models of community-based services, including family participation in rehabilitation, to be developed in conjunction with the proposed RRTC in Psychological-Social Adjustment and Community Integration in TBI;
- Develop linkages with appropriate NIDRR-supported and other research and development resources to assure that appropiate technological aids and devices, such as supportive wheelchair seating and augmentative communication devices, are used;
- Provide training for family members and care providers in techniques to assist in the rehabilitation process;
- Conduct a state-of-the-art study on selected techniques of clinical management of individuals with severe brain injuries;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDR-sponsored consensus conference; and
- Serve as a national resource for information and referral on rehabilitation in severe traumatic brain injury.

RRTC in Psychological and Social Adjustment and Community Integration in TBI

The increasing frequency with which TBI individuals recover function and can return to some level of living in the community—either independently or with special support systems—focuses attention on the need for more knowledge about the most effective mechanisms to promote independent living, employment, and community integration. A definite priority in this area is a focus on the behavior management, community reintegration,

and social adjustment of individuals with TBI of all degrees of severity. There is also a definite need for an information database on rehabilitation research in TBI as well as an information resource on available services and resources. This priority emphasizes the establishment of a cooperative database, which will include data from all NIDRR-supported research efforts in traumatic brain injury, and the dissemination of research-based information.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to promoting psychological adjustment, independent living, employment, and community integration for individuals with head injury. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for an RRTC in psychological adjustment and community integration in TBI that will:

- Conduct studies on all aspects of psychological and social adjustment and behavior management in TBI, including family education and participation, in order to develop effective rehabilitation techniques;
- Evaluate current models, and develop improved models, of community reintegration, including new community-based recreational and respite care models, and models for vocational preparation, adjustment, and maintenance;
- Develop, with other NIDRR research Centers and projects, including the NIDRR designated model projects for TBI rehabilitation, a coordinated TBI research database;
- Conduct a state-of-the-art study on a significant aspect of psychological or social adjustment or community integration in TBI;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Serve as a national resource and information center on all aspects of psychological, social, community and family oriented research and service delivery issues.

RRTC in Prevention and Treatment of Secondary Complications of Spinal Cord Injury (SCI)

The rehabilitation community throughout the world has long recognized the enormous economic demands and general societal impact made by the lifetime care needs of persons with spinal cord injuries. The prevalence of spinal cord injury (SCI) in the United States is estimated to be between 150,000 and 200,000, with 8,000–10,000 new spinal cord injuries occurring each year. While the costs of lifetime care for an individual with SCI are considerable, perhaps more important are the compromised independence and quality of life. Secondary medical complications are the most debilitating, life threatening, and costly conditions associated with SCI, often resulting in extended acute care hospitalization that decreases the potential for successful rehabilitation and return to independence.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to preventing and treating secondary complications from SCI. A critical element of any Center to be funded under this priority will be the involvement of individuals with spinal cord injury and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for an RRTC in secondary complications of SCI that will:

- Develop methods to prevent and treat secondary complications of spinal cord injury such as deep vein thrombosis, pulmonary-respiratory problems, autonomic dysreflexia, gastrointestinal infections, stress ulcers, ossification, mass reflex spasticity, infertility, genitourinary infection, and pressure sores;
- Develop techniques to remedy psychological and social problems that occur in individuals with SCI;
- Serve as a national resource and information center on secondary complications of SCI, and establish linkages and coordinate with other NIDRR-supported research and demonstration activities in this area;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one state-of-the-art study on a significant aspect of prevention and treatment of secondary complications of SCI.

RRTC in Neural Recovery and Enhanced Function in SCI

Rehabilitation treatments to promote functional recovery and restoration after spinal cord injury can make a significant impact on long-term outcomes for the individual with SCI. This priority focuses on new rehabilitation interventions to increase neural recovery and enhance function following impairment.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to promoting restoration and maintenance of function after SCI. A critical element of any Center to be funded under this priority will be the involvement of individuals with SCI and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for an RRTC in neural recovery from SCI that will:

- Develop and evaluate therapies for maximizing neural recovery and functioning;
- Develop, test, and validate instruments that assess physical function and predict rehabilitation outcomes;
- Serve as a national resource and information center on all appropriate aspects of neural recovery and return of function;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one state-of-the-art study on a significant aspect of neural recovery and enhanced function of SCI.

RRTC in Community-Oriented Services in SCI

The improvements in acute rehabilitative care have resulted not only in longer life expectancies for individuals with SCI, but in a greater likelihood of return to the community and enhanced expectations for quality of life and work. A third priority in the area of SCI emphasizes innovative followup and health maintenance strategies, methods and resources for community reintegration and social participation, and psychological-social-vocational preparation and adjustment. Attention must also be directed to a fuller understanding of the aging process in spinal cord injury.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to promoting psychological adjustment and community reintegration after SCI. A critical element of any Center to be funded under this priority will be the involvement of individuals with SCI and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for an RRTC in community-based rehabilitation of SCI that will:

- Develop and test innovative post-acute rehabilitation followup models, including programs of health maintenance, to assure continued rehabilitation;
- Develop and evaluate techniques to improve psychological, social, and vocational preparation, including community reintegration and adjustment, for individuals with SCI;
- Provide training to individuals with SCI and their families on home-based management of pain, financial reimbursements, health insurance, new techniques and devices for communication, and recruitment, training, and financing of personal attendants;
- Conduct one or more studies on the aging process in spinal cord injury, to include the identification and elucidation of changing needs for medical care, psychological services, and adaptive equipment;
- Serve as a national SCI resource and information center on innovations in followup care, psychological and social adjustment, community reintegration, financial management, management of attendant care, vocational preparation, and employment;
- Develop and document one or more rehabilitation techniques suitable for consideration at an NIDRR-sponsored consensus conference; and
- Conduct at least one state-of-the-art study on a significant aspect of community-oriented services in spinal cord injury.

Invitation to Comment

Interested parties are invited to submit comments and recommendations regarding these priorities. All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in Room 3070, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance No. 84.133B, National Institute on Disability and Rehabilitation Research)

(20 U.S.C. 761a, 762)

Dated: May 22, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-12889 Filed 6-4-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.188]

Inviting Applications for New Awards Under the Drug-Free Schools and Communities—Regional Centers Program for Fiscal Year 1987

Purpose: Provides awards to public or private organizations, institutions, or agencies, or to individuals to establish and maintain five regional alcohol and drug abuse education and prevention centers. The primary purpose of each center is to help schools and communities eliminate alcohol and drug abuse by young people.

Deadline for Transmittal of Applications: August 7, 1987

Applications Available: June 10, 1987

Available Funds: Approximately $8.5 million

Estimated Range of Awards: $1.5—2 million

Estimated Average Size of Awards: $1.7 million

Estimated Number of Awards: 5

Project Period: Up to 36 months

Applicable Regulations: (a) Regualtions governing the Drug-Free Schools and Communities—Regional Centers Program as proposed to be codified in 34 CFR Part 235. (A notice of proposed rulemaking for proposed Part 235 was published in the **Federal Register** on March 18, 1987 at 52 FR 8570. Applicants should prepare their applications based on the proposed reguations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resubmit their applications); and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

For Applications or Information Contact: Mr. Allen King, OESE Drug-Free Schools Task Force, U.S. Department of Education, 400 Maryland Avenue, S.W. Room 2135, Washington, DC 20202. Telephone: (202) 732-4599.

Program Authority: 20 U.S.C. 4645.

Dated: June 3, 1987.

Lois A. Bowman,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-12992 Filed 6-4-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Award of Cooperation Agreement for the Operation of the Laboratory for Plasma Studies; Restricted Eligibility

AGENCY: Department of Energy, Nevada Operations Office.

ACTION: Notice of restricted eligibility for award of a cooperative agreement.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), it is restricting eligibility for the award of a cooperative agreement for the operation of the Laboratory for Plasma Studies and the performance of inertial fusion research.

PROJECT SCOPE: This award will primarily support the operation of the Laboratory for Plasma Studies and the planning and performance of original, basic research underlying the scientific and technological base related to intense light ion beams. The objectives of the project are: (1) To conduct research to enhance the science and technology base related to extractor diode, namely the beam focusing studies and the exploding metal foil anode plasma source; (2) light ion inertial confinement fusion includes barrel diode research and spectroscopic studies of ion diodes which concentrates on resonance fluorescence spectroscopy experiments to measure the electric field profile; (3) to evaluate promising, low-cost driver technology options for commercial inertial fusion applications; (4) to provide the assistance necessary to maintain trained scientists to meet the nations future science and technology needs related to intense light ion beams. The benefits to flow from this project include the promotion, stimulation, and support of related technologies for the advancement of inertial fusion concepts.

Eligibility for the award of this cooperative agreement is being limited to Cornell University because the Laboratory for Plasma Studies is the only facility with the LION Accelerator which is one module of the Particle Beam Fusion Accelerator I at Sandia National Laboratory. The team of this cooperative agreement award will commence on July 1, 1987, and end on June 30, 1992. The total estimated cost of this award is $2,000,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, Attn: Robert E. Clemensen, P.O. Box 14100, Las Vegas, NV 89114-4100.

Issued in Las Vegas, Nevada, on May 22, 1987.

Thomas R. Clark,

Manager.

[FR Doc. 87-12836 Filed 6-4-87; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Boulder Canyon Project; Rate Order; Confirmation and Approval

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a rate order—Boulder Canyon Project power rates.

SUMMARY: Notice is hereby given of the confirmation and approval, by the Under Secretary of the Department of Energy, of Rate Order No. WAPA–34 for placing power rates into effect on an interim basis for the sale of power from the Boulder Canyon Project by the Western Area Power Administration (Western).

The Base Charge identified in 10 CFR Part 904, "General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project" (51 FR 43124, November 28, 1986) (1986 General Regulations) which provide the basic revenue requirements for the Boulder Canyon Project (BCP), consists of an energy rate of 3.410 mills per kilowatthour (kWh) and a capacity rate of $.75 per kilowatt/month. The Lower Basin Development Fund Contribution Charge identified in the 1986 General Regulations, which provides for the contributions to the Lower Colorado River Basin Development Fund, consists of an energy rate of 4.5 mills per kWh to purchasers in Arizona and 2.5 mills per kWh to purchasers in California and Nevada.

The rate order contains further explanations of the rate development, discussions of the principle factors supporting the decisions concerning the rates, and responses to the major comments and criticisms offered during the rate adjustment proceeding.

EFFECTIVE DATE: The rates will become effective on an interim basis on June 1, 1987, that being the first day of the June 1987 billing period. As a result of the extensive comments received from customers, and the consequent development of additional power repayment studies coupled with the critical need to place a new rate in effect by June 1, 1987, or have no rate (present or provisional) in effect for power sold beginning June 1, 1987, it is necessary, in order to avoid financial difficulties, that the provisional rates be placed into effect by June 1, 1987. Therefore, the provisional rates shall become effective less than 30 days after the Under Secretary's decision, as permitted by 903.21 of the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 50 FR 37835, September 18, 1985.

FOR FURTHER INFORMATION CONTACT:
Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477–3202

Mr. Conrad K. Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402,Golden, CO 80401, (303) 231–1535

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated:

1. To the Administrator of Western on a non-exclusive basis the authority to develop power and transmission rates;

2. To the Under Secretary of the Department of Energy on a non-exclusive basis the authority to confirm, approve, and place such rates in effect on an interim basis; and

3. To the Federal Energy Regulatory Commission on an exclusive basis the authority to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates.

The proceeding for the proposed power rates and a 75-day customer consultation and comment period were initiated on January 21, 1987, with a notice in the **Federal Register** at 52 FR 2280. The January 21 notice announced a public information forum on February 3, 1987, and a public comment forum on March 16, 1987. On January 23, 1987, letters were sent to customers and interested parties briefly describing the public process and setting out the dates for the public information forum and the public comment forum. Written comments were accepted through April 6, 1987.

All public comments received have been considered in the preparation of the rate order. Rate Order No. WAPA–34 confirming and approving power rates on an interim basis is hereby issued, and the rates will be promptly submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Washington, DC, May 20, 1987.

Joseph F. Salgado,
Under Secretary.

United States Department of Energy Under Secretary

In the matter of: Western Area Power Administration, Boulder Canyon Project Power Rates.

Order Confirming, Approving, and Placing Power Rates in Effect on an Interim Basis

Rate Order No. WAPA–34

May 20, 1987.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, and particularly section 9(c) of the Reclamation Act of 1939, 43 US.C. 485h(c), and acts specifically applicable to the Boulder Canyon Project, were transferred to and vested in the Secretary of Energy. By Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated: (1) The authority on a non-exclusive basis to develop power and transmission rates to the Administrator of the Western Area Power Administration (Administrator); (2) the authority on a non-exclusive basis to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy (Under Secretary); and (3) the authority on an exclusive basis to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate order is issued pursuant to such delegations to the Administrator and the Under Secretary, and the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration (Western) at 10 CFR Part 903, published at 50 FR 37835 on September 18, 1985, with corrections published at 50 FR 48075, November 21, 1985.

Background

Project History

The Boulder Canyon Project was authorized for construction by the Boulder Canyon Project Act (Project Act) on December 21, 1928 (45 U.S.C. 614, *et seq.*). The Project Act provided

for a dam to be built in either Black or Boulder Canyon located on the Colorado River adjacent to the Arizona/Nevada border. The dam was built for the expressed purposes of: (1) Controlling the flooding in the lower regions of the Colorado River drainage system, (2) improving navigation of the Colorado River and its tributaries, (3) regulating the Colorado River, while providing storage and delivery of the stored water for the reclamation of public lands, and (4) generating electrical energy as a means of making the BCP a self-supporting and financially solvent undertaking. Congress authorized the Secretary of the Department of the Treasury (Treasury) to advance up to $165 million to the Secretary of the Interior to provide for the construction of the dam, powerplant, and related features; $25 million of the $165 million was allocated to flood control.

Construction of Boulder Dam in Black Canyon of the Colorado River began in 1930, and the first generating unit of the powerplant went into service in 1937. Upon completion of the dam, appurtenant works, generating equipment, and associated electrical facilities, the BCP power was sold to contractors in the States of Arizona, California, and Nevada. The initial power rates for the BCP power were considered excessive by the contractors, and they requested a rate reduction. Agreements were reached and legislation introduced to adjust the rates for the BCP power.

The Project Act was modified in 1940 by the Boulder Canyon Project Adjustment Act (Adjustment Act), (43 U.S.C. 618, *et seq.*). The Adjustment Act, among other things, authorized the Secretary of the Interior to promulgate, and to put into effect, power rates based upon a repayment period from June 1, 1937, to May 31, 1987; reduced the interest rate from 4 percent to 3 percent per annum on unpaid Treasury advances; required annual payments to the States of Arizona and Nevada in lieu of taxes levied; and deferred without interest until June 1, 1987, the repayment of the $25 million allocated to flood control.

The Secretary of the Interior, pursuant to the Adjustment Act, promulgated general regulations for the charges for the sale of power from the Boulder Canyon Project entitled "General Regulations For Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act," May 20, 1941 (1941 General Regulations), for the period ending May 31, 1987.

As the end of the 50-year term of the original contracts approached, controversy developed among the BCP contractors over renewal rights to BCP power, and litigation resulted. Compromises were reached and embodied in the legislation entitled the "Hoover Power Plant Act of 1984" (HPP Act) (43 U.S.C. 619, *et seq.*).

The centerpiece of the HPP Act was the increase of the output capability of the existing generating and associated electrical equipment at the BCP. This program, referred to as the uprating program, would be funded by certain BCP contractors who would advance funds to Reclamation. Those funds advanced would be returned to such contractors through credits on their monthly power bills. The HPP Act also provided for additional advances from the Treasury to improve visitor facilities at the BCP, and required certain charges to be added to the rates for electrical power from the BCP and the resultant revenue transferred to the Lower Colorado River Basin Development Fund (Development Fund).

The BCP's power is to be sold to contractors located in the States of Arizona, California, and Nevada, in accordance with the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Conformed Criteria) (49 FR 50582, December 28, 1984), beginning on June 1, 1987.

Due to the numerous requirements set out in the HPP Act and the earlier separation of the Federal responsibilities relating to Hoover Dam between Reclamation and Western, both agencies promulgated new regulations governing their respective responsibilities at the BCP after June 1, 1987. Reclamation adopted 43 CFR Part 431, "General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada" (Reclamation's General Regulations) (50 FR 23960, July 1, 1986). Western adopted 10 CFR Part 904, "General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project" (1986 General Regulations) (51 FR 43124, November 28, 1986). These regulations supersede the 1941 General Regulations which terminate on May 31, 1987.

Power Repayment Study

The basis for charges for capacity and energy, generated and sold from the BCP, is set out in the 1986 General Regulations. In accordance with the 1986 General Regulations, Western, in conjunction with Reclamation, developed the data utilized in the power repayment analysis. The purpose of the power repayment analysis is to project a level of annual revenues sufficient to repay all costs and obligations of the BCP during the repayment period in accordance with applicable laws, regulations, policies, and directives. (Throughout this ratesetting process, power repayment study (PRS) and repayment analysis are used interchangeably.)

Pertinent sections of the 1986 General Regulations are referenced below:

Section 904.6

The charge for Capacity and Firm Energy from the Project shall be composed of two separate charges; a charge to provide for the basic revenue requirements, as identified in paragraphs (b), (c), and (d) of § 904.5 of these General Regulations (Base Charge) and a charge to provide the surplus revenue for the Lower Colorado River Basin Development Fund contribution, as identified in paragraph (e) of § 904.5 of these General Regulations (Lower Basin Development Fund Contribution Charge).

Section 904.7

(a) The Base Charge shall be developed by the Administrator and promulgated in accordance with appropriate DOE regulations. The Base Charge shall be composed of a capacity component and an energy component.

(b) The capacity component of the Base Charge shall be a dollar per kilowattmonth amount determined by (1) multiplying the estimated average annual revenue requirement developed pursuant to paragraphs (b), (c), and (d) of § 904.5 of these General Regulations by 50 percent, (2) dividing the result of that multiplication by the estimated average annual kW rating of the Project, and (3) dividing the quotient by 12. The total estimated kW rating will be based on the powerplant output capability with all units in service at 498 feet of net effective head or 1,951,000 kW, whichever is less. The capacity component of the Base Charge shall be applied each billing period to each kW of rated output to which each Contractor is entitled by Contract. Adjustments to the application of the capacity component shall be made during outages which cause significant reductions in capacity as provided by the Contract.

(c) The energy component of the Base Charge shall be a mills per kWh amount determined by (1) multiplying the estimated average annual revenue requirements developed pursuant to paragraphs (b), (c), and (d) of § 904.5 of these General Regulations by 50 percent and (2) dividing the results of that multiplication by the average annual kWh estimated to be available from the Project. The energy component of the Base Charge shall be applied to each kWh made available to each Contractor as provided for by Contract, except for the energy purchased by Western, at the request of a Contractor, to meet that Contractor's deficiency in Firm Energy, pursuant to section

105(a)(2) of the Hoover Power Plant Act (43 U.S.C. 619(a)(2)) and section F of the Conformed Criteria, and that Contractor's Uprating Program credit carryforward, as provided by Contract.

(d) Application of the Base Charge to capacity and energy overruns will be provided for by Contract. The capacity component and the energy component of the Base Charge shall be applied each billing period for each Contractor.

(e) The Base Charge shall be reviewed annually. The Base Charge shall be adjusted either upward or downward, when necessary and administratively feasible, to assure sufficient revenues to effect payment of all costs and financial obligations associated with the Project pursuant to paragraphs (b), (c), and (d) of § 904.5 of these General Regulations. The Administrator shall provide all Contractors an opportunity to comment on any proposed adjustment to the Base Charge pursuant to the DOE's power rate adjustment procedures then in effect.

Section 904.8

(a) The Lower Basin Development Fund Contribution Charge will be developed by the Administrator of Western on the basis that the equivalent of 4½ mills or 2½ mills per kWh, as appropriate, required to be included in the rates charged to purchasers pursuant to section 1543(c)(2) of the Basin Act, as amended by the Hoover Power Plant Act, shall be collected from the energy sales of the Project.

(b) The Lower Basin Development Fund Contribution Charge shall be applied to each kWh available to each Contractor, as provided for by Contract, except for the energy purchased by Western at the request of a Contractor to meet:

(1) That Contractor's deficiency in Firm Energy, pursuant to section 105(a)(2) of the Hoover Power Plant Act (43 U.S.C. 619(a)(2) and section F of the Conformed Criteria; and

(2) That Contractor's Uprating Program credit carryforward as provided by Contract. A 4½ mills per kWh charge shall be applied to each kWh made available to an Arizona Contractor, and a 2½ mills per kWh charge shall be applied to each kWh made available to a California or Nevada Contractor; provided, that after the repayment period of the Central Arizona Project, a 2½ mills per kWh charge shall be applied to each kWh made available to the Arizona, California, and Nevada Contractors. The Lower Basin Development Fund Contribution Charge shall be applied to energy overruns. The Lower Basin Development Fund Contribution Charge shall be applied each billing period for each Contractor.

Section 904.10

(c) The charge for all Excess Energy shall be the charge for Boulder Canyon Project Firm Energy existing at the time the Excess Energy is made available to the Contractor, including the appropriate Lower Basin Development Fund Contribution Charge.

The BCP Provisional PRS (subsequently defined) was prepared following the guidelines set out in the 1986 General Regulations. The Base Charge capacity and energy rates are necessary to recover the costs associated with the BCP. The Lower Basin Development Fund Contribution Charge is necessary to collect the revenues required by section 1543(c)(2) of the Colorado River Basin Project Act (43 U.S.C. 1501, *et seq.*).

Public Notice and Comments

The procedures for public participation for rate adjustments as set forth in 10 CFR Part 903 have been followed in the development of these rates. The following discussion summarizes the steps Western took to assure involvement of interested parties in the rate process:

1. An informal meeting was held on January 15, 1987, with the BCP contractors and their representatives, and Reclamation and Western personnel to discuss the methods, assumptions, and processes to be utilized in the development of the BCP repayment analysis.

2. A **Federal Register** notice (52 FR 2280, January 21, 1987) initiated the public proceedings, announced the proposed power rates, and began the 75-day consultation and comment period.

3. On January 23, 1987, letters were sent to contractors and interested parties briefly describing the public process and setting out dates for the public information and comment forums.

4. A public information forum was held on February 3, 1987. Western's representatives presented an overview of the assumptions, methods, and processes of the PRS (Appendix A) used in developing the BCP rates proposed in the January 21, 1987, notice and the rationale behind it. In response to some contractor's informal comments received by Western, a sensitivity study (a PRS utilizing alternative assumptions) was included in the Boulder Canyon Project Proposed Power Rates brochure (Appendix C) handed out at the forum.

5. At the request of the BCP contractors, an informal meeting was held on February 26, 1987, to discuss various items presented by Western at the public information forum.

6. On March 11, 1987, letters were sent to contractors and other interested parties transmitting a requested "Pinch-point" PRS (a Pinch-point PRS is an alternative study that is based on the concept that all expenses and required principal payments are satisfied annually when due throughout the repayment period).

7. A public comment forum was held on March 16, 1987. Responses to comments made at the forum are presented in the "Discussion" section of this document.

Certification of Rates

Western markets power and energy from the BCP at the lowest possible rates consistent with sound business principles. The Administrator has certified that the BCP power rates as set out herein are the lowest possible rates consistent with sound business principles and applicable laws.

Discussion

This section provides the issues presented by commentors and Western's responses to those comments. The issues are arranged by topic as follows:

1. Ratemaking Methodology.
2. Repayment Study Format.
3. Repayment Study Period.
4. Visitor Facilities Repayment.
5. Application of Accumulated Surplus.
6. Uprating Program Debt Service.
7. Replacements.
8. Operation and Maintenance Expenses.
9. Hydrology and Energy Forecasts.
10. Other.

A number of commentors raised issues about the computer programming utilized in the Appendix A PRS. A new computer program will need to be developed in order to address such issues. With the time available, Western is not in a position to develop a new program which meets those elements of the program identified in the comments. Western has attempted to recognize and include all such elements which actually affect the rate by making adjustments to the existing program. A new computer program will be developed before the October 1, 1988, rate analysis which will include the modifications indicated in the following discussion.

Various PRSs are referenced in this order. They are identified as follows:

(1) Appendix A—This PRS was the basis for the rate proposed by Western in its notice of the rate adjustment in the **Federal Register** (52 FR 2280, January 21, 1987), and was included in the Boulder Canyon Project Proposed Power Rate brochure as Appendix A.

(2) Appendix C—This PRS, which was prepared subsequent to the Appendix A PRS, was included in the BCP Proposed Power Rate brochure as Appendix C.

(3) Pinch-point—This PRS of March 10, 1987, is an alternative study based on the concept that annual expenses and required debt payments were made when due. This PRS was transmitted to all BCP interested parties on March 11, 1987.

(4) Provisional—This PRS, upon which the rates in this order are set,

incorporates suggested changes made by commentors and adopted by Western.

One or more of these PRSs may be referred to in Western's discussion of the comments received which follows.

1. Ratemaking Methodology

Issue: Commentors stated that Western should review its ratemaking criteria and establish clearer guidelines. A comment was made that, based upon large swings in the rates and total dollar amounts developed in several of Western's PRSs, Western should spell out in "clear prose" the ratemaking criteria.

Response: Interested parties made comments, as part of the public process, that Western had not followed applicable regulations, orders, and guidelines in developing the first few PRSs. Western agreed with some of the comments which resulted in the development of additional PRSs that conformed to the applicable regulations, orders, and guidelines. The fact that more than one PRS (and resulting rate and revenue projection) was developed does not mean that the ratemaking criteria are not sufficiently clear; rather, the development of more than one PRS is a function of attempting to apply a number of rules from the Conformed Criteria, the HPP Act, the 1986 General Regulations, the DOE Order RA 6120.2 Power Marketing Administration Financial Reporting (RA 6120.2), and the power sales contract to a very complex factual matter.

Western believes that the public record since beginning the process of marketing, allocating, negotiating, and contracting for the power from the BCP for the period beginning June 1, 1987, sets out Western's position on the repayment and ratesetting criteria for the BCP. The Conformed Criteria, the HPP Act, the 1986 General Regulations, RA 6120.2, and the power sales contracts, in addition to the public record in this matter, provide documentation of the criteria and procedures for the setting of power rates. Additional clarification of the ratemaking criteria may be made during the next ratesetting process.

The comments received in the entire public process mentioned above have demonstrated the value of all parties' participation in order to resolve the issues and establish clear interpretations of statutes, regulations, policies and criteria. Western appreciates the thoroughness and detailed comments by the commentors throughout the entire public process.

2. Repayment Study Format

Issue: One commentor stated that the BCP's PRS should display the annual unamortized investments and the allowable unamortized investments.

Response: Western concurs that it is appropriate to display the allowable unamortized balance in addition to the unpaid balance for each increment of investment during its repayment period. While the Provisional PRS does not display the allowable unamortized balance of investments, the study does display the annual unamortized balance for each investment/interest grouping on an annual basis. Since the rates established based upon the Provisional PRS were not driven by the requirement to meet statutorily mandated requirements to repay the principal to the Treasury, although such requirements do exist, the inclusion of the suggested columns in the PRS would not affect the rates. The rates were established based on the cost-recovery criteria set out in the 1986 General Regulations and RA 6120.2 where applicable. Western will modify the future BCP PRS format to include a column displaying the allowable unpaid balance for each investment/interest grouping.

Issue: One commentor pointed out that the Base Charge (as defined in the 1986 General Regulations) revenue requirement and the subsequent determination of the capacity and energy rates could not be easily determined from the PRS and should be incorporated into the PRS.

Response: The formula for the calculations which developed the capacity and energy rates for the BCP are described in the 1986 General Regulations. The calculations for the proposed power rates (Appendix A PRS) were set out in the Boulder Canyon Project Proposed Power Rates brochure at page VIII-6 and like calculations were provided to all parties for each subsequently published PRS. Western will include the suggested calculations in the future computer programming modifications to the PRS.

3. Repayment Study Period

Issue: Several commentors made reference to the BCP repayment study period being used in the BCP PRSs. A comment was made that current contractors are paying a rate level that not only satisfies the repayment obligations of the BCP for the contract period, but also satisfies the repayment obligations of the BCP for the subsequent 20 years remaining in the repayment period. One commentor proposed an alternative rate determination methodology which relied on a 5-year ratesetting period rather than setting an average annual rate based on the entire BCP 50-year repayment period. If this methodology was not adopted by Western, the commentor suggested modifying the repayment study to use a higher level of rates after the first 5 years. Another commentor recommended a dual rate be adopted based on a 50-year rate calculated to equal 50-year costs with a surcharge added for the first 30 years to provide the amounts necessary to repay the uprating advance.

Response: The 1986 General Regulations, section 904.5, establishes the revenue requirements and the applicable cost recovery criteria upon which the Provisional PRS was developed. Further, RA 6120.2 provides clarification in its definition of a power system's repayment period as: "A period extending to the final year allowed under the cost recovery criteria for amortization of the original investment in all projects included in the power repayment study." The cost recovery criteria set out in RA 6120.2 state, in part:

> The current rates for a power system will be adequate if, and only if, a power repayment study indicates that:
>
> a. The expected revenues are at least sufficient to repay annually, except for a possible initial short transition period:
>
> (1) All costs of operating and maintaining the power system during the year in which such costs are incurred; plus,
>
> (2) The cost of acquiring power through purchase and/or exchange agreements, the cost for transmission services and other costs during the year in which such costs are incurred; plus,
>
> (3) Expensed interest on the unamortized investment in Federal power facilities in the year for which the interest charges are assessed * * *;
>
> b. In addition to the recovery of the above costs on a year-by-year basis, the expected revenues are at least sufficient to recover:
>
> (1) Each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law * * *.

Western has set the BCP rates, which are average annual rates for capacity and energy sales based upon the Provisional PRS, at the lowest possible level consistent with sound business principles. These rates are projected to provide sufficient annual revenue levels to satisfy the BCP's cost recovery criteria as provided in the 1986 General Regulations rather than setting rates for a 5-year ratesetting period, or splitting up the 50-year repayment period into a 30-year period and a 20-year period.

It should be recognized that in order to meet the above-stated requirement, rates must be adequate to meet all expenses plus required principal repayments required in each year of the study. Some years have a higher revenue requirement than others because the expenses vary from year to year, and the required repayments must be completed 50 years after installation of the feature, or in some earlier year if the life expectancy of the feature is less than 50 years. The year with the highest total expenses plus required repayment is called the "Pinch-point," revenue requirement.

As future repayment analyses are done on an annual basis, the "Pinch-point" year may change because of changes in realization of revenues and because of changes in repayment of principal and projected expenses. While the Provisional PRS indicates the collection of large surplus revenues after the "Pinch-point," in fact, unless there are increases in expenses or new additions or deficiencies in revenue, as the "Pinch-point" year is passed, future rate adjustments will be based on a new lower "Pinch-point," and the rates will be lowered to meet this new requirement. In the Provisional PRS the "Pinch-point" occurs in the 6th fiscal year of the study because of the need to provide the credits to the uprating program contributors during the period of their 30-year contract. After that obligation is met, if nothing else in the PRS changes, a new lower "Pinch-point" would be established and the rate would be adjusted so that the funds shown as surplus would not actually be collected as indicated in the Provisional PRS.

The Provisional PRS shows a small deficiency in revenues for the year 1993 for payment of certain uprating contractors pursuant to their repayment schedules. Repayment pursuant to the schedules would begin in 1993 and continue until 2017. However, previously advanced credits would have been made to such contractors during the 1987–1992 period, in excess of such deficiencies, which could be used to meet the scheduled payments. The power repayment study developed for the next rate adjustment will reflect sufficient revenues to meet the payments shown on the repayment schedules provided to Western by the uprating contractors.

Issue: A comment was made that Western had failed to comply with RA 6120.2 by not extending the BCP's repayment period 50 years beyond the last addition's inservice date, thereby not accurately setting the rates at the lowest possible level in accordance with sound business principles.

Response: Western concurs that it did not set the repayment period 50 years beyond the projected inservice date of BCP's last addition (visitor facilities). The Provisional PRS's repayment period upoon which the capacity and energy rates are based begins on June 1, 1987, and ends September 30, 2037 (50 years 4 months). This Provisional PRS reflects that the principal payments on the visitor facilities begin in FY 1993 and end FY 2016. Western agrees that visitor facilities should have the full 50-year repayment period, which would extend the repayment period for this PRS to 2043. The surplus revenues which are created as a result of setting rates at a level sufficient to insure the timely repayment of the uprating program contributions by the year 2017, yields sufficient surplus revenues that the repayment of the visitor facilities is accomplished by the year 2016. The repayment of the visitor facilities prior to the allowable repayment period of 50 years reflects other factors setting the rates and is not itself the cause of the rate to be set at the level addressed in this rate order. The 6 additional years in the repayment period would have no effect on the rates set by the Provisional PRS (because the rate level is determined by the cash flow requirements of the first 30 years). Western will not add the years to the Provisional PRS, but will reflect the change in subsequent studies.

4. Visitor Facilities Repayment

Issue: One commentor stated that Western was not in compliance with the 1986 General Regulations by including the visitor facilities construction cost in the rate base prior to an appropriation.

Response: The basis for Western including the projected construction costs of the visitors facilities lies in the 1986 General Regulations, as more fully described in the RA 6120.2 definition of cost evaluation period:

> 'Cost evaluation period' means a period of time during which estimates of future costs and revenues may be modified to reflect changing conditions, normally 5 years.

The inclusion of the visitor facilities construction costs in the repayment analysis was based on the last congressionally approved construction budget document provided to Western by Reclamation. This budget reflects the estimated construction cost during the cost evaluation period for the repayment study utilized in the Appendices A and C PRSs, the subsequent Pinch-point PRSs, and the Provisional PRS. The same budget documents indicate an inservice date which falls within the 5-year cost evaluation period (1988–1992) for the Provisional PRS. Any necessary adjustments of the estimated construction costs will be reflected in subsequent studies. The recommendation by the commentor has not been adopted.

Issue: Another commentor requested that Western modify its PRS in the event the construction of the visitors facilities is deferred.

Response: Western uses budget documents provided by Reclamation to determine the funding requirement data for inclusion in the PRS. The data contained in the Provisional PRS is from the latest available, congressionally approved construction budget document. If subsequent approved construction budget documents reflect any changes to the construction timetable or amounts, Western will reflect these changes in subsequent studies.

5. Application of Accumulated Surplus

Issue: Numerous comments were received by Western regarding Western's failure to use accumulated surplus revenues to reduce unpaid debt. By this failure, the commentors have indicated that Western was not in compliance with RA 6120.2. Further, Western was repaying lower interest-bearing investments first rather than repaying higher interest-bearing investments as required by RA 6120.2. Another commentor asserted that the time value of money is not reflected in the PRSs and recommended adoption of an iterative process to apply overcollections to remaining outstanding debt and interest. Western also received a comment that the BCP repayment analyses utilized level interest/principal payments to repay investments.

Response: Any revenues in the Colorado River Dam Fund which are surplus to the needs of the BCP's annual obligations will be utilized to reduce outstanding BCP debt in accordance with guidelines provided through statute, 1986 General Regulations, RA 6120.2, and the BCP contracts. The Provisional PRS demonstrates adoption of the principle of applying surpluses to higher interest debt. Because the existing computer program does not apply surpluses, those shown in the study were developed manually. The computer program will be modified in the future to reflect the optimal use of surpluses to reduce the overall project obligations, and thus reduce the revenue requirements of the project. Utilizing this approach, the repayment study recognizes the time value of money.

6. Uprating Program Debt Service

Issue: Several commentors indicated that the Appendix A PRS did not properly reflect the debt service obligation to the uprating contractors, specifically funded interest costs and interest on reserves. Western also received a comment suggesting that the PRSs should show a credit against interest costs for those amounts of arbitrage realized by the uprate contractors on funds held in escrow. The same commentors indicated that a description of the debt service values should be included with the PRS.

Response: Western agrees that the Appendix A PRS did not properly reflect the estimated debt service obligation (principal and interest). The subsequent PRSs were modified to more accurately reflect the debt service obligations. The amounts reflected in the Provisional PRS are the latest available estimated amounts payable by, or on behalf of, the uprating program contractors in each fiscal year to all indebtedness then outstanding, and all related periodic interest costs provided by the uprating contractors. Western has been advised by the uprating contractors that the estimated funded interest costs, income on investment of bond proceeds, and interest on reserves are incorporated into the debt service schedules. Therefore, the credits against interest costs for those amounts realized from arbitrage are included in the Provisional PRS although not presented in separate columns. The debt service data are reflected in the Provisional PRS. In the future, as long-term bonds are issued and all required advances to Reclamation are made, the debt-service obligations will become more clearly defined. Western will request that each uprating program contractor provide Western with a description of the elements that make up the indebtedness amounts. This description will be subsequently provided to all contractors by Western.

7. Replacements

Issue: Comments were received that replacements must be amortized, not expensed. One commentor cited two statutory provisions to support his conclusion. Section 5 of the Adjustment Act provides in pertinent part:

> If at any time there shall be insufficient sums in the Colorado River Dam Fund to meet the cost of replacements, however necessitated, in addition to meeting the other requirements of this Act, or of regulations authorized hereby and promulgated by the Secretary, the Secretary of the Treasury, upon request of the Secretary of the Interior, shall readvance to the said fund, in amounts not exceeding in the aggregate, moneys repaid to the Treasury pursuant to section 2(b) hereof, the amount required for replacements, however necessitated, in excess of the amount currently available therefor in said Colorado River Dam Fund. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums, not exceeding said aggregate amount, as may be necessary to permit the Secretary of the Treasury to make such readvances.

The other statutory provision relied upon is the Energy and Water Development Appropriation Act, 1985 (Pub. L. 99–141), under "Operation and Maintenance" where it provides in pertinent part:

> *Provided further*, That of the total appropriated, such amounts as may be required for replacement work on the Boulder Canyon Project which would require readvances to the Colorado River Dam Fund shall be readvanced to the Colorado River Dam Fund pursuant to section 5 of the Boulder Canyon Project Adjustment Act of July 19, 1940 (43 U.S.C. 618d), and such readvances since October 1, 1984, and in the future shall bear interest at the rate determined pursuant to section 104(a)(5) of Pub. L. 98–381.

Response: The above-cited statutory provisions do not require that all funds required for replacement work be readvanced from the Treasury; rather, the provisions provide for such readvancement from the Treasury "for replacement work * * * *which would require* readvances" (emphasis supplied). The rates as set forth in this rate order will provide the necessary revenues to pay for the projected replacement work. Therefore, it is not anticipated that a readvance will be necessary. It follows that a request to the Secretary of the Treasury for a readvance to the Colorado River Dam Fund in this situation is unnecessary and inappropriate. If Congress would have intended all replacement work to be funded by readvances from the Treasury, whether or not sufficient funds were available in the Colorado River Dam Fund, it could have easily provided for such a result. However, Congress did not require readvances for all replacement work, and Western declines to adopt such a position. If, in the future, there are insufficient funds in the Colorado River Dam Fund to cover all replacement work, the above-cited provisions of law provide the statutory authority for a readvancement of funds to the Colorado River Dam Fund.

Issue: Several commentors expressed concern about Western's use of a trend-line analysis to calculate future years cost of replacements shown in the Appendix A PRS. In addition, several commentors asserted that Western was not in compliance with the 1986 General Regulations or RA 6120.2 regarding the treatment of replacements in the PRS (expensing rather than capitalizing). Also, one commentor suggested that Western should consider the continuation of the provision for a replacement reserve contained in article 17(b) of the 1941 General Regulations.

Response: After analyzing the comments, Western concurs that the use of the sum-of-the-least–squares regression concept used to develop the replacement amounts shown in the Appendix A PRS was not the most appropriate means to forecast future annual funding requirements for replacements. Further, Western agrees with the comments that the cost of each replacement should not necessarily be recovered in the year the replacement occurs (expensing replacement costs); rather, the costs of replacements should be recovered over an appropriate time period (capitalizing replacement costs).

In response to one commentor's suggestion, Western reviewed the approach utilized in the 1941 General Regulations as to how replacements were treated in the ratesetting process. The method of capitalization utilized in the 1941 General Regulations was adopted in the Provisional PRS with a minor change. The 1941 General Regulations required use of a percentage of the replaceable investment to calculate the annual replacement reserve funding requirement. In the Provisional PRS, Western utilized the replaceable investments (adjusted to current dollars) as a base and computed the composite average service life using Reclamation's and Western's August 1981 publication entitled "Replacements—Units, Service Lives, Factors" (a document that uses actual historical experience and the Iowa survivor curves to develop units, lives, and factors) to determine the average annual estimated future replacement amounts. The average annual amounts displayed in the Provisional PRS are the result of dividing Western's estimated total BCP costs of replacements throughout the repayment period by 50 years. The actual (historic) replacement costs and the status of the replacement reserve will be reflected annually in Reclamation's financial statement for the BCP. Western will consider other methods of capitalizing replacement costs in preparing subsequent rate analyses.

8. *Operation and Maintenance Expenses*

Issue: Several commentors questioned Western's use of a trend-line analysis to calculate future year operation and

maintenance (O&M) expenses, instead of utilizing the budget forecasts for the first 5 future years and holding the remaining future years constant at the fifth future year level, as set out in the RA 6120.2 guidelines.

Response: Western has modified the projection of future O&M costs in the Provisional PRS and incorporated the 5 future years of budgeted amounts for O&M costs with the fifth future year amount being carried forward (levelized) to all future years beyond the fifth year.

Issue: Comments were received by Western stating that the contractors had not been provided the components of the O&M estimates relating to either Reclamation or Western. In addition, a commentor asserted that neither Western nor Reclamation were relieved from the necessity of publication, for comment, of annual justifications which show components of operation, maintenance and replacement costs, in the same detail as justifications previously submitted to the Office of Management and Budget and the Appropriation Committees of Congress

Response: The annual O&M amounts used in the Pinch-point PRS provided to the contractors by Western's letter dated March 11, 1987, did provide a breakout of Reclamation's and Western's annual budget estimates for O&M expenses for the cost evaluation period. The Provisional PRS upon which the rates for capacity and energy are developed utilizes Western's most recent data and the most recent data that Reclamation has provided to Western.

9. *Hydrology and Energy Forecasts*

Issue: Several comments were received regarding hydrology and the energy forecasts used in Appendix A and subsequent studies. One commentor stated that the hydrology and energy forecasts used in the Appendix A PRS to develop the proposed rates and the later PRSs are flawed because:

1. Upper basin depletion schedules are too high which results in less water in storage in Lake Mead and a lower head at Hoover Dam.

2. The storage splitting between Lake Powell and Lake Mead is not accurately modeled on a monthly basis which results in less storage at Lake Mead and a lower head at Hoover Dam.

3. Sedimentation effects on storage elevation are not evenly distributed throughout Lake Mead resulting in lower head at Hoover Dam.

4. Efficiency of Hoover generators is too low based on the forecasted increase in efficiency of 6 to 12 percent, resulting in lower energy projections.

The commentor indicated that the result of these flaws is that energy projections used by Western are too low. This commentor recommended that Western use the commentor's water model to forecast energy until the Colorado River Simulation System (CRSS) model is modified to reflect these flaws. Another commentor stated that Western's energy projections, used in developing the proposed rates of Appendix A, were more correct and that the energy projections used in Western's later studies were too high. The commentor submitted a report from an engineering firm to support this statement. The same commentor noted that the energy projections by Reclamation and the engineering firm were very similar and that, in accordance with Reclamation's General Regulations and the electric service contracts, Western should defer to Reclamation's energy projections and should not "massage" such data. This commentor also suggested utilizing a "moving window" of water supply estimates covering blocks of 5 or 10 years for calculating the rates. Another commentor suggested Western reserve for future rate determinations the question of how much weight to give the assumption of Reclamation that there will be increased efficiency in the operation of the BCP which will produce additional energy.

Response: In developing the energy projections used in the Appendix A PRS, Western used the total energy figures from Reclamation's May 1986 CRSS computer study. That computer study uses indexed-sequential hydrological modeling with 80 sequences of estimated hydrogeneration. Energy in excess of firm was determined for each year based on the amount of excess energy available for each yearly 80-sequence average.

Western worked with Reclamation to refine the computations of excess energy and total energy for the energy projections in the later studies. Excess energy estimates were revised to account for the fact that, from among the sequences comprising the yearly average, some sequences would have energy excesses and some would have less than firm energy. Computation of average excesses should not include the sequences which have less than firm energy available. The effect of this refinement was to increase the estimated excess energy due to the statistical averaging techniques.

Western next undertook to refine the estimated total energy in the later PRSs. Factors to be accounted for in the refinement were: (1) Consolidation of BCP power plant operations, (2) BCP uprating program, and (3) the progress of Colorado River upper basin depletions.

It was estimated that the addition of 9 percent to the CRS-computed total energy would account for the consolidated operation of the BCP and the uprating of the generators. Accounting for the progress of the Colorado River Upper Basin depletions was more difficult. Upper basin depletions have not been developing as quickly as was originally projected. After comparing various options, Western decided to estimate the total BCP energy by assuming that firm energy obligations of 4,527 million kWh would be met every year, and then adding the estimated surpluses. Western believes this resulted in a more realistic estimate of projected energy—156,928 million kWh for 30 years and 255,056 million kWh for 50 years. If the total BCP energy was estimated by adjusting only for the consolidation of operations and the generator uprating, values of 147,253 million kWh for 30 years and 234,317 million kWh for 50 years, as shown on table 4 of the Boulder Canyon Project Proposed Power Rates brochure, would have resulted.

One commentor, believing Western's estimates are too low, uses an assumption that upper basin depletions will occur more slowly than the depletion schedules used by Reclamation in the CRSS studies. Using Western's method described previously, the energy projections done by both the commentor and Western are so close that the use of either would result in similar rates. The exact rate of the upper basin depletion level build up is uncertain. As such, Western believes its method is reasonable.

The commentor also states that the storage splitting between Lake Powell and Lake Mead is not properly modeled on a monthly basis, resulting in a lower head at Hoover. Western used Reclamation's CRSS study which reflects currently official simulation of sedimentation and storage splitting. Whether or not the storage splitting is done the way the CRSS study does it, or the way the commentor suggests, the effect on the 50-year rate would be minimal. Reservoir level and storage requirements have annual targets based on water supply, water depletions, and flood control regulations. Western believes that the effects of modified storage-splitting operations would tend to average out over the 50-year period.

The commentor further suggests that the effects of sedimentation on storage elevations are not properly modeled. As stated above, Western used Reclamation's CRSS study, which

reflects the current, official simulation of operating factors. Western believes that any differences which might exist result in insignificant changes in the energy projections over the 50-year study period and would only have an effect if the resrvoir system were at very low elevations. Therefore, Western rejects the suggested change in the energy projections based on sedimentation.

The commentor also stated that the efficiency of the Hoover generators is much higher than shown. Reclamation estimated that an increase between 6 and 12 percent could be attributed to the consolidated operation of the BCP and the uprating of the generators. As stated previously, Western chose the midpoint of this range, 9 percent, as the best estimate for use in the Provisional PRS. As subsequent PRSs are preparedc annually, experience with the uprated plant will provide Western with better data as to the actual improvement in efficiency. Western believes utilizing a 9 percent increase to be more reasonable than deferring any consideration of increased efficiency to future rate determinations.

Another commentor requested its consulting engineer to analyze Western's projected energy figures and give their own conclusions. Those conclusions were transmitted by the consulting engineer's letter dated March 5, 1987. Since the consultant's report has been submitted in support of the commentor's statement, a substantial portion of the ensuing discussion is being devoted to that report.

Western's excess energy and total energy estimates were shown in Table 4 of the BCP Proposed Power Rates brochure. The table was developed by Western using the output data from Reclamation's May 1986 CRSS computer study. The commentor's consultant has performed comparison studies to those projections reflected in Table 4 to estimate the BCP's excess energy and total energy.

The consultant's report states the assumption that "All of the results of the 80-sequence model run have equal probability, statistically speaking" (page 2, paragraph 4), and "each of the energy projections made by the Bureau's model (5200) has an equal probability of occurrence" (page 3, paragraph 5). These statements are only partially correct. Each of the virgin inflows used by the CRSS model has an equal probability of occurrence. However, since the Colorado River Upper Basin depletion levels are increasing, river system inflows from one year to the next are decreasing, and therefore do not have an equal probability of occurrence within the contract period. Flood control criteria and surplus and shortage criteria within the model also create numerous possibilities for future years.

In its statistical analyses, Western has treated each year as a separate statistical population with each population represented by a sample of 80 events (80 sequences). In Western's opinion, it is erroneous to draw conclusions from treatment of all the energy/sequence events as one sample of 5,200 events. Statistical analyses of energy events for several years at a time will most certainly bias the conclusions.

The commentor's consultant made the statement:

> The summaries (totals and averages) for each column at the bottom of Table 4 should be used with caution. In both sets of summaries the Bureau only reviewed selected periods, 1988–2017 and 1988–2037. This can be misleading because the CRSS model was run for the period 1986–2050 (page 2, paragraph 4).

In fact, the number of years of the model run is immaterial in the selection of a period for analysis, especially in light of the one year indexing in these studies (which allows use of the entire flow record for each year). It is valid to select any appropriate contiguous period from which to draw Western's conclusions.

The consultant furthers his assumption that all year/sequence events are part of the same population in his development of rule-of-thumb probabilities of the excess energy production (page 3, paragraph 2 and page 3, paragraph 3). Since the number of occurrences and magnitude of excess energy production will decline over time, it is not appropriate to develop probabilities of excess energy by including years beyond the contract period. Also, one must be careful how one averages the number of occurrences and the magnitudes of excesses from one year to the next within the contract period. Western has estimated excess energy one year at a time (based on 80 sequences) and averaged the figures for all years of the contract period. The consultant has estimated a *rule-of-thumb number of years* with excesses, and estimated the *average amount of those excesses* based on 65 years of data. The consultant then multiplied these together to approximate the total excess energy. The consultant also used this rule-of-thumb approach in estimating total energy (page 3, paragraph 5). Western considers its approach more straightforward and more accurate. However, the approach used by the consultant does provide a good cross-check.

It is interesting to note that the consultant's results are not substantially "out-of-line" with Western's Appendices A and C energy figures. In fact, the consultant states on page 5 of his report (paragraph 3), "* * * it appears the Bureau's May 1986 CRSS Model produces reasonable estimates for Hoover generation, if uprating and consolidation is not considered." It is assumed that the consultant is referring to Western's estimated excess energy and total energy before adjustments for uprating and consolidation, in this statement, when he refers to the CRSS model estimates.

Western believes that its energy projections are based on the best information available at this time. Although Western does not agree precisely with either of the commentors, Western's results are very close to both (see table below) and the use of any of the projections would not significantly change the rate. Therefore, Western will use the method employed in the later PRSs (Appendix C, Pinch-point and Provisional) and will continue, in later studies, to establish reasonable energy projections based on experience with the uprating program at the powerplant.

Table I.—Energy Projections

Low Study—50 year	229,827 mKwh	} Difference 11%
Provisional Study—50 year	255,056 mKwh	} Difference 5%
High Study—50 year	269,039 mKwh	

The suggestion that Western utilize a "moving window" of water supply estimates covering blocks of 5 or 10 years is not in conformance with the procedures set out in the 1986 Regulations for estimating the amount of energy from the BCP for ratesetting purposes. Therefore, Western declines to adopt such a suggestion.

10. Other

Issue: Comments were received that the Appendix A PRS reflected some annual expenses at a full-year level for FY 1987 instead of a one-third of a year level.

Response: Western agrees that some expenses were entered at the full-year level in the Appendix A PRS. The Provisional PRS reflects only one-third of a year (June–September) for the FY 1987 expenses.

Issue: One commentor indicated that the PRS does not reflect purchased power expense. This expense should be reflected to demonstrate Western's purchase of power to satisfy the uprating program contractor's credits on monthly power bills when the amount owed to the United States by the contractor is not sufficient to "offset" the credit due the contractor.

Response. The Provisional PRS follows the guidelines in RA 6120.2 which provides that forecasts of O&M expenses shall take into account known factors which are expected to affect the future level of such costs during the cost evaluation period. It further provides that all costs of planned purchased power shall be included. The purchase of power by Western to offset uprating program credits will be predicted upon several conditions such as: the amounts of power available, the amount of debt service to an individual contractor, and, most importantly, the contractor making a specific request for the purchased power. Accordingly, Western has determined that it would be inappropriate to include an estimate of the costs of purchased power in the Provisional PRS. Also, the cost of purchased energy for firming will be a "passthrough" which will not impact the rates.

Issue. One commentor requested Western adopt a procedure to allocate interest credits for the funds advanced by some Schedule B contractors (uprating) on behalf of the Arizona Power Authority, thereby achieving equity between all affected parties.

Response. The funds advanced by some Schedule B (Uprating) contractors on behalf of the Arizona Power Authority are the result of an agreement between the contractors and Reclamation to provide Reclamation with sufficient uprating program funds during the first few months of the new contract period. Repayment of these advanced funds will be through billing credits on the respective contractor's monthly power bills issued by Western. Therefore, Western believes that this is not a ratesetting matter. Western will not modify the BCP PRS, but will cooperate with Reclamation and the affected contractors in an effort to resolve this matter.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, the Council of Environmental Quality regulations, and the DOE guidelines, Western conducted an environmental assessment of the Conformed Criteria (Environmental Assessment of General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (DOE/EA–0204), April 1983). The DOE determined that the proposed action did not constitute a major Federal action significantly affecting the quality of the human environment and issued a Finding of No Significant Impact (Finding of No Significant Impact, General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects) on May 2, 1983. The environmental assessment was supplemented by further environmental analyses relative to the 1986 General Regulations. Those supplemental analyses are: the General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, Environmental Determination (Supplemental to DOE/EA–0204), June 5, 1986; the Determination Memorandum, General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, June 6, 1986; and the Addendum Economic Analysis, General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project (Final Rule), Supplemental to Determination Memorandum, January 12, 1987.

Based upon the environmental assessment and other supplementary environmental analysis, Western determined that the implementation of the rate formula as described in the 1986 General Regulations and the resultant rates do not constitute a major Federal action having a significant adverse impact on the human environment.

Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western has received an exemption from sections 3, 4, and 7 of that order, and therefore will not prepare a regulatory impact statement.

Availability of Information

All studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the power rates are and will be available for inspection and copying at the Boulder City Area Office, Western Area Power Administration, Boulder City, Nevada 89005, (702) 477–3202.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective June 1, 1987, that being the first day of the June 1987, billing period, Rate Schedule BCP–F1. These rates shall remain in effect on an interim basis pending the FERC confirmation and approval of them or substitute rates on a final basis, or until they are superseded.

Issued at Washington, DC, May 20, 1987.

Joseph F. Salgado,

Under Secretary.

United States Department of Energy, Western Area Power Administration, Boulder Canyon Project

Schedule of Rates for Power Service

Effective

June 1, 1987, that being the first day of the June 1987 billing period.

Available

In the area served by the Boulder Canyon Project.

Applicable

To power customers served by the Boulder Canyon Project supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Capacity Charge: The Base Charge capacity rate is $.75/kW-month for each kW of rated capacity to which each contractor is entitled by contract during the billing period.

Energy Charge: The Base Charge energy rate is .3410 mills/kWh for each kWh measured or scheduled at the point of delivery during the billing period, except for purchased power.

The Lower Basin Development Fund Contribution Charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to

a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overruns shall be billed at 10 times the above Base Charge capacity and energy rates. The Lower Basin Development Fund Contribution Charge shall be also applied to each kWh of overrun.

Adjustments

None.

[FR Doc. 87-12816 Filed 6-4-87; 8:45am]
BILLING CODE 6450-01-M

Order Confirming, Approving, and Placing in Effect on an Interim Basis the Power Rate Adjustment for Fryingpan-Arkansas Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of power rate adjustment for the Fryingpan-Arkansas Project (Fry-Ark).

SUMMARY: Notice is given of Rate Order No. WAPA-31 of the Under Secretary of the Department of Energy placing the rate adjustment for Fry-Ark into effect on the first day of the first full billing period on or after June 20, 1987, on an interim basis for power marketed by the Western Area Power Administration (Western).

The FY 1984 Fry-Ark Power Repayment Study (PRS) published in June 1986, first indicated that the existing rate schedule does not yield sufficient revenue to satisfy the cost recovery criteria through the study period. The revised rate schedule is based upon the FY 1986 PRS and yields sufficient revenue to satisfy these criteria.

FOR FURTHER INFORMATION CONTACT: Mr. Mark N. Silverman, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 85039, (303) 490-7201.

SUPPLEMENTARY INFORMATION: By delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664, December 14, 1983), as amended by Amendment No. 1, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated to the Administrator of Western the authority to develop power and transmission rates, to the Under Secretary of the Department of Energy the authority to confirm, approve, and place such rates in effect on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis, to remand or to disapprove, rates developed by the Administrator under the delegation.

The rate adjustment for Fry-Ark has been conducted in accordance with the procedural rules applicable to Western.

Proceedings were initiated on June 13, 1986, with publication of a **Federal Register** notice (51 FR 21614) which officially announced the proposed rate adjustment and procedures for public participation. A public information forum was held on July 1, 1986, in Denver, Colorado. A comment forum was held on July 23, 1986, in Denver, Colorado. The consultation and comment period, initially ending September 11, 1986, was extended through November 10, 1986, at the request of a customer group.

Various comments were received at the meetings, and several issues were raised during the consultation and comment period. After reviewing and considering the comments received and the records of the meetings, this rate order was assembled to respond to the comments offered during the public rate adjustment process. I have concluded that the Fry-Ark rate adjustment is needed to meet cost recovery criteria. Therefore, Rate Order No. WAPA-31 confirming and approving the Fry-Ark rate on an interim basis is hereby issued, and the new rate schedule will be promptly submitted to FERC for confirmation and approval on a final basis.

Issued in Washington, DC, May 20, 1987.

Joesph F. Salgado,

Under Secretary.

Department of Energy

Under Secretary

May 20, 1987.

In the matter of Western Area Power Administration—Fryingpan-Arkansas Projet Power Rate, Rate Order No. WAPA-31.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.* (Act), the power marketing functions of the Secretary of the Interior under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), for the Bureau of Reclamation (BuRec) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664, December 14, 1983), as amended by Amendment No. 1 effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated to Western Area Power Administration's (Western) Administrator the authority to develop power and transmission rates, to the Under Secretary of the DOE (Under Secretary) the authority to confirm, approve, and place in effect such rates on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis, to remand, or disapprove rates developed by the Administrator under the delegation.

This rate order is issued pursuant to the delegation to the Under Secretary and the rate adjustment procedures at 10 CFR Part 903 (50 FR 37835, September 18, 1985).

Effective Date

The new rate will become effective on the first day of the first full billing period on or after June 20, 1987, and will remain in effect until superseded.

Description of Rate

The capacity without energy rate for the Fryingpan-Arkansas Project (Fry-Ark) will be implemented in two phases. The first phase of the proposed rate is scheduled to be placed in effect on an interim basis, the first day of the first full billing period on or after June 20, 1987. The second phase is to be effective 15 months later on or after September 20, 1988. A comparison of the present and approved rate is shown below.

	$/kW-yr	$/kW-mo	Effective on or after
Present rate	37.32	3.11	
Approved rate:			
1st phase	41.04	3.42	June 20, 1987.
2nd phase	45.00	3.75	Sept. 20, 1988.

The new rate is an increase of $7.68/kilowatt-year or $0.64/kilowatt-month. The rate adjustment will increase average annual revenues about $1.5 million, and is necessary to satisfy the cost recovery criteria as set forth in DOE Order No. RA 6120.2.

Explanation of Rate Development Process

Proceedings on the proposed rate adjustment were initiated on June 13, 1986, with publication of a **Federal Register** notice (51 FR 21614) which officially announced the proposed rate adjustment and procedures for public participation. On July 1, 1986, and July 23, 1986, a public information forum and

a public comment forum, respectively, were held in Denver, Colorado. The consultation and comment period was extended from September 11, 1986, to November 10, 1986, at the request of he customers. All public comments received in the consultation and comment period were considered in the prepartion of this rate order. During the month of July, informal meetings were held with customers and interested parties. In addition, a customer group and the BuRec met to review background information in the BuRec's files that the customers felt would be useful to help understand the proposed rate action.

Discussion of Issues—Public Comments

Question Regarding Cost of Power in 1989

Western received a question concerning the cost of power allocated under the "Post-1989 General Marketing and Allocation Criteria" because of the proposed rate increase. Under these Criteria, Fry-Ark capacity will be marketed on a blended basis after 1989.

The question is not directly concerned with the matter of the proposed rate which is for Fry-Ark alone. It pertains more to a rate procedure for power marketed after 1989. In the post-1989 period, Fry-Ark capacity and energy will be marketed with power from the Pick-Sloan Missouri Basin Program-Western Division (P-SMBP-WD), and sold at a blended rate for both projects. At this time, Western does not know exactly what the blended rate will be. However, in the "Environmental Assessment for Post-1989 General Power Marketing Criteria and Allocation Criteria for Loveland-Fort Collins Area," published in April 1985, a composite rate of $0.01247/kilowatthour was estimated for the post-1989 period assuming a rate of $46.00/kilowatt-year ($3.8333/kilowatt-month) for the Fry-Ark.

Comment Regarding the Allocation of Multipurpose Plant Cost

Western received comments disputing the BuRec's change in multipurpose plant cost allocation whereby both generation/pump units at the Mt. Elbert Powerplant are allocated a portion of the multipurpose plant costs instead of allocating these costs to just the first unit as was initially done. The comments maintain that this BuRec change in multipurpose plant cost allocation is not consistent with the statutory requirements of section 302(a) of the DOE Act. In addition, the comments, as a related matter, claim that the provisions of 10 CFR 903.14, the Department of Energy Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, were not followed with regard to the BuRec's change in multipurpose plant cost allocations. Neither comment has been adopted in this rate proceeding.

The Reclamation Project Act of 1939, section 9, among other things, sets forth the Secretary of the Interior's authority to make cost allocations in the case of reclamation projects, and the Secretary has delegated this authority to the BuRec. The Fry-Ark is a reclamation project. The DOE Act, section 302, transferred the power marketing functions and authorities previously vested in the Secretary of the Interior to the Secretary of Energy. The DOE Act did not transfer the Secretary of the Interior's authority regarding cost allocations. Notwithstanding this fact, the legislative history of section 302 supports the proposition that, in some instances, a power marketing administration may have a role in resolving certain cost allocation matters as they relate to compliance with applicable laws. However, given the fact that the Secretary of the Interior has primary responsibility to resolve cost allocation disputes, Western will not substitute its judgment for that of the BuRec in this proceeding. Any party disputing the change in the multipurpose plant cost allocation for the Fry-Ark should appropriately raise and resolve this dispute with the Secretary of the Interior in accordance with the administrative process rules and regulations of the Department of the Interior.

The comment alleging that Western's administrative process regarding the Fry-Ark rate is deficient for a lack of compliance with the provisions of 10 CFR 903.14 is also not well founded. The substance of the allegation is that Western did not provide adequate backup data for examination and comment concerning the BuRec's change in multipurpose cost allocation.

Western understands that the BuRec has provided substantial data to the Fry-Ark customers relating to the cost allocation question. Even if the BuRec had withheld certain documents, Western does not have the authority to compel production. Western, has, in fact, fully complied with the provisions of 10 CFR 903.14 by providing the customers with all of the documents under Western's control. Moreover, Western has made every effort to facilitate the gathering the releae of information to Fry-Ark customers on the cost allocation issue.

Questions Regarding Operation and Maintenance Expenses

The FY 1984 Power Repayment Study (PRS) was in use when the rate adjustment procedures were initiated in June 1986.

Comment was received referring to the fact that the FY 1984 PRS uses the BuRec FY 1986 budget for the basis of future year projections for operation and maintence (O&M) expenses. The BuRec had consolidated two of their regional offices after the submittal of the FY 1986 budget, but any savings in O&M expenses, according to the comment, were not reflected in the FY 1984 PRS.

The FY 1986 PRS, which is the basis for this rate order, includes new O&M expenses, which the BuRec has submitted to Western, and which are based upon the BuRec's proposed FY 1988 budget. These data do reflect the consolidation of BuRec's Regional and Project Offices.

Another comment was made that the O&M costs for Fry-Ark are inappropriately high.

Western reviewed both BuRec and Western's historical O&M expenses. We verified that actual historical expenses have been higher than the expenses projected in the FY 1982 PRS (which was used to support the present rate of $3.11/kilowatt-month). However, the outyear projections in the FY 1986 PRS are nearly 26 percent less than the preliminary FY 1986 actual O&M expenses for the project. Based on available data, the projected O&M expenses in the study are conservative and reasonable.

Starting Year for Repayment

There was one comment regarding choice of the starting year for the repayment period in the PRS, saying the starting year should coincide with the requirement to pay under the sales contracts.

The Mt. Elbert Powerplant was declared to be available for service in FY 1982. In researching Western's contracts, there were seven customers who had contracts, and 10 customers who did not have contracts by the end of FY 1983, and initial commerical sales begin in FY 1983. Therefore, the start year of FY 1983 for the PRS does coincide with the sales contracts and DOE Order RA 6120.2 which states that "the first year of the repayment period . . . shall be the first year following the fiscal year in which the investment goes into comerical service."

Questions Regarding Other Revenues

Western received questions about the exclusion of interchange energy sales

from the revenue projection, since such revenue was, according to the comment, included in the FY 1982 PRS. Western, in its review of interchange energy accounting and the cash settlement for Fry-Ark, considers the occurrence of future cash settlements as uncertain. Therefore, Western will not include cash settlements in projections of future revenue. In reviewing the "other revenue" in the FY 1982 PRS, Western found no interchange energy cash settlement. The only items included in "other revenue" in the FY 1982 PRS were a contribution from a participating utility for facilities at Poncha Substation and revenue from municipal and industrial (M&I) water contracts to assist in the repayment of irrigation facilities.

In the FY 1986 PRS, the contributions from the participating utility are in the form of reduced capitalized plant costs. Further, since no required irrigation aid is shown in the FY 1986 PRS, there is no revenue assistance from M&I water contracts.

Western received a comment requesting that benefits from hydrothermal integration activities be allocated based on the installed capacity ratio of the projects involved, namely the Fry-Ark (200 MW) and the P–SMBP–WD (516 MW).

Western has reviewed the integrated operation of the projects and has included historical revenues in the PRS based upon the hydrothermal integration. There is a high probability that revenues will be available in the short-term; therefore, Western has also projected additional hydrothermal revenues through 1991.

Question Regarding Replacements

There was one comment regarding overpayment of replacements by approximatley $7 million by the end of the study period.

The PRSs normal priority of payments after annual costs, interest expense, and repayment of capitalized deficits is to repay the highest interest bearing investment first. In the same interest bearing investment group, replacement investments are paid before project investment. This situation often results in repayment of replacements in the year they are placed in service.

However, it may be desirable to direct where and when future principal payments should be made. Occasionally, the funds for payment of a higher interest rate investment may be directed to repay a lower interest rate investment in years preceding a required payment which is larger than the then available annual revenue. When this approach is used, interest expense increases. The increase in expenses reduces the amount of revenue available for repayment. The PRS will then have a larger unpaid investment at the end of the study period than would otherwise be the case. As long as the increase in the unpaid investment exceeds the increased interest cost plus the payment to the lower interest bearing investment, the required power rate for repayment can sometimes be reduced. In this Fry-Ark PRS, the lowest rate is obtained when there is a balance of repaid and unpaid replacement investment at the end of the study.

Phased Rate Adjustment

The customers commented that severely depressed economic conditions exist in Colorado and adjoining States, particularly in rural areas, and that end-use consumers are clearly unable to pass along increased energy costs in the sale price of their goods and services. As a result, they believe that Western should seriously consider the postponement of the proposed rate increase until the Fry-Ark is integrated with other Loveland Area resources according to the post-89 marketing plan.

Western is well aware of the depressed economic conditions that exist in the rural areas and has considered how to cushion the impact of such a large rate increase. The Administrator does not have discretion under provisions of R.A. 6120.2 to unduly delay a needed rate increase, which would be the situation if the rate were not placed in effect until the start of the post-89 marketing period on October 1, 1989. However, a PRS was made using a two-phase increase. The first phase was assumed to start with the July 1987 billing period and include about one half of the rate increase needed for project repayment. The first phase would be in effect for 15 months. The second phase, or full amount of the rate increase would be placed in effect beginning with the October 1988 billing period. Due to the reduction in revenues during the initial 15-month period, the final rate is slightly greater than would be required for a single-phase increase.

Western does not favor, as a matter of general policy, the adoption of phased increases, but because of the magnitude of the Fry-Ark rate increase (from $37.32/kilowatt-year to $45.00/kilowatt-year), and the poor economic conditions in the rural areas where Fry-Ark power is sold, some phasing of the rate is warranted.

The rate approved in this order is:

1st phase: $41.04/kilowatt-year ($3.42/kilowatt-month), effective on or after June 20, 1987.

2nd phase: $45.00/kilowatt-year ($3.75/kilowatt-month), effective on or after September 20, 1988.

The second phase provides for full repayment of project costs within the allowable repayment periods for the investments.

Miscellaneous Issues

One comment stated that Western should credit benefits from substitute sources and diversity to Fry-Ark; Western should not consider this credit to be in lieu of credits due to the hydrothermal integration (discussed in "Questions Regarding Other Revenues").

Western views this comment as two issues. The first issue is the credit of benefits from substitute sources such as the P–SMBP–WD. Western does credit benefits from substitute sources by accounting for project energy at generation and at load. There is a financial settlement between Fry-Ark and P–SMBP–WD when interchange energy is settled.

The other issue is the diversity settlement. Western believes that diversity is a relationship between loads and the swing taken by the generators. The Fry-Ark generators are scheduled generators, not swing generators; therefore, no benefit is due to Fry-Ark because of diversity.

Western received another comment suggesting a delay of the rate increase until "Post-1989" because of the economic conditions in the rural areas.

Western is required by statute to meet annual O&M costs and interest on the investment, and repay each investment within its repayment period. While a needed rate action cannot be deferred, Western makes every effort to assure that only fully justified costs and all proper revenues are shown in the PRS.

Other Considerations

Interest Rate Not Based on RA 6120.2

In the FY 1982 PRS, which was used to set the initial Fry-Ark power rate, the interest rate for the project investment was in accordance with the authorizing legislation. This interest rate is referred to as a "coupon rate." However, the interest rate used for the deficit loans and replacement investment was in accordance with DOE Order RA 6120.2, or the "yield rate." In the FY 1986 PRS, to be consistent in the repayment of loans and investment, and since the authorizing legislation directs the use of

the "coupon rate," Western used the appropriate "coupon rate" as the interest rate for the deficit loans and replacement investment.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) and th DOE Regulations published in the **Federal Register** on March 28, 1980 (45 FR 20694–20701), as amended, Western normally prepares environmental assessments for proposed rate adjustments which exceed the rate of inflation in the period since the last adjustment. Western completed an environmental assessment (EA) of the proposed rate increase. A Finding of No Significant Impact was issued by DOE on September 23, 1986.

In an effort to use the latest available finance and budget information, Western has revised the proposed power rate. The initial proposed rate was based upon the FY 1984 PRS as published in the rate brochure, while the final proposed rate is based upon the FY 1986 PRS. The rate evaluated in the EA was $3.88/kilowatt-month. In this rate order, the final capacity rate is $3.75/kilowatt/month, as compared with the previous rate of $3.11/kilowatt-month. Because the final rate is less than the rate used in the EA, the evaluation contained in that document becomes in effect a "worst-case" analysis. No significant environmental effects were discovered using the higher rate, so none are anticipated with a slightly lower rate. It is not expected that further NEPA compliance will be required.

Submission to FERC

The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve, and place in effect on an interim basis, effective the first day of the first full billing period on or after June 20, 1987, Rate Schedule FA–C1. This rate schedule shall remain in effect on an interim basis until FERC confirms and approves it or a substitute rate on a final basis.

Issued in Washington, DC, May 20, 1987.

Joseph F. Salgado,
Under Secretary.

United States Department of Energy

Western Area Power Administration

Rate Schedule FA–C1—Fryingpan-Arkansas Project

Schedule of Rates for Capacity Without Energy

Effective

1st phase: The first day of the first full billing period on or after June 20, 1987.
2nd phase: The first day of the first full billing period on or after September 20, 1988.

Available

To wholesale power customers for capacity without energy.

Character and Condition of Service

Alternating current, 60 hertz, 3-phase, delivered and metered at the voltage and points established by contract.

Monthly Rate

1st phase: $3.42 per kilowatt of contract rate of delivery.
2nd phase: $3.75 per kilowatt of contract rate of delivery.

Adjustments

Customers will be required to bear transmission costs and losses of 1 mill/kilowatthour and 5 percent losses in each direction for wheeling of energy to and from the Malta Substation over the transmission system of Public Service Company of Colorado.

[FR Doc. 87–12884 Filed 6–4–87; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51677; FRL–3211–8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-two such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–1121, 87–1122 and 87–1123—August 12, 1987.
P 87–1124, 87–1125 and 87–1126—August 15, 1987.
P 87–1127, 87–1128, 87–1129 and 87–1130—August 16, 1987.
P 87–1131, 87–1132, 87–1133, 87–1134, 87–1135, 87–1136, 87–1137, 87–1138, 87–1139, 87–1140, 87–1141, 87–1142, and 87–1143—August 17, 1987.
P 87–1144, 87–1145, 87–1146, 87–1147, 87–1148, 87–1149, 87–1150, 87–1151 and 87–1152—August 18, 1987.

Written comments by:

P 87–1121, 87–1122 and 87–1123—July 13, 1987.
P 87–1124, 87–1125 and 87–1126—July 16, 1987.
P 87–1127, 87–1128, 87–1129 and 87–1130—July 17, 1987.
P 87–1131, 87–1132, 87–1133, 87–1134, 87–1135, 87–1136, 87–1137, 87–1138, 87–1139, 87–1140, 87–1141, 87–1142, and 87–1143—July 18, 1987.
P 87–1144, 87–1145, 87–1146, 87–1147, 87–1148, 87–1149, 87–1150, 87–1151, and 87–1152—July 19, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51677]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1121

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Industrial and commercial oligomer. Prod. range: 1,000 to 3,000 kg/yr.

P 87–1122

Importer. Confidential.

Chemical. (G) Substituted Morpholine.
Use/Import. (G) Chemical intermediate. Import range: Confidential.
Toxicity Data. Irritation: Skin—Irritant, Eye—Irritant.

P 87–1123

Manufacturer. Adhesive Coatings Co.
Chemical. (S) Polyamine urea-formaldehyde condensate.
Use/Production. (S) Industrial epoxy curing agent. Prod. range: 300,000 to 500,000 kg/yr.

P 87–1124

Manufacturer. Takasago USA, Inc.
Chemical. (S) 7-Ethoxy-3, 7-dimethyl 1-octene.
Use/Import. Industrial fragrance. Import range: 100 to 1,200 kg/yr.
Toxicity Data. Acute oral: 15.3 g/kg; Irritation: Skin—Non-irritant; Ames test—Non-mutagenic; Skin sensitization: Non-sensitizer; Phototoxicity—No phototoxicity.

P 87–1125

Manufacturer. Confidential.
Chemical. (S) Mixture of 2-ethoxy-2,6-dimethyl octane and 6-ethoxy-2,6-dimethyl octane.
Use/Import. (S) Site-limited fragrance. Import range: 100 to 1,200 kg/yr.
Toxcity Data. Acute oral: >20 m/kg; Irritation: Skin—Non-irritant; Ames test—Non-mutagenic; Skin sensitization—Non-sensitizer; Phototoxicity—No phototoxicity.

P 87–1126

Importer. Ilford Photo Corporation
Chemical. (S) 1,1'-Ethylene-2,2'bipyridylium dibromide.
Use/Import. (G) Stabilizer for holograms containing silver halide; open, non-dispersive use. Import range: 200 to 1,000 kg/yr.

P 87–1127

Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1128

Manufacturer. Confidential.
Chemical. (G) Acrylic modified polyurethane.
Use/Production. (G) Industrially used coating with an open use. Prod. range: 10,000 to 50,000 kg/yr.

P 87–1129

Manufacturer. Confidential.
Chemical. (G) Alkyl aminal.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87–1130

Manufacturer. Confidential.
Chemical. (G) Polymer of amines, alkanediols, aliphatic and aromatic acids.
Use/Production. (S) Industrial open, non-dispersive use. Prod. range: 66,500 to 100,000 kg/yr.

P 87–1131

Manufacturer. Texaco, Inc.
Chemical. (G) Sulfurized molybdenum derivative of an amide and ester.
Use/Production. (S) Industrial, commercial and consumer lube oil additive for crankcase engine oils. Prod. range: Confidential.

P 87–1132

Manufacturer. Cardolite Corporation.
Chemical. (G) Cashew nutshell liquid polymer with formaldehyde and polyamine. Prod. range: Confidential.
Use/Production. (S) Curative (Hardener) for epoxy resins. Prod. range: Confidential.

P 87–1133

Manufacturer. Texaco, Inc.
Chemical. (G) Substituted polyisobutenyl succinimide or bis-alkenyl succinimide.
Use/Production. Industrial, commercial and consumer lube oil additive for crankcase engine oils. Prod. range: Confidential.

P 87–1134

Manufacturer. Biddle Sawyer Corporation.
Chemical. (G) Aliphatic urethane acrylate oligomer.
Use/Import. (S) Oligomer for UV/EB curable systems. Import range: Confidential.

P 87–1135

Manufacturer. Cardolite Corporation.
Chemical. (S) Cashew nutshell liquid acetate ester.
Use/Production. (S) Diluent-accelerator for epoxy resins. Prod. range: Confidential.

P 87–1136

Manufacturer. Confidential.
Chemical. (G) Anionic substituted aromatic.
Use/Production. (G) Textile applications. Prod. range: Confidential.

P 87–1137

Manufacturer. Biddle Sawyer Corporation.
Chemical. (G) Aliphatic urethane acrylate oligomer.
Use/Production. (S) Oligomer for UV/EB curable systems. Prod. range: Confidential.

P 87–1138

Manufacturer. Biddle Sawyer Corporation.
Chemical. (G) Aliphatic urethane acrylate oligomer.
Use/Production. (S) Industrial, commercial and consumer oligomer for UV/EB curable systems. Prod. range: Confidential

P 87–1139

Manufacturer. Southland Corporation.
Chemical. Rapeseed oil, sulfated, sodium salt.
Use/Production. (S) Industrial emulsifier-wetting agent. Prod. range: 5,000 to 20,000 kg/yr.

P 87–1140

Manufacturer. Southland Corporation.
Chemical. (S) Rapeseed oil, sulfated, potassium salt.
Use/Production. (S) Industrial emulsifier-wetting agent. Prod. range: 5,000 to 20,000 kg/yr.

P 87–1141

Manufacturer. Southland Corporation.
Chemical. (S) Rapeseed oil, sulfated, triethanolamine salt.
Use/Production. (S) Industrial emulsifier-wetting agent. Prod. range: 5,000 to 20,000 kg/yr.

P 87–1142

Manufacturer. Southland Corporation.
Chemical. (S) Rapeseed oil, sulfated, triethanolamine salt.
Use/Production. (S) Industrial emulsifier-wetting agent. Prod. range: 5,000 to 20,000 kg/yr.

P 87–1143

Manufacturer. Confidential.
Chemical. (G) Alkyl aminal.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87–1144

Manufacturer. Confidential.
Chemical. (G) Mannich base of alkylated phenol.
Use/Production. (G) Commercial open, dispersive. Prod. range: Confidential.

P 87–1145

Manufacturer. Confidential.
Chemical. (G) Nitroaromatic alkenoic acid.
Use/Production. (G) Industrial chemical intermediate. Prod. range: 4,500 to 35,000 kg/yr.

P 87–1146

Manufacturer. Confidential.
Chemical. (G) Amine functional epoxy.

Use/Production. (S) Site-limited and industrial coatings. Prod. range: Confidential.

P 87-1147

Manufacturer. Confidential.
Chemical. (G) Polyamine cationic agent.
Use/Production. (G) Dye-fixative. Prod. range: Confidential.

P 87-1148

Manufacturer. Confidential.
Chemical. (G) Amine capped epoxy.
Use/Production. (S) Site-limited and industrial coatings. Prod. range: Confidential.

P 87-1149

Manufacturer. Confidential
Chemical. (G) Nonionic surfactant.
Use/Production. (S) Site-limited and industrial coatings. Prod. range: Confidential.

P 87-1150

Manufacturer. Confidential.
Chemical. (G) Aliphatic blocked isocyanate crosslinker.
Use/Production. (S) Site-limited and commercial coatings. Prod. range: Confidential.

P 87-1151

Manufacturer. Confidential.
Chemical. (G) Amine functional epoxy resin.
Use/Production. (S) Site-limited and industrial coatings. Prod. range: Confidential.

P 87-1152

Manufacturer. Shin-Etsu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane containing epoxy group.
Use/Import. (S) Industrial textile finishing agent. Import range: 4,000 to 40,000 kg/yr.

Dated: May 22, 1987.

Linda K. Smith,

Acting Division Director, Information Management Division.

[FR Doc. 87-12566 Filed 6-4-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59816; FRL-3211-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 87-147 and 87-148—June 4, 1987.
Y 87-149—June 8, 1987.
Y 87-150 and 87-151—June 9, 1987.
Y 87-152 and 87-153—June 10, 1987.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-147

Manufacturer. Confidential.
Chemical. (G) Water reducible alkyd.
Use/Production. (G) Water reducible resin for coatings. Prod. range: Confidential.

Y 87-148

Manufacturer. Confidential.
Chemical. (G) Water reducible alkyd.
Use/Production. (G) Water reducible alkyd for coatings. Prod. range: Confidential.

Y 87-149

Manufacturer. Confidential.
Chemical. (G) Aliphatic hydrocarbon resin.
Use/Production. (S) Industrial function is a binder and the application is the lithographic printing inks. Prod. range: Confidential.

Y 87-150

Manufacturer. Spencer Kellogg Products.
Chemical. (G) Fast dry long oil alkyd.
Use/Production. (G) Open, non-dispersive manner. Prod. range: Confidential.

Y 87-151

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyol polyester.
Use/Production. (G) Industrial coating with an open use. Prod. range: 15,000 to 50,000 kg/yr.

Y 87-152

Manufacturer. Confidential.
Chemical. (G) Polyether block polyamide copolymer.
Use/Production. (S) Hot melt binder or adhesive for explosives. Prod. range: Confidential.

Y 87-153

Manufacturer. Confidential.
Chemical. (G) Polyamide copolymer.
Use/Production. (S) Hot melt textile adhesive. Prod. range: Confidential

Dated: May 22, 1987.

Linda K. Smith,

Acting Director, Information Management Division.

[FR Doc. 87-12567 Filed 6-4-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3214-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared May 18, 1987 Through May 22, 1987

Availability of EPA comments prepared May 18, 1987 through May 22, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was publishd in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-AFS-K65100-00, Rating EC2, Inyo Nat'l Forest, Land and Resource Mgmt. Plan, NV and CA. SUMMARY: EPA expressed environmental concerns because multiple-use Forest activities may degrade riparian areas, water quality and beneficial uses. The final EIS needs to more fully discuss how proposed activities and the protection of Forest resources will be achieved. EPA also asked for more information on air

quality impacts and attainment of air quality objectives.

ERP No. D–COE–G39025–TX, Rating LO, Denison Dam—Lake Texoma Reevaluation Plan, Water Resource Problems and Needs, Red River, OK and TX. SUMMARY: EPA has no objection to the no action plan as proposed in the draft EIS.

ERP No. D–COE–K35028–CA, Rating EU2, Shorelands Commercial/Industrial Park, Development and Construction, Sect. 10 and 404 Permits, CA. SUMMARY: EPA rated the proposed horse racing facility, research and development complex, family-oriented entertainment park and related facilities as "Environmentally Unsatisfactory" because 697 acres of valuable wetlands and wildlife habitat in the South San Francisco Bay would be lost. EPA determined that the project failed to comply with the Clean Water Act (CWA) 404(b)(1) Guidelines and that the project's magnitude and severity of impacts to migratory birds is unacceptable. Because of these severe environmental impacts, EPA strongly recommended that the Army Corps deny the 404 permit. If the Army Corps considers issuing a permit for the project, EPA will consider the project a candidate for referral to the Council on Environmental Quality.

ERP No. D–FHW–H40136–KS, Rating EO2, South Lawrence Trafficway Construction, Kansas Turnpike/I–70 to K–10/Noria Rd., 404 Permit, Right-of-Way Acquisition, KS. SUMMARY: EPA objects to impacts on wetlands and critical habitat of rare and endangered species. EPA suggests that realignments be made to avoid sensitive areas and requests mitigation plans be developed and included in the final EIS.

Final EISs

ERP No. F–BLM–K61064–NV, Clark County Wilderness Study Areas, Wilderness Recommendations, Designation, NV. SUMMARY: EPA expressed continuing concerns on how air and water quality conditions will be protected in areas that BLM decides not to recommend for addition to the National Wilderness System. EPA recommended that BLM commit to appropriate monitoring to protect air and water quality in areas not recommended for wilderness preservation.

ERP No. F–BLM–K61068–AZ, Phoenix Resource Area, Wilderness Study Areas, Designation, AZ. SUMMARY: EPA expressed continuing concerns on how air and water quality conditions will be protected in areas that BLM decides not to recommend for addition to the National Wilderness System. EPA recommended that BLM commit to appropriate monitoring to protect air and water quality in areas not recommended for wilderness preservation.

ERP No. FS–COE–A32456–AL, Black Warrior and Tombigbee Rivers, Maintenance and Operation, New Information, AL. SUMMARY: EPA finds that the issues raised concerning the supplemental draft EIS have been satisfactorily addressed. EPA notes, however, that in maintaining the long-term navigability of the waterway, the Corps will have a continuing problem of where to place the spoil.

ERP No. F–FHW–J40063–CO, US 50 Improvement, East of Cimarron to Windy Point, 404 Permit, CO. SUMMARY: The final EIS responded to EPA's concerns expressed in the draft EIS.

ERP No. F–FHW–K40149–CA, Pacific Coast/CA–1 Widening, CA–55 to Golden West St., 404 Permit, CA. SUMMARY: EPA supported the full implementation of the mitigation measures described in the final EIS.

ERP No. F–NPS–C61034–00, Upper Delaware Scenic and Recreational River Mgmt. Plan, PA and NY. SUMMARY: EPA's concerns on the draft EIS have been addressed. EPA also refers the NPS to the publication entitled "Septic Systems and Ground Water Protection: A Program Manager's Guide and Reference Book", for additional information.

ERP No. F–SCS–E36159–MS, South Delta Watershed Protection and Flood Prevention Plan, 404 Permit, MS. SUMMARY: EPA reviewed the final EIS and expects no significant and/or long-term adverse impact from the project as proposed.

ERP No. F–UAF–B52000–MA, Westover AFB, Air Force Reserve Mission Change C–130 to C–5A Aircraft and Civil Aviation Operation Expansion thru 1995, MA. SUMMARY: EPA recommends that the Air Force deny permission for civilian night-time operations at Westover AFB because of severe impacts due to repeated wake-ups of substantial populations. EPA also recommends that if the Air Force approves use of military C–5A aircraft, the Air Force continue investigating further mitigation for sensitive receptors such as schools and hospitals.

ERP No. F–USN–K60016–CA, El Centro Target Ranges R–2510 (W. Mesa) and R–2512 (E. Mesa), Range Safety Zones, Land Acquisition and Mgmt. on Non-Federal Lands, Naval Air Force, CA. SUMMARY: EPA had no comments to offer on the final EIS.

Regulation

ERP No. R–DOI–A20024–00, 43 CFR Part II, Natural Resource Damage Assessments, Amendment of Final Rules to Conform with the Amendments to CERCLA Enacted By Passage of Superfund Amendments and Reauthorization Act (SARA) (52 FR 12886). SUMMARY: EPA's comments are directed to the treatment of Indian tribes in the proposed rule. Among a number of things, EPA believes that Indian tribes should be considered trustees of natural resources within their domain. Therefore, the definition of "trustee" in the regulation should be changed to include Indian tribes and the language referring to Federal and State trustees and Indian tribes should be replaced by the term "natural resource trustee". Additionally, while EPA does not dispute DOI's finding that the SARA does not grant rebuttable presumption to assessments performed by Indian tribes, EPA believes assessments jointly prepared by Federal trustees and Indian tribes or reviewed by Federal trustees could qualify for the rebuttable presumption.

Dated: June 2, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–12840 Filed 6–4–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3214–1]

Environmental Impact Statements; Availability; Findings for May 25, 1987 Through May 29, 1987

Responsible agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed May 25, 1987 through May 29, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870188, Final COE, FL, Palm Beach County, Beach Erosion Control Project, Palm Beach County, Due: July 6, 1987, Contact: Paul Schmidt (904) 791–1691.

EIS No. 870190, Draft, FHW, CA, CA–118 through Saticoy, Realignment and Widening, CA–126/Santa Paula Freeway to CA–232/Vineyard Avenue, Ventura County, Due: July 20, 1987, Contact: Glen Clinton (916) 551–1310.

EIS No. 870191, Final, FWS, AK, Kodiak National Wildlife Refuge, Comprehensive Management Plan and Wilderness Review, Gulf of Alaska, Due: July 6, 1987, Contact: William Knauer (907) 786–3399.

EIS No. 870192, Final, AFS, TX, East Texas National Forests and Caddo and LBJ National Grasslands, Land and Resource Management Plan, Due: July 6, 1987, Contact: Gordon S. Steele (409) 639–8501.

EIS No. 870193, Final, FHW, MI, I–94 Improvements, Merriman and Middlebelt Interchanges, Wayne County, Due: July 6, 1987, Contact: Thomas Fort Jr. (517) 377–1879.

EIS No. 870194, Draft, BLM, MT, West Hiline Planning Area, Resource Management Plan, Due: August 28, 1987, Contact: Wayne Zinne (406) 538–7461.

Amended Notice

EIS No. 870175, Draft, FWS, AK, Yukon Delta National Wildlife Refuge, Long Term Management Plan and Wilderness Review, Due: July 22, 1987, Published FR 5–22–87—Review period extended.

Dated: June 2, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–12839 Filed 6–4–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3214–3]

Science Advisory Board; Hazard Ranking System Review Subcommittee; Open Meeting—June 29–30, 1987

Under Pub. L. 92–463, notice is hereby given that the Toxicity Subgroup of the Science Advisory Board's Hazard Ranking System Review Subcommittee will hold a two-day meeting on June 29–30, 1987 at the U.S. Environmental Protection Agency, in the Administrator's Conference Room, Room 1103 of the West Tower. The meeting will begin at 9:00 a.m. on Monday and adjourn no later than 4:00 p.m. on Tuesday.

The purpose of this meeting is to continue deliberations on the toxicity issues that have been presented to the Science Advisory Board as part of the review of the Hazard Ranking System. The second day of the meeting will be a writing session. The issues to be addressed at this meeting are contained in a "Discussion of Options for Revising the Hazard Ranking System (HRS) Toxicity Factor," May 4, 1987. Copies of this and other documents provided to the full HRS Subcommittee are available in the Superfund Docket. The Superfund Docket is located at EPA Headquarters, Waterside Mall Sub-basement, 401 M Street, SW., Washington, DC 20460. The Docket is open by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday excluding holidays. To obtain copies of the Toxicity Factor document or to make an appointment, contact Tina Maragousis at 202/382–3046. Further technical information on the toxicity issues of the HRS is available from Ms. Jane Metcalfe, Office of Emergency and Remedial Response (WH–548E), U.S. EPA, 401 M Street, Washington, DC 20460 (202/382–7393).

The meeting is open to the public. Any member of the public wishing to attend or submit written comments to the Toxicity Subgroup should notify Mr. Eric Malès, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, of the Science Advisory Board at 202/382–2552 by June 24, 1987.

Dated: June 1, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–12829 Filed 6–4–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59243; FRL–3214–7]

Certain Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under setion 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provide a summary, and requests comments on the appropriateness of granting each exemption.

DATE: Written comments by: June 22, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–59243]" and the specific TME number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential versions of the TME applications received by EPA. The complete non-confidential applications are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87–16

Close of Review Period. July 5, 1987.
Manufacturer. Confidential.
Chemical. (G) Epoxy resin ingredient.
Use/Production. (G) Epoxy resin.
Prod. range: Confidential.

T 87–17

Close of Review Period. July 5, 1987.
Manufacturer. Confidential.
Chemical. (G) Epoxy resin ingredient.
Use/Production. (G) Epoxy resin.
Prod. range: Confidential.

Dated: May 29, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87–12830 Filed 6–4–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–5942A; FRL–3214–6]

Certain Chemical; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–87–14. The test marketing conditions are described below.

EFFECTIVE DATE: James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611E, 401 M street 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.

EPA hereby approves TME–87–14. EPA has determined that test marketing of the new chemcial substance described below, under the conditions set out in the TME appliction, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. The production volume must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–87–14. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date 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 the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

4. The applicant and its customers must protect workers exposed to the TME substance with impervious gloves, safety goggles or equivalent eye protection, and protective clothing.

T 87–14

Date of Receipt: April 14, 1987.

Notice of Receipt: April 24, 1987 (52 FR 13753).

Applicant: Confidential.

Chemical: (G) Epoxy resin.

Use: (G) Composite structure formulations.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Manufacturing: Dermal, a total of 3 workers for twenty days/year. Use: Dermal, a total of 30–60 workers 100 days/year.

Test Marketing Period: One year.

Commencing on: May 21, 1987.

Risk Assessment

EPA identified potential adverse human health effects associated with exposure to the TME substance. However, EPA has determined that, under the conditions outlined above, and the restrictions outlined below, there will be no significant human exposures. Therefore, the test market substance will not present any unreasonable risk of injury to human health. EPA has identified no significant environmental concerns.

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: May 21, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87–12831 Filed 6–4–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59818; FRL–3214–4]

Certain Chemicals Premanufacture Notices; E.I. du Pont de Nemours and Co., Inc., et al

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides the summary of each.

DATES: Close of Review Period: Y 87–154, 87–155 and 87–156—June 15, 1987.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–154

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Y 87–155

Manufacturer. E.I. du Pont de Nemours and Company, Inc..

Chemical. (G) Lactone modified acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 87–156

Importer. BASF Engineering Plastics.

Chemical. (G) Butadiene acrylate polymer.

Use/Import. (S) Site-limited and industrial impact resistance modifier in polyamide thermoplastic processed by injection molding. Import range: Confidential.

Dated: May 29, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87–12832 Filed 6–4–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51678; FRL–3214–5]

Certain Chemicals Premanufacture Notices; Pacific Anchor Chemical Corp., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in

the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-five such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–1153, 87–1154, 87–1155, 87–1156 and 87–1157—August 19, 1987.

P 87–1158, 87–1159, 87–1160 and 87–1161—August 23, 1987.

P 87–1162, 87–1163, 87–1164, 87–1165, 87–1166, 87–1167, 87–1168, 87–1169, 87–1170, 87–1171 and 87–1172—August 24, 1987.

P 87–1173, 87–1174, 87–1175, 87–1176 and 87–1177—August 25, 1987.

Written comments by:

P 87–1153, 87–1154, 87–1155, 87–1156 and 87–1157—July 20, 1987.

P 87–1158, 87–1159, 87–1160 and 87–1161—July 22, 1987.

P 87–1162, 87–1163, 87–1164, 87–1165, 87–1166, 87–1167, 87–1168, 87–1169, 87–1170, 87–1171 and 87–1172—July 23, 1987.

P 87–1173, 87–1174, 87–1175, 87–1176 and 87–1177—July 24, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51674]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1153

Manufacturer. Pacific Anchor Chemical Corporation.

Chemical. (G) Polymer of diethylenetriamine, triethylenetetramine, monobasic fatty acid, dibasic fatty acid; a lactam, substituted phenol and substituted oxirane.

Use/Import. (S) Curing agent for epoxy resin coating systems, adhesives, putties, sealants and jointing compounds. Import range: Confidential.

P 87–1154

Manufacturer. Velsicol Chemical Corporation.

Chemical. (G) Benzoate ester.

Use/Production. (G) Coalescing agent and plasticizer. Prod. range: Confidential.

P 87–1155

Manufacturer. Confidential.

Chemical. (G) Fatty substituted polyamine cationic agent.

Use/Production. (G) Cationic softener/dye fixing agent. Prod range: Confidential.

Toxicity Data. Acute oral: 10 ml/kg; Irritation: Skin—Non-irritant.

P 87–1156

Manufacturer. Velsicol Chemical Corporation.

Chemical. (G) Benzoic acid ester.

Use/Production. (G) Coalescing aid and plasticizer. Prod. range: Confidential.

P 87–1157

Manufacturer. Velsicol Chemical Corporation.

Chemical. (G) Benzoic acid ester.

Use/Production. (G) Coalescing aid and plasticizer. Prod. range: Confidential.

P 87–1158

Importer. Confidential.

Chemical. (G) Poly(oxy-1,2-ethanediyl), alpha-alkyl-omega hydroxy-, phosphate.

Use/Import. (S) Industrial chemical intermediate. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight; Eye—Non-irritant.

P 87–1159

Importer. Rohm Tech, Inc.

Chemical. (S) 2-Butenedioic acid (Z)-, mono [(2-methyl-1-oxo-2-propenyl)oxy]ethyl]ester.

Use/Import. (S) Industrial component of a formulated mixture of other monomers and polymers for U.V. cured coatings, adhesives, and manufacture of ploymers for use in coatings and adhesives. Import range: 10,000 to 30,000 kg/yr.

Toxicity Data. Acute oral: 300 to 5,000 mg/kg; Irritation: Skin—Primary-irritant; Eye—Primary-irritant.

P 87–1160

Importer. Biddle Sawyer.

Chemical. (S) 2-Hydroxy-3-(4-benzoylphenoxy)-N,N,N-trimethyl-1-propanaminium chloride monohydrate.

Use/Import. (S) Photoinitiator for the photo-curing of water based U.V. and near visible spectrum curing compositions. Import range: Confidential.

P 87–1161

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Intermediate for electrical insulation coatings. Prod. range: Confidential.

P 87–1162

Importer. Confidential.

Chemical. (S) 5,6-diamino-2-naphthalene-sulfonic acid, ferrate(3), sodium salt.

Use/Import. (G) Industrial and commercial component in an article Import. range: Confidential.

P 87–1163

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (S) (N-methyldimethoxysilylpropyl) polyethyleneimine.

Use/Production. (S) Industrial coupling agent for thermoplastic composites and coating material for hydrophobic coatings on various substrates. Prod. range: Confidential.

P 87–1164

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (S) Methyldiethoxysilyl modified poly(1,2-butadiene).

Use/Production. (S) Industrial coupling agent for thermoplastic composites and coatings material for hydrophobic coatings on various substrates. Prod. range: Confidential.

P 87–1165

Importer. Confidential.

Chemical. (G) Fluorinated urethane compound.

Use/Import. (G) Antistain agent. Import range: Confidential.

P 87–1166

Manufacturer. Confidential.

Chemical. (G) Oxyalkylated terephthalate glycol esters.

Use/Production (S) Industrial component for urethane foam insulating products. Prod. range: 455,000 to 1,230,000 kg/yr.

P 87–1167

Manufacturer. Confidential.

Chemical. (G) Terephthalate glycol esters.

Use/Production (S) Industrial component to polyurethane foam insulating materials. Prod. range: 400,400 to 1,082,400 kg/yr.

P 87–1168

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Intermediate for electrical insulation coatings. Prod. range: Confidential.

P 87-1169

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (S) [2-trimethylsiloxy-4-(2-propenyloxy)phenyl] phenylketone.

Use/Production. (G) Siliconized UV absorber. Prod. Range: Confidential.

P 87-1170

Manufacturer. Confidential.

Chemical. (G) Disubstituted quinacridone.

Use/Production. (S) Industrial colorant for paint and plastic. Prod. range: Confidential.

P 87-1171

Importer. Confidential.

Chemical. (G) N-(substituted-substituted-phenyl)acetamide.

Use/Import. (S) Industrial colorant for textiles. Import range: Confidential.

Toxicity Data. Acute oral: 20 ml/kg.

P 87-1172

Importer. Confidential.

Chemical. (G) Acetyldiazine.

Use/Import. (G) Ingrediant for use in consumer food products; highly dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: 1 mb/kg.

P 87-1173

Importer. Confidential.

Chemical. (S) Isopropylmorpholine.

Use/Import. (G) Isolated intermediate. Import range: Confidential.

P 87-1174

Manufacturer. Farchan Laboratories, Inc.

Chemical. (G) Haloganated alkane derivative.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.

P 87-1175

Manufacturer. Farchan Laboratories, Inc.

Chemical. (G) Halogenated alkane.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.

P 87-1176

Manufacturer. Dow Corning Corporation.

Chemical. (G) Dimethyl, alkoxy functional polysiloxane fluid.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 87-1177

Manufacturer. Dow Corning Corporation.

Chemical. (G) Dimethyl, alkoxy, functional polysiloxane fluid.

Use/Production. (S) Intermediate. Prod. range: Confidential.

Dated: May 29, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-12833 Filed 6-4-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Berkshire Broadcasting-South Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Berkshire Broadcasting-South, Inc.	Great Barrington, Massachusetts	BPH-860313MS	87-161
B. Empire Communications	Great Barrington, Massachusetts	BPH-860317MY	
C. Mai Cramer	Great Barrington, Massachusetts	BPH-860317MZ	
D. Ronald L. Wilson	Great Barrington, Massachusetts	BPH-860317NA	
E. Daniel F. Viles, Jr.	Great Barrington, Massachusetts	BPH-860317NB	
F. J.W. McWhirk Publishers, Inc	Great Barrington, Massachusetts	BPH-860317NC	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before the applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Main Studio	D
2. Air Hazard	B, D
3. Comparative	A, B, C, D, E, F
4. Ultimate	A, B, C, D, E, F

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-12850 Filed 6-4-87; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 87-147]

Memorandum Opinion and Order; Multipoint Information Systems, Inc., et al.

In re Applications of CC Docket No. 87-147: Multipoint Information Systems, Inc., File No. 50056-CM-P-74; and Digital Paging Systems, Inc., File No. 50057-CM-P-74; and Private Networks, Inc., File No. 50186-CM-P-74; and Videohio, Inc., File No. 50200-CM-P-74; and KC Corporation, File No. 50218-CM-P-74.

For Construction Permits in the Multipoint Distribution Service for a new station on Channel 2 at Cleveland, Ohio.

Adopted May 8, 1987.

Released May 29, 1987.

By the Common Carrier Bureau:

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Cleveland, Ohio. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, *It is Hereby Ordered.* That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications *Are Designated for Hearing,* in a *Consolidated Proceeding,* at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. *It is Further Ordered,* That Multipoint Information Systems, Inc., Digital Paging Systems, Inc., Private Networks, Inc., VideOhio, Inc., KC Corporation and the Chief of the Common Carrier Bureau, *Are Made Parties* to this proceeding.

5. *It is Further Ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. *It is Further Ordered,* That any authorization granted to Digital Paging Systems, Inc., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.,* FCC 82–391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 87–12851 Filed 6–4–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; WCBA Radio, Inc. et al.

1. The Commission has before it the following mutually exclusvie applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. WCBA Radio, Inc.	Corning, New York	BPH-860408ME	87-152
B. Crystal City Broadcasters	Corning, New York	BPH-860414MN	
C. Christian Hope Center	Corning, New York	BPH-860414MI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the correspoding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Air Hazard	C
2. Comparative	A, B, C
3. Ultimate	A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and coying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW, Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–12852 Filed 6–4–87; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain,* 77 FCC 2d 20 (1980).

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Response to a Catastrophic Earthquake, Final Plan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Plan for Federal Response to a Catastrophic Earthquake (referred to as the Plan), dated April 15, 1987, has been finalized as the basis for Federal response to assist State and local governments impacted by a catastrophic earthquake or, if appropriate, another natural catastrophic event. The Plan focuses on providing supplemental support during emergency response operations to save lives and protect property. Individual department and agency emergency authorities, as well as assignments of responsibility under the provisions of the Disaster Relief Act of 1974 to accomplish this support, are identified in the Plan. Delivery of Federal assistance will be managed and coordinated by the Federal Coordinating Officer (FCO), as authorized by section 303 of the Disaster Relief Act, 42 U.S.C. 5143. The Plan is not meant to create enforceable rights in third parties.

The Letter of Agreement signed by the heads or designated representatives of the 25 participating Federal departments and agencies is published with this notice. Their acceptance of responsibility finalizes the Plan and establishes a basis for continuing development of the Federal capability for response to a catastrophic natural event in any area of the country. The Plan establishes the policies, planning assumptions, concept of operations, organizational structure, and specific assignments of responsibility to carry out the Federal response.

A notice to initiate Federal planning was published in the **Federal Register** March 4, 1983 (48 FR 9466). The final proposed National Plan for Federal Response to a Catastrophic Earthquake was published in the **Federal Register** June 30, 1986 (51 FR 23624) as an operative plan. Comments from the public were solicited for consideration in final revisions to the National Plan.

Five letters of comment for the public record and comments from the Federal agencies involved were taken into consideration in revising the Plan. The following is a summary of the most significant issues, comments, and actions taken:

Summary of Comments and Changes to the Plan

1. *Comment:* Many of the comments pertained to specific emergency support function (ESF) annexes to the Plan. Comments varied in nature but usually provided recommendations on specific issues related to an ESF. Suggestions were made to improve Federal and State coordination of the ESF so that Federal response is clearly supplemental to that of State and local governments.

Discussion: During the comment period all ESF annexes were revised extensively by the responsible primary agencies to make them more consistent as far as level of detail, scope, and completeness. The concept of operations section which describes the coordination between national and regional levels as well as Federal and State governments has been improved in all ESF annexes. Suggestions and copies of comments were provided to the officials responsible for the ESF for their consideration in preparing the final annexes to the Plan.

2. *Comment:* Coordination mechanisms and Federal/State relationships were not clearly outlined in the Plan. This could result in duplication of effort, Federal actions not being in consonance with State priorities and procedures, and ineffective utilization of resources. Further, the Plan should consider preevent planning efforts of State and local agencies and should be clearly supportive of these efforts. Although it was recognized that further Federal planning at the regional level is necessary, the Plan should establish a better framework for Federal and State coordination.

Discussion: Policies in the Plan have been clarified to emphasize that Federal support is supplemental to State and local response and that all Federal actions will be coordinated with State officials. The FEMA Regional Directors will be responsible for establishing liaison with State officials during the planning process to develop coordination and procedural relationships. The Plan now requests that, upon implementation, a State official be appointed to coordinate Federal response requirements with each of the primary agency officials responsible for an ESF. The Operations function, which is part of the FCO's organizational structure, ensures State priorities and requirements are met. Emphasis will be placed on Federal/State procedures during the regional planning process to develop the necessary coordination mechanisms.

3. *Comment:* The Federal Reserve Bank of San Francisco suggested that it be included in the Plan. It further suggested that a Federal Reserve Bank representative be available to provide information to the FCO.

Discussion: The Federal Reserve System overall does not have emergency authorities or capabilities to support State and local governments. The Federal Reserve Bank of San Francisco should participate in regional planning to support the Technical and Advisory Services function of the FCO.

4. *Comment:* Questions were raised about the authorities and responsibilities given to the FCO in a catastrophic disaster, such as that described in the Plan, as compared to traditional disaster assistance. The Plan does not clearly distinguish between the roles of the FEMA Regional Director and the FCO for recovery assistance that may be requested during the emergency response phase.

Discussion: The questions were prompted because the FCO is given authority in the Plan which is usually delegated to the FEMA Regional Director and the FEMA Disaster Recovery Manager (the Disaster Recovery Manager is the official who has been delegated the Regional Director's authority to direct any Federal agency to provide assistance to State and local governments under Pub. L. 93–288). In the Plan, the FCO is given full authority to coordinate and manage the Federal response and resources in support of State and local requirements. Language in the Plan, particularly in the policies section, has been clarified to emphasize that the FEMA Regional Director is responsible for implementing the Federal response until the designated FCO is onscene. Further, the Regional Director will assist the FCO as requested to carry out the Federal response. A policy statement has been added that clarifies the FCO's tasking authority and responsibility for coordinating Federal recovery assistance as well as response activities.

5. *Comment:* Concerns were expressed about handling public information and the concept of the Joint Information Center (JIC) as written in the Plan. The JIC seems to be primarily a Federal operation.

Discussion: The JIC is intended to be a centralized activity for release of disaster information, coordinated with all levels of government. The Plan, Appendix A, has been changed to require Federal coordination with the affected State to establish a JIC and information programs. The FCO's Lead Public Affairs Officer will be responsible for coordinating with the States to address public affairs requirements.

6. *Comment:* Several comments were receivied about regional planning required by the Plan, including: how to approach multi-State and multi-region planning; clarification of requirements for supplemental and site-specific planning; and, the framework that should be established in the Plan for procedural guidance.

Discussion: The FEMA Regional Directors have been given responsibility in the Plan to coordinate regional interagency planning for each earthquake risk area. The Subcommittee on Federal Earthquake Response Planning is responsible for providing guidance and coordinating regional planning. Language in the Plan has been clarified to distinguish between regional interagency planning and the internal supplemental planning which is the responsibility of each department and agency to carry out as they determine necessary to fulfill their responsibilities in a response situation. Regional interagency planning will be initiated after publication of the Plan for all earthquake risk areas. The issue of multi-State, multi-regional planning will be addressed in planning guidance and will be resolved in coordination with the Subcommittee and FEMA regional offices.

7. *Comment:* Collocation of Federal and State field operations as required in the Plan raises significant operational and cost implications. Arrangements for field operations should be made in advance of a catastrophe to the extent possible.

Discussion: No changes have been made to the Plan. FEMA fully agrees that advance arrangements should be made so that logistical and support requirements can be carried out to meet the goal of establishing an operational Federal disaster field office within 6 to 12 hours after the Plan is implemented.

This will be a primary area for concentration of Federal regional planning, in conjunction with State officials and planning.

8. *Comment:* Concern was expressed about financial control and availability of funds to support the Federal response.

Discussion: A paragraph has been added to the Financial Management section of Appendix B, Administrative Policies and Procedures, which requires FEMA to ensure availability of sufficient funds to support Federal response. Primary agencies will be required to provide initial estimates of operating costs and update those estimates as funds are expended in response operations. During future planning and exercising activities, it is important for FEMA and all other Federal agencies to determine estimated costs to initiate and sustain Federal emergency response. These estimates will contribute to refining the mechanisms for reprogramming funds and ensuring that Federal response is not impeded by violation of the Antideficiency Act.

Additionally, based upon agreement by the Subcommittee on Federal Earthquake Response Planning, "National" has been removed from the title of the Plan and independent regional plans are no longer required. Rather, interagency regional planning will be initiated to develop the Federal/State coordination mechanisms, operational procedures, and administrative and logistical requirements that make the Federal response possible. Regional supplements will be integrated into the Plan to meet the specific requirements of the catastrophic earthquake risk in the region.

Based upon a Presidential major disaster declaration, the FEMA Director has the authority to determine that an earthquake or any other natural event is catastrophic and thereby implement the Plan.

DATED: The Plan for Federal Response to a Catastrophic Earthquake is dated April 15, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis W. Boyd or Mary Ellen Stemper, Division of Response Planning and Coordination, Disaster Assistance Programs, State and Local Programs and Support, Federal Emergency Management Agency, telephone (202) 646-3880 or (202) 646-3665, respectively.

SUPPLEMENTARY INFORMATION: FEMA has the responsibility as the lead agency for managing and coordinating the National Earthquake Hazards Reduction Program established by the Earthquake Hazards Reduction Act. A requirement of the program is to improve the capability of all levels of government to respond to the effects of a catastrophic earthquake in any of the high-population risk areas in such a way as to reduce the loss of life and property. In addition, FEMA is responsible for coordination and implementation of programs of assistance under the provisions of Executive Order 12148 and the Disaster Relief Act of 1974, as amended, 42 U.S.C. 5121 *et seq.*

Under the auspices of the Interagency Coordinating Committee of the National Earthquake Hazards Reduction Program, FEMA chairs the Subcommittee on Federal Earthquake Response Planning. The Subcommittee will continue as the coordinating mechanism for maintaining the Plan and conducting regional response planning through all FEMA regions.

A limited supply of copies is available, and may be obtained by writing to: Federal Emergency Management Agency, P.O. Box 70274, Washington, DC. 20024.

June 1, 1987.

Julius W. Becton, Jr.,

Director.

Letter of Agreement

The Plan for Federal Response to a Catastrophic Earthquake (hereafter referred to as the Plan) establishes the basis for fulfilling the Federal Government's responsibilities to State and local governments impacted by a catastrophic earthquake or, if appropriate, another catastrophic natural event. By signature hereon, the Federal officials with responsibilities in the Plan agree to prepare for and carry out its provisions.

The Plan is based on the fundamental assumption that a catastrophic earthquake will overwhelm the capability of State and local governments to carry out the extensive emergency operations that will be necessary to save lives and protect property. Consequently, resources and authorities of Federal departments and agencies have been grouped into broad categories of response activities, called emergency support functions (ESF), to provide Federal assistance. Primary and support agency responsibilities have been identified for each of these functions. Signature on this letter constitutes acceptance of responsibility for the specific assignments.

Under the provisions of Public Law 93-288, the Disaster Relief Act of 1974, as amended, a Federal Coordinating Officer (FCO) will be appointed as the President's representative to coordinate overall delivery of Federal assistance. Federal officials will be designated for each department and agency to carry out the provisions of the Plan, and will be responsive to the overall management and direction by the FCO.

The Subcommittee on Federal Earthquake Response Planning is recognized as the interagency organization responsible for overall coordination of planning and exercising efforts required to develop and maintain a Federal response capability. The Subcommittee is chaired by the Federal Emergency Management Agency (FEMA) and includes representatives of each of the Federal departments and agencies identified in the Plan. Members of the Subcommittee are responsible to their department or agency officials for changes required to improve the Plan and for department or agency participation in response planning and exercising activities. Changes or issues which cannot be resolved at the Subcommittee level will require approval by the heads of the appropriate departments or agencies.

To fulfill their responsibilities in the Plan, the undersigned agree to develop and maintain the supplemental internal and regional interagency planning that must be done to establish a coordinated Federal response capability.

Many aspects of the Plan have been developed as a result of lessons learned from response operations after the catastrophic earthquake in Mexico in September 1985. The tragedy of that event serves as a reminder that the United States is also vulnerable to the devastating effects of a powerful earthquake in some of our high-risk, high-population areas. By agreeing to the provisions of the Plan, the undersigned willingly accept responsibility to contribute to a coordinated, timely Federal response to supplement the capabilities of State and local governments.

Signed by:

Richard E. Lyng,

Secretary of Agriculture.

John W. Shannon,

Assistant Secretary of the Army (Installation and Logistics), Executive Agency, Department of Defense.

John S. Herrington,

Secretary of Energy.

Donald Paul Hodel,

Secretary of the Interior.

William E. Brock,

Secretary of Labor.

Elizabeth Hanford Dole,

Secretary of Transportation.

Malcolm Baldridge,

Secretary of Commerce.

William J. Bennett,

Secretary of Education.

Dr. Otis R. Bowen,

Secretary of Health and Human Services.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

Ronald I. Spiers,

Under Secretary of State for Management.

John J.W. Rogers,
Assistant Secretary of the Treasury (Management).
Robert K. Dawson,
Assistant Secretary of the Army (Civil Works).
Richard F. Schubert,
President, American Red Cross.
Lee M. Thomas,
Administrator, Environmental Protection Agency.
Julius W. Becton, Jr.,
Director, Federal Emergency Management Agency.
Heather J. Gradison,
Chairman, Interstate Commerce Commission.
LTG Winston D. Powers,
Manager, National Communications System.
Constance Horner,
Director, Office of Personnel Management.
Thomas K. Turnage,
Administrator, Veterans Administration.
Edward J. Minkel,
Managing Director, Federal Communications Commission.
Terence C. Golden,
Administrator, General Services Administration.
Dr. James C. Fletcher,
Administrator, National Aeronautics and Space Administration.
Thomas M. Roberts,
Acting Chairman, Nuclear Regulatory Commission.
Preston R. Tisch,
Postmaster General.
[FR Doc. 87-12805 Filed 6-4-87; 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 NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary 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.: 224-010873-002.

Title: Port of Oakland Terminal.

Parties:

Port of Oakland
Gearbulk Container Services

Synopsis: The proposed agreement amends the basic agreement to incorporate provisions covering Gearbulk's new Pacific Coast/Trans-Pacific service.

Agreement No.: 224-200004.

Title: San Francisco Port Commission Agreement.

Parties:

San Francisco Port Commission
Atlas Shipping, Ltd.

Synopsis: The proposed agreement will cause Mexican Line, under the management and control of Atlas Shipping, Ltd., (Atlas) to make San Francisco its published regularly scheduled northern California port of call form all liner services between Pacific Ports and the United States. The agreement provides guarantees to the port of a minimum annual number of vessel calls and a minimun annual thruput of containers. San Francisco Port Commission will agree to provide service to Atlas at prescribed reduced rates.

Agreement No.: 224-010718-002.

Title: Virginia International Terminals, Inc. Agreement.

Parties:

Virginia International Terminal, Inc.
Evergreen Marine Corporation

Synopsis: The proposed agreement adds Japan Line, Ltd. as a party to agreement. Cargo tonnages and crane rental hours generated by Evergreen and Japan Line accrue to "rate concession" formula. Involvement of Japan Line as party ceases upon termination of Evergreen & Japan Line space charter and sailing agreement No. 213010879.

Dated: June 2, 1987.

By order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.
[FR Doc. 87-12807 Filed 6-4-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bellbrook Bancshares, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The comnpanies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 29, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Bellbrook Bancshares, Inc.,* Bellbrook, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Bellbrook Community Bank, Bellbrook, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Tara Bancshares Corporation,* Riverdale, Georgia; to become a bank holding company by acquiring 25 percent of the voting shares of Tara State Bank, Riverdale, Georgia.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Commercial Bancorp, Inc.,* Obion, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of The Commercial Bank, Obion, Tennessee.

Board of Governors of the Federal Reserve System, June 1, 1987.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-12802 Filed 6-4-87; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank

holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 notice or to the offices of the Board of Governors. Comments must be received not later than June 19, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lyman E. Wakefield, Jr.*, Long Lake, Minnesota; to acquire 25.6 percent of the voting shares of Resources Companies, Inc., Minneapolis, Minnesota, and thereby indirectly acquire Resource Bank and Trust Company, Minnetonka, Minnesota.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Roland Walters*, Kerrville, Texas; to acquire up to 74.80 percent of the voting shares of Kerrville Bancshares, Inc., Kerrville, Texas, and thereby indirectly acquire Bank of Kerrville, Kerrville, Texas. Comments on this application must be received by June 10, 1987.

Board of Governors of the Federal Reserve System, June 1, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-12803 Filed 6-4-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0241]

Availability of 1986 Revision of National Shellfish Sanitation Program Manual of Operations, Part I, "Sanitation of Shellfish Growing Areas"

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the 1986 Revision of the National Shellfish Sanitation Program Manual of Operations, Part I, "Sanitation of Shellfish Growing Areas." Copies may be purchased from the Interstate Shellfish Sanitation Conference (ISSC) at a cost of $10 per copy, which includes postage. Prepaid requests with checks payable to the Interstate Shellfish Sanitation Conference should be sent to P.O. Box 4460, Austin, TX 78765.

FOR FURTHER INFORMATION CONTACT: Stanley D. Ratcliffe, Center for Food Safety and Applied Nutrition (HFF-344), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0149.

SUPPLEMENTARY INFORMATION: FDA is responsible for the Federal administration of the National Shellfish Sanitation Program (NSSP). The NSSP is the voluntary program involving state shellfish control agencies, the shellfish industry, and FDA. Seven foreign countries also participate in the NSSP through international bilateral agreements.

The NSSP is concerned with the sanitary control of fresh and fresh frozen molluscan shellfish (oyster, clams, and mussels) offered for sale in interstate commerce. The program has been in existence since 1925. In the interest of assuring uniform administrative and technical controls, the NSSP has developed and maintained recommended shellfish control practices. These control practices have been published in the form of a three part manual of operations. The last NSSP Manual of Operations was published in 1965.

In 1982, interested state officials and members of the shellfish industry formed the ISSC. The purpose of the ISSC is to provide a formal structure wherein state regulatory authorities can establish updated guidelines for shellfish controls that will ensure sources of safe and sanitary shellfish. The ISSC has established procedures for the uniform application of these guidelines.

FDA and the ISSC entered into a memorandum of understanding (MOU) in March 1984 (see 49 FR 12751; March 30, 1984). This agreement provides, among other things, that FDA will provide technical assistance to the ISSC, including assistance in efforts to develop and to revise program criteria and guidelines.

Based on the MOU, FDA developed a draft revision of the NSSP Manual of Operations, Part I, in cooperation with the ISSC. This draft was adopted by the ISSC on August 19, 1986, with the provision that the revised manual will become effective January 1, 1987.

The revised manual provides guidance and procedures governing the sanitation of shellfish growing areas. Major topics covered in the manual include: General administrative and laboratory procedures, growing area surveys and classifications, the control of relaying and harvesting, and contingency plans for the control of marine biotoxins.

Dated: May 29, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-12800 Filed 6-4-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register** Vol. 49, No. 174, pp. 35246-35247, dated Thursday, September 6, 1984; and **Federal Register** Vol. 49, No. 228, pp. 46501-46505, dated Monday, November 26, 1984; and **Federal Register** Vol. 51, No. 138, pp. 26060-26063, dated Friday, July 18, 1986) is amended to reflect a reorganization within the Office of Management and Budget (OMB). The reorganization abolishes the Office of Management and Human Resources (OMHR), OMB. The Division of Personnel is abolished in its entirety and is replaced by the Office of Personnel, Health, and Resource Managment. Its functions are divided into four subdivisions:

—Division of Classification and Organizational Analysis
—Division of Staffing and Employee and Health Services
—Division of Policy, Performance, and Development
—Division of Labor/Management Relations

The Division of Management, Organizational Analysis, and Planning is abolished in its entirety and is replaced by the Management Planning and Analysis Staff. The organizational analysis, delegations of authority, and position management functions are transferred to the Office of Personnel, Health, and Resource Management, Division of Classification and Organizational Analysis. The paperwork and advisory and assistance services functions are transferred to the Office of Financial Management and Procurement (addressed later in this package). The conference management function is transferred to the Office of Administrative Services (addressed later in this package). The Internal

Control Program, workplanning, and management/productivity improvement programs remain in the new Management Planning and Analysis Staff. The Office of Financial Management and Administrative Systems (OFMAS) is renamed the Office of Financial Management and Procurement. The administrative systems functions are transferred from OFMAS to the Office of Administrative Services (OAS). The procurement functions are transferred from OAS to the Office of Financial Management and Procurement.

The specific changes to Part F. are as follows:

- Section FH.20.A.1., Office of Management and Human Resources (FHA4), is deleted in its entirety. The functions are divided between the new Office of Personnel, Health, and Resource Management and the new Management Planning and Analysis Staff.
- Section FH.20.A.1.a., Division of Personnel (FHA41), is deleted in its entirety. The Division of Personnel has been renamed the Office of Personnel, Health, and Resource Management and now reports directly to the Director, OMB. The Office of Personnel, Health, and Resource Management (OPHRM) replaces OMHR as Section FH.20.A.1. The functional statements for the new OPHRM and its four new divisions read as follows:

1. Office of Personnel, Health, and Resource Management (FHA6)

Provides services, leadership, direction, and control with respect to personnel and related services within HCFA. Serves as the principal advisor to the Director of the Office of Management and Budget on the operation of HCFA's personnel system, including recruitment and placement, position classification, personnel management evaluation, performance appraisal, employee development and training, employee relations, ethics function and labor relations. Administers the Agency special emphasis placement and executive personnel programs. Serves in a leadership role in providing authoritative advice and assistance to management officials in carrying out their position management responsibilities. Provides for an employee counseling service for employees in HCFA central office. Provides services, policy direction, and coordination with respect to the organizational analysis and delegations of authority activities. Provides direct service and establishes policy for other HCFA components with respect to health and activities related to health matters.

a. Division of Classification and Organizational Analysis (FHA61)

Plans, directs, and implements a comprehensive HCFA position classification and position management program. Classifies all central office wage grade and general schedule positions at or below the GS-15 level. Evaluates programs for adequacy and recommends corrective action when deficiencies are disclosed. Plans, implements, and monitors HCFA position classification surveys and issues reports and recommendations for improvements.

Coordinates the survey results with the Office of the Secretary and/or the Office of Personnel Management. Interprets legislation, regulations, guides, directives and bulletins concerning position classification. Provides information on HCFA's classification structure for entry into the automated personnel information system and prepares statistical information related to HCFA's position classification program. Provides services, policy direction, and coordination with respect to organizational analysis functions and delegation of authority activities. Conducts studies of HCFA's organizational and functional arrangements and develops plans for assimilating new or modified functions into the HCFA organization. Designs, develops, implements, and maintains a system for initiating, analyzing, reviewing, and approving HCFA-wide program delegations of authority.

b. Division of Staffing and Employee and Health Services (FHA62)

Provides service to all central office HCFA components in the areas of recruitment, in-service staffing, and pre-employment investigations for all types of appointments and all occupational classes and levels of work. Provides advice, guidance, and consultation to HCFA supervisory and management officials on such issues as optional staffing mixes, recruitment sources, qualification factors, etc. Interprets regulations, guides, directives, and bulletins related to staffing and personnel services. Establishes and maintains the employment data base for routine and special reports and statistical studies related to the employee population. Plans and controls the central system for all personnel transaction processes, serves as the official custodian for all personnel folder clearances, confidential reports, employment agreements, and other related areas. Plans, administers, and evaluates HCFA-wide employee relations activities and ethics functions. Provides general employee counseling on such matters as employee/management communication, retirement, life insurance, health plans, worker's compensation claims, and related areas. Serves as the central HCFA reference point for inquiries, guidance, and interpretation on employee relations matters. Processes insurance claims for survivors of deceased employees. Assures due process in adverse personnel actions and provides procedural advice in the processing of grievances and appeals under Agency and negotiated agreements. Directs programs for health nationwide, employee health enhancement, physical fitness, and blood assurance programs.

c. Division of Policy, Performance, and Development (FHA 63)

Provides leadership, direction, and control with respect to HCFA's personnel related policies; employee training, career development, and counseling activities; and performance management and awards programs. Serves as the Agency's representative in dealing with the Department of Health and Human Services (HHS), other Federal agencies, contractors, and employee/management/Union organizations. Plans, coordinates, and executes a wide range of major studies and projects involving personnel issues of Agency-wide magnitude. Provides coordination and leadership with respect to HCFA's administrative delegations of authority.

d. Division of Labor/Management Relations (FHA64)

Plans, directs, and administers the HCFA-wide labor relations activities including the application and interpretation of the Federal

Labor Management Relations Program, collective bargaining agreements, and regulations. Serves as Agency representatives in dealing with the Department of Health and Human Services, other Federal agencies, employee and supervisory organizations, and third-party representatives concerning labor relations issues. Formulates HCFA-wide policy regarding the development, implementation, and evaluation of labor relations activities. Provides management advisory services on all labor/management relations issues. Plans and conducts the administration of grievances and appeals under negotiated grievance procedures. Directs the development and implementation of a labor relations training program in conjunction with other Office of Personnel, Health, and Resources Management components. Plans and coordinates the integration of the HCFA Labor Relations Program with other personnel management functions and related management assistance activities.

• Section FH.20.A.4., Division of Management, Organizational Analysis, and Planning (FHA42), is deleted in its entirety and is replaced by a new Section FH.20A.4. The new Section reads as follows:

4. Management Planning and Analysis Staff (FHA–1)

Provides services, policy direction, and coordination with respect to HCFA's management program including the planning and execution of management planning and analysis, management processes, workplanning, management control systems, and Privacy Act responsibilities. Develops HCFA policy in these areas and assures the implementation of these policies throughout HCFA.

• Section FH.20.A.2., Office of Financial Managment and Administrative Systems (FHA1) is amended by changing the organizational title and replacing the functional statement with an updated statement. The new Section FH.20.A.2. reads as follows:

2. Office of Financial Management and Procurement (FHA1)

Provides financial, accounting, and procurement (excluding Medicare contractors and Medicaid State Agencies) services, leadership, and policy direction for HCFA's financial management program including the preparation, justification, and execution of the HCFA budget and financial and manpower management policies and activities. Provides services, policy direction, and coordination with respect to HCFA's advisory and assistance services contracting and paperwork reduction activities.

• Section FH.20.A.2.a., Division of Budget (FHA15), is deleted in its entirety and replaced by a new Section FH.20.A.2.a. to reflect the new responsibilities of the Division. The new Section FH.20.A.2.a. reads as follows:

a. Division of Budget (FHA15)

Consolidates, prepares, and executes HCFA's budget and operates HCFA's budget system. Serves as the central information point for all budgetary matters including interagency agreements impacting on HCFA's funding and transfer of funds to and from other agencies. Provides advice on the reporting of program and financial data necessary for the presentation and defense of budget requests. Provides advice, guidance, and assistance to HCFA components in the development of budget justification materials and analysis including current services budgeting and other budgetary principles required by the Office of the Secretary, HHS, the Office of Management and Budget, and the Congress. Provides technical direction to HCFA regional components on all budgetary matters. Develops budget control systems necessary to insure that appropriate measures are in place to prevent violations of the Anti-Deficiency Act. Maintains and monitors an allotment and allowance system sufficient to pinpoint responsibility and accountability for Federal funds. Provides staff expertise in the review and analysis of budgetary, operational, legislative, or regulatory proposals by HCFA operating components. Reviews these proposals to determine the fiscal impact on, and consistency with, HCFA and Department management and programmatic objectives. Develops financial management policy as it relates to HCFA's programmatic objectives. Certifies the cost impact of all proposed program and demonstration waivers. Reviews financial data and makes recommendations as to the effectiveness of the waiver and potential termination or nonrenewal actions. Directs the allocation of HCFA'a staffing resources among HCFA components, issues employment ceilings, and directs HCFA's manpower management system. Assures the validity of cost allocation data and monitors adherence to financial management policies among HCFA components. Provides services, policy direction, and coordination with respect to paperwork reduction activities.

• Section FH.20.A.2.c., Division of Administrative Systems, is deleted in its entirety. This Division is transferred to the Office of Administrative Services.

• A new Section FH.20.A.2.c., Division of Procurement Services (FHA16), is added to reflect the transfer of this Division to the Office of Financial Management and Procurement from the Office of Administrative Services. The new section reads as follows:

c. Division of Procurement Services (FHA16)

Provides procurement services for other HFCA components including project grant, contract, and small purchase solicitation, award, and administration; cost and advisory function; and procurement-related training. Monitors the annual HCFA contract plan and prepares and submits required reports. Solicits, negotiates, analyzes, and coordinates proposal evaluation and prepares and awards contracts. Provides HCFA cost advisory and audit services on pre-award and post-award grant and procurement actions to ensure conformance to legal and regulatory requirements. Performs all HCFA cost/price analysis and evaluation required for the review, negotiation, award administration, and close-out of grants and contracts. Provides field audit capability during the pre-award and close-out phases of contract and grant activities. Coordinates and acts as liaison with the Defense Contract Audit Agency, Department of Health and Human Services (HHS) Audit Agency, Office of the General Counsel, and other HHS offices and agencies to obtain required audit support and resolution. Coordinates and/or conducts training for contracts and grant personnel and project officers in HCFA components. Provides services, policy direction, and coordination with respect to HCFA's advisory and assistance services contracting.

• Section FH.20.A.3., Office of Administrative Services (FHA5), is deleted in its entirety and replaced by a new Section FH.20.A.3. The new Section reads as follows:

3. Office of Administrative Services (FHA5)

Provides services, policy direction, coordination, and broad operational control of HCFA's voice telecommunication policies, administrative services, printing and distribution services; conference management; records and mail services; telecommunications services, facilities management, and related support

services. Develops and promulgates HCFA-wide policy for these areas and coordinates with the Bureau of Data Management and Strategy (BDMS) on the relationship of voice and data telecommunication policies. Provides applications software support to HCFA with respect to personnel management systems, financial management systems, administrative systems, and management information systems.

• A new Section FH.20.A.3.a., Division of General Services (FHA51), is deleted in its entirety and replaced by a new Section FH.20.A.3.a. The new Section reads as follows:

a. Division of General Services (FHA51)

Provides direct service and establishes policy for other HCFA components with respect to facilities and property management, supply, security, and personal services, including space acquisition, management, and maintenance; conference facilities; occupational safety; emergency preparedness planning; and parking. Provides or secures labor, warehouse, shipping, moving services, equipment loans, machine repairs, rentals, etc. Develops comprehensive budget estimates for and management of centralized facilities management funds. Provides general administrative support to Washington, DC components. Provides service, leadership, direction, and control of HCFA's publications, printing, records management, mail management and services, library services, forms management, in-house graphics, and reprographics activities. Responsible for the direction, control, and maintenance of centralized publications, including storage, distribution, printing, and reproduction of publications; processing, control, and distribution of incoming and outgoing mail. Manages the national Medicare forms printing and distribution program.

• Section FH.20.A.3.b., Division of Procurement Services, is deleted in its entirety. This Division has been transferred to the Office of Financial Management and Procurement.

• A new Section FH.20.A.3.b., Division of Administrative Systems (FHA54), is added to reflect the transfer of the Division to the Office of Administrative Services. The new Section FH.20.A.3.b. reads as follows:

b. Division of Administrative Systems (FHA54)

Provides applications software support to HCFA headquarters including personnel management systems, general administrative systems, and management information systems. Provides applications software support to HCFA regional offices in administrative management systems. Provides applications software support services to other HCFA components in the development of administrative systems, including those utilizing microcomputer technology. Responsible for the macro design and evaluation of prototype administrative systems. Develops short and long range plans for administrative, personnel, and financial systems. Develops appropriate standards and guidelines to govern the development and ongoing support of administrative systems. Provides service, leadership, direction, and control of HCFA's telecommunications needs and the operation of the Baltimore teleconferencing room.

Dated: May 4, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-12810 Filed 6-4-87; 8:45 am]

BILLLING CODE 4120-03-M

Public Health Service

Advisory Committees; Meeting Change in Open Session Schedule

In Federal Register document 87-11651, appearing on page 19204 in the issue dated Thursday, May 21, 1987, the open session of the Health Care Technology Study Section has been changed to June 9, 1987, from 8:00 AM to 9:00 AM. All other information is correct as it appears.

Dated: May 28, 1987.

Samuel Lin,

Assistant Surgeon General, Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87-12808 Filed 6-4-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: U.S. Fish & Wildlife, Regional Director—Region 3, Twin Cities, MN; PRT-697830.

The applicant requests an amendment to their current permit to take Iowa Pleistocene snails (*Discus macclintocki*) in Iowa and Illinois for scientific purposes and the enhancement of propagation or survival of the species in accordance with the approved recovery plan for the Iowa Pleistocene snail.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 601, 1000 North Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT 2 number when submitting comments.

Dated: June 1, 1987.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-12876 Filed 6-4-87; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[U-49985]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-49985 for lands in San Juan County, Utah, was timely filed and required rentals and royalties accruing from February 1, 1987, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-49985 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective February 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-12795 Filed 6-4-87; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-042-07-4212-14; WY-94384]

Realty Action; Lincoln County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action-FLPMA Sale; Public Lands, Lincoln County, Wyoming.

SUMMARY: The following public lands have been examined and found suitable for Direct Sale under section 203 of the Federal Land Policy and Management Act of 1976, at not less than the appraised fair market value of $12,600.

T. 21 N., R. 120 W., 6th Principle Meridian

Section 3: Lots 9, 10, 11
Section 4: Lot 5
Acreage: 63.02

The lands are proposed to be offered for sale to L. Dallas Johnson, the adjoining landowner, to consolidate his private ownership and protect his agricultural interests.

The sale is consistent with the Bureau's planning system. At this time, the lands are not suitable for management by the Bureau or another federal agency. It has been determined through the Kemmerer Resource Management Plan process that the public interest would be best served by offering the lands for sale. This sale will have no impact to any grazing lease permittees.

The patent, when issued, will contain reservations to the United States and will be subject to all valid existing rights and reservations of record. This patent will be subject to a restriction that the land lying within the Housing and Urban Development designated 100 year floodplain (located in T. 21 N., R. 120 W., Section 3: Lot 11, containing less than 10 acres) may only be used for farming, ranching, or similar interests and not for residential or other development. A detailed description of these reservations area available from the address shown below.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever occurs first.

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 Kemmerer Resource Area Manager at the address below. Any adverse comments will be reviewed 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 the final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Ron Wenker, Area Manager, Kemmerer Resource Area, Bureau of Land Management, P.O. Box 632, Kemmerer, Wyoming 83101, (307) 877-3933.

Ron Wenker,

Area Manager.

May 19, 1987.

[FR Doc. 87-12187 Filed 6-87;8:45 am]

BILLING CODE 4310-22-M

[UT-020-07-4214-14; U-54888]

Salt Lake District, Sale of Public Land in Tooele County, UT; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of Public Land in Tooele County.

SUMMARY: Correction to Notice of Realty Action UT-020-07-4212-14; U-54888 published April 29, 1987 (52 FR 15563). The following section regarding the acceptance of bids is corrected as follows:

All bids must conform to the following conditions:

1. All bids must be delivered to the Salt Lake District, Bureau of Land Management at the above address before the date of sale July 1, 1987.

Deane H. Zeller,

District Manager.

[FR Doc. 87-12794 Filed 6-4-87; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Proposed Outer Continental Shelf Oil and Gas Lease Sale No. 96; North Atlantic Planning Area; Public Scoping Meetings

AGENCY: Minerals Management Service, Atlantic OCS Region, Interior.

ACTION: Notice of public scoping meetings for proposed Outer Continental Shelf Oil and Gas Lease Sale No. 96, North Atlantic Planning Area, and the close of the written comment period for scoping.

SUMMARY: This notice announces four public scoping meetings to be held regarding proposed Outer Continental Shelf Oil and Gas Lease Sale No. 96, North Atlantic Planning Area. The purpose of these scoping meetings is to indicate the area to be studied in an Environmental Impact Statement (EIS), gather public information, identify issues and concerns related to the proposed sale, review the offshore leasing process, and assist in the development of reasonable alternatives for the EIS. The meetings will take place in Portland, Maine; Boston, Massachusetts; Hyannis, Massachusetts; and Providence, Rhode Island. In addition, this notice identifies July 2, 1987, as the close of the written comment period of the scoping process.

ADDRESSES:

June 15, 1987
Holiday Inn—West, 81 Riverside Street, Portland, ME 04103, phone: (207) 774-5601

June 16, 1987
Ramada Hotel—Airport, 225 McClellan Highway, Boston, MA 02128, phone: (617) 569-5250

June 17, 1987
Sheraton Hyannis—Route 132 and Bearse's Way, Hyannis, MA 02601, phone: (617) 771-3000

June 18, 1987
Holiday Inn—Downtown, 21 Atwells Avenue, Providence, RI 02903, phone: (401) 831-3900

Directions to these locations can be obtained by calling the hotels at the numbers listed above.

All scoping meetings will have two sessions. The first session will begin at 1 p.m. and will continue until all present have had an opportunity to speak. A second session will begin at 6 p.m. and will continue until 8 p.m. or until all present wishing to speak have been heard.

Any written scoping comments should be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Barry R. Clark, Minerals Management Service, Atlantic OCS Region, 1951 Kidwell Drive, Suite 601, Vienna, VA 22180, phone: (703) 285-2165 or FTS 285-2165.

SUPPLEMENTARY INFORMATION: On November 4, 1986, the Minerals Management Service (MMS) published notices in the **Federal Register** (Volume 51, Number 213) announcing the Call for Information and Nominations and the Notice of Intent to Prepare an EIS for proposed OCS Oil and Gas Lease Sale No. 96, North Atlantic Planning Area. This began the prelease process leading to the lease sale tentatively scheduled for February, 1989, and opened the public scoping period. To ensure that public concerns and issues are identified and addressed in the EIS, four public scoping meetings are scheduled. At these meetings, concerned citizens, interest groups, representatives of government agencies, and the oil and

gas industry, will have the opportunity to meet with MMS staff to discuss issues of concern. Additionally, a presentation on the Sale No. 96 Area Identification and a brief overview of the offshore leasing program will be made. Although the written comment portion of the scoping period formally ends July 2, 1987, there will be several other opportunities for public comment prior to the proposed lease sale. Included will be specific opportunities to comment on the draft EIS.

Dated: June 1, 1987.

Ralph V. Ainger,

Acting Regional Director, Atlantic OCS Region.

[FR Doc. 87-12835 Filed 6-4-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Environmental Impact Statement; Big Cypress National Preserve; FL

AGENCY: National Park Service, Interior.

ACTION: Availability of Environmental Assessment, Oil and Gas Plan of Operations within the Big Cypress National Preserve; Florida.

SUMMARY: Notice is hereby given of the availability for review and comment of an environmental assessment for a plan of operations submitted by Clements Energy, Inc., for the purpose of oil and gas operations in the Big Cypress National Preserve Florida. Copies of the environmental assessment are available for review at:

ADDRESS: Big Cypress National Preserve, Star Route Box 110, Satinwood Drive, Ochopee, Florida, 33943 (telephone [813] 695-2000);

National Park Service, Southeast Regional Office, 75 Spring Street S.W., Atlanta Georgia, 30303 (telephone [404] 331-4916);

Miami-Dade Public Library, 101 West Flagler Street, Miami, Florida, 33130; and

Collier County Public Library, 650 Central Avenue, Naples, Florida, 33940.

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Fagergren, Superintendent, Big Cypress National Preserve, (telephone [813] 695-2000).

SUPPLEMENTARY INFORMATION: Comments received within 30 days of the publication of this notice will be entered into the official records.

Dated: May 27, 1987.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 87-12892 Filed 6-4-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31015]

Boston and Maine Corp.; Lease and Trackage Rights Exemption; Springfield Terminal Railway Co.

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) filed a notice of exemption for B&M to lease to ST the following lines of railroad in the vicinity of Boston, MA:

(a) All yard tracks, running tracks, industry tracks, side tracks, and other tracks of B&M in the areas commonly known as Yard 8 in Somerville;

(b) Yard 7 and the piggyback yard in Cambridge and Somerville;

(c) The so-called Kat Yard in Cambridge;

(d) The Third and Fourth Iron tracks in Somerville and Boston;

(e) Yard 21 in Somerville (all valuation section 1);

(f) The New Yard in Lowell (VS-13.1);

(g) The Woburn Branch in Wilmington between a connection with the New Hampshire Route Main Line at M.P. 13.97 (Woburn Jct.) and end of track (VS-13.4);

(h) The Marblehead Branch between a connection with the Eastern Route Main Line at M.P. 15.59 (Castle Hill) and the end of track; and

(i) The east leg of the wye in Salem between a connection with the Eastern Route Main Line at M.P. 1699 (Northey Point) and M.P. 16.78 (North Street) on the Danvers Branch (VS-3).

In order to facilitate ST's operations, B&M will: (1) Grant ST overhead trackage rights on B&M's Freight Main Line between Rollinsford, NH, and Ayer, MA portions of which are owned either by B&M or the Massachusetts Bay Transportation Authority (MBTA); and (2) assign to ST the right to use its freight easement over the following other lines of MBTA in the Boston vicinity: [1]

(a) Approximately 36.90 miles of the Eastern Route Main Line between M.P. 0.00 (Boston-North Station) and M.P. 36.90 (Newburyport);

(b) Approximately 16.63 miles of the Gloucester Branch between a connection with the Eastern Route Main Line at M.P. 18.70 (Beverly Jct.) and M.P. 35.33 (Rockport);

(c) Approximately 9.6 miles of the Saugus Branch between a connection with the Eastern Route Main Line at M.P. 2.75 (Everett Jct.) and a connection with the Eastern Route Main Line at M.P. 12.35 (West Lynn);

(d) The East Boston Branch between a connection with the Eastern Route Main Line at M.P 6.23 and the end of the track;

(e) Approximately 4.92 miles of the Danvers Branch between a connection with the Eastern Route main Line at M.P. 16.70 (SA Tower) and M.P. 21.62 (Danvers);

(f) Approximately 25.47 miles of the New Hampshire Main Line between M.P. 0.00 (Boston-North Station) and M.P. 25.47 (Lowell);

(g) Approximately 2.34 miles of the Stoneham Branch between a connection with the New Hampshire Maine Line at M.P. 9.76 (Montvale) and M.P. 2.34 (end of track);

(h) Approximately 2.99 miles of the Wildcat Branch between a connection with the New Hampshire Maine Line at M.P. 15.20 (Wilmington) and a connection with the Western Route Maine Line at M.P. 17.92 (Wilmington Jct);

(i) Approximately 2 miles of the Billerica Branch between a connection with the New Hampshire Maine Line at M.P. 21.79 (N. Billerica) and M.P. 2.52 (Billerica);

(j) Approximately 19.57 miles of the Western Route Maine Line between M.P. 0.00 (Boston-North Station) and M.P. 19.57 (Lowell Jct);

(k) The Newburyport Branch between a connection with the Western Route Maine Line at M.P. 9.38 (Wakefield Jct.) and M.P. 18.87 (end of track);

(l) The Fitchburg Route Main Line between M.P. 0.00 (Boston-North Station) and M.P. 33.72 (Willows);

(m) The Lexington Branch between a connection with the Fitchburg Route Main Line at M.P. 4.16 (West Cambridge) and M.P. 14.82 (end of track); and

(n) The Central Mass Branch between a connection with the Fitchburg Route Main Line at M.P. 8.30 (Clematis Brook) and M.P. 10.20 (end of track).

The purpose of these transactions is to enable ST to carry on operations now performed by B&M. B&M and ST are wholly-owned subsidiaries of Guilford Transportation Industries, Inc. (GTI). GTI also owns the Maine Central Railroad Company and the Delaware and Hudson Railway Company. As a result of the proposed transactions, it is anticipated that ST will provide B&M's rail customers with more responsive and efficient service. B&M will improve its financial viability by eliminating costly operations relative to the revenues earned. With its lower cost structure, ST

[1] B&M operates over these MBTA lines pursuant to an easement reserved in a deed of the rail property from the trustees of the Boston and Maine Corporation, Debtor, to MBTA approved in Finance Docket No. 26115, *Boston & M. Corp.—Reorganization* (not printed), served May 7, 1986.

should be able to perform these operations on a more profitable basis.

Since B&M and ST are members of the same corporate family, both the lease and the grant of trackage rights fall within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(3). The transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.[2]

Any employees affected by the lease transaction would normally be protected by the labor conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354, I.C.C. 732 (1978), and 360 I.C.C. 653 (1980) (*Mendocino*). Similarly, any employees affected by the trackage rights transactions would normally be protected by the labor conditions set forth in *Norfolk & Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino, supra*, 360 I.C.C. 653 (1980) (*N&W*). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for, respectively, lease and trackage rights transactions. However, in a decision in Finance Docket No. 30965, *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company, et al.* (not printed), served May 18, 1987, the Commission set for modified procedure a series of notices filed by the GTI carriers because labor interests raised issues related to the level of employee protection for the transactions. The Commission asked the parties to that proceeding to address several issues and present additional evidence, including the existence of similar notices and transactions, such as this one, involving the GTI carriers. These lease and trackage rights transactions will therefore be considered in that proceeding.

If, prior to the Commission's determination of the appropriate level of labor protection for these GTI transactions, B&M consummates these transactions and provides its employees with *Mendocino* protection for the lease and *N&W* protection for the trackage rights, it does so at its own risk. Should the Commission subsequently determine that a higher level of protection is required, B&M will be required to provide its employees with that greater protection.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transactions.

Decided: June 1, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-12904 Filed 6-4-87; 8:45 am]

BILLING CODE 7035-01-M

[2] The assignment of trackage rights also falls within another category of exempt transactions. *See* 49 CFR 1180.2(d)(7).

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations; Ashland Chemical, Inc., et al.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Ashland Oil, Inc., 1000 Ashland Drive, Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary	Jurisdiction of Incorporation
Ashland Chemical, Inc	Delaware.
Ashland Development, Inc	Delaware.
Ashland Ethanol, Inc	Delaware.
Ashland Oil and Transportation Co	Kentucky.
Ashland Petroleum, Inc	Delaware.
Ashland Pipe Line Co	Ohio.
Inland Towing Co	Delaware.
Mid-Valley Supply Co	Kentucky.
Southern Oil Company of New York, Inc	New York.
Tri-State Marketing Services, Inc	Delaware.
APAC—Alabama, Inc	Delaware.
APAC—Arkansas, Inc	Delaware.
APAC—Carolina, Inc	Delaware.
APAC—Florida, Inc	Delaware.
APAC—Georgia, Inc	Delaware.
APAC, Inc	Delaware.
APAC—Kansas, Inc	Delaware.
APAC—Mississippi, Inc	Delaware.
APAC—Oklahoma, Inc	Delaware.
APAC—Texas, Inc	Delaware.
APAC—Virginia, Inc	Delaware.
Reg X Condor, Inc	Delaware.
Scurlock Oil Co	Delaware.
TAP-CO, Inc	North Carolina.
Algonquin Pipe Line Co	Illinois.
Ohio River Pipe Line Co	Delaware.
Owensboro-Ashland Co	Delaware.
SOCO Pipeline Co	Texas.
Transport Supply Co., Inc	Texas.
Blanton Marine Corp	Texas.
Rich Oil, Inc	Delaware.
Capital City Asphalt Co., Inc	Alabama.
McClinton, Inc	Arkansas
Drew Chemical Corp	Delaware.
Warren Brothers Hauling, Inc	Delaware.

B. 1. Parent Company: US West, Inc., 7800 East Orchard Road, Englewood, Colorado 80111.

2. Wholly-owned subsidiaries which will participate in the operations and state of incorporation:

(a) US West Materiel Resources, Inc.—Colorado.

(aa) US West Materiel Resources, Inc.—Delaware.

(ab) US West Corporate Transportation, Inc.—Colorado.

(b) Mountain Bell Holdings—Colorado.

(ba) The Mountain States Telephone and Telegraph Company—Colorado.

(baa) El Paso Telephone Company—Colorado;

(bab) Malheur Home Telephone Company—Oregon;

(bac) Mubeta Development Co.—Colorado;

(bad) Mountain Bell Training Partnership, Inc.—Colorado (nonprofit).

(bb) Mountain Bell Service Link, Inc.—Colorado.

(c) Northwestern Bell Corporation—Minnesota.

(ca) Northwestern Bell Information Technologies, Inc.—Minnesota.

(cb) Northwestern Bell Telephone Company—Iowa.

(cc) NuBeta, Inc.—Minnesota.

(cca) NuImages Properties, Inc.—Minnesota;

(ccb) 100 South 5th Street Corp.—Minnesota.

(d) Pacific Northwest Bell Corporation—Washington.

(da) Pacific Northwest Bell Telephone Company—Washington.

(db) Comm+ Systems, Inc.—Washington.

(e) US West Advanced Technologies, Inc.—Colorado.

(f) US West Capital Funding Inc.—Colorado.

(g) US West Enterprises, Inc.—Minnesota.

(h) US West Corporate Communications—Colorado.

(i) US West Financial Services, Inc.—Colorado.

(ia) USWFS International, Inc.—Delaware.

(ib) CFI Leasing of New York, Inc.—New York;

(ic) CFI of California, Inc.—California.

(j) Glue Co.—Minnesota.

(k) US West Information Systems, Inc. dba Interline Communications, Inc.—Colorado.

(ka) IPI Financial, Inc.—California.

(kc) Applied Communications, Inc.—Nebraska.

(kca) JBA, Inc.—Nebraska.

(l) US West International, Inc.—Colorado.

(la) Interwest—V.I.

(m) US West Investments, Inc.—Colorado.

(ma) BetaWest Properties, Inc.—Colorado.

(maa) BetaWest National Referral Services Corporation—Colorado;

(mab) Taurus Laurel—Colorado;

(mac) Taurus Properties—Colorado;

(mad) Meadows Warehouse Corporation—Maryland;
(maf) BetaWest Properties, Inc.—Delaware.
(n) US West Knowledge Engineering, Inc.—Colorado.
(o) Landmark Publishing Company—Colorado.
(oa) TransWestern Publishing—California.
(oaa) J & J Publishing, Inc.—New York;
(oab) Berkshire Countywide Publishing—Massachusetts.
(ob) US West Direct Company—Colorado.
(oba) Direct Investment Company—Delaware.
(oc) Hiram Productions dba Directory Publishing Corporation—Colorado.
(oca) Hiram Publishing dba Lomar & Johnson Publishing—Colorado.
(p) US West NewVector Group, Inc.—Colorado.
(pa) NewVector Communications, Inc.—Delaware.
(pb) US West Cellular, Inc.—Colorado.
(pba) Communications Network Services, Inc.—Washington.
(pc) NewVector Communications of Omaha, Inc.—Colorado.
(pd) US West Paging, Inc.—Minnesota.
(pda) Associated Telephone Answering Services System, Inc.—New Mexico.
(pe) US West Cellular of California, Inc.—Texas.
(q) US West Systems, Inc.—Colorado.
(r) Telematics Inc.—New York.
(s) US West Venture Capital, Inc.—Delaware.
(t) US West, Inc.—Delaware.

c. 1. Parent corporation and address of principal office: Eldorado Chemical Company, Inc., 14500 Lookout Road, P.O. Box 34837, San Antonio, Texas 78265.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation: Eldorado Transportation Corporation (Texas).

Noreta R. McGee,

Secretary.

[FR Doc. 87-12821 Filed 6-4-87; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 274 (Sub-No. 3D)]

Abandonment of Rail Lines—Use of Opportunity Costs

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: The Commission finds that, in adandonment proceedings, the appropriate rate of return to be used in calculating opportunity costs and other return on investment where use of the real pre-tax cost of capital is prescribed is 16.5 percent. Other rates of return that are supported by clearly explained methodologies and evidence will be considered on a case-by-case basis.

DATE: This notice will be effective on June 8, 1987.

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).

Decided: May 15, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioners Andre and Simmons commented with separate expressions. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-12822 Filed 6-4-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-18, 883]

Cooper Industries, Arrow Hart Division, Danielson, CT; Negative Determination on Reconsideration

On March 31, 1987, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers at the Arrow Hart Division of Cooper Industries, Danielson, Connecticut. This detrmination was published in the **Federal Register** on April 4, 1987 (52 FR 11140).

The International Brotherhood of Electrical Workers (IBEW) application for reconsideration claims that the Danielson plant was an integrated production facility with the Hartford plant of Cooper Industries whose workers are covered under a certification (TA-W-17,815). The union also claims that production was transferred from the Danielson plant to a Mexican plant in 1984 and early 1985.

Findings in the investigation show that although both plants made switches, their applications and marketing were different. The specialty switches and industrial controls produced at Hartford were sold to OEM manufacturers as components for power tools and instrumentation. During the period applicable to the petition, the Danielson plant produced wall toggle switches for buildings and electrical plugs and connectors. The wall toggle switches and plugs and connectors are marketed through the company's electrical distributors.

On reconsideration, the Department did not find any integration of production from the Danielson plant to the Hartford plant. The Hartford plant was an assembly and fabricating plant while Danielson was only an assembly plant. Athough, the metal components used at Danielson for assembly operations were fabricated in Hartford, this would not form a basis for certification under the integrated production principle. Production from Danielson was not shipped to Hartford for assembly into trade impacted articles. Also, the coverage of workers at both plants under a common collective bargaining agreement would not constitute integrated production within the meaning of the Trade Act.

The union's claim that production was transferred from Danielson to a company plant in Mexico in 1984 and early 1985 also would not form a basis for certification. Section 223(b)(1) of the Trade Act does not permit the certification of workers laid off more than one year prior to the date of the petition, which in this case is December 22, 1986. According to company officials there was no transfer of production between Danielson and foreign facilities during the period applicable to the Danielson petition. All production at Danielson was transferred to Brunswick, Maine by June 1986.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to former workers of the Arrow Hart Division of Cooper Industries, Danielson, Connecticut.

Signed at Washington, DC, this 26th day of May 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-12855 Filed 6-4-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,136]

CSX Oil and Gas Corp.; (Formerly Texas Gas Exploration Corporation); Oklahoma City District Office, Oklahoma City, OK; Negative Determination Regarding Application for Reconsideration

By an application dated April 23, 1987, one of the petitioners requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at the Oklahoma City District Office of CSX Oil and Gas Corporation, Oklahoma City, Oklahoma. The denial notice was signed on April 17, 1987 and published in the Federal Register on May 12, 1987 (52 FR 17852).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner claims that workers at the Mitchell Energy Corporation (MEC) were certified for adjustment assistance and that MEC's operations are not any different than CSX Oil & Gas Corporation's (CSX).

In its initial investigation, the Department investigated the entire CSX Corporation in order to determine whether the support workers at the Oklahoma City District Office qualify for adjustment assistance. Service workers may become eligible for benefits if the reduction in demand for their services is determined to have originated at a production facility related to the workers' firm by ownership, whose workers independently meet the statutory criteria for certification. The reduction in demand for services must directly relate to the products adversely affected by increased imports.

CSX is mainly a dry gas and natural gas liquids producer; a minor percentage of its production in 1986 was crude oil. Findings in the investigation show that the production workers at CSX did not meet the worker group certification criteria of section 222 of the Trade Act of 1974. CSX experienced an increase in sales and production of natural gas liquids and crude oil in 1986 compared to 1985. U.S. imports of dry natural gas decreased absolutely and relative to domestic shipments in 1986 compared to 1985.

With respect to petitioner's claim that workers at MEC were certified eligible for adjustment assistance and workers at CSX were not, the Department's records show that workers at MEC met the statutory worker group certification criteria of section 222 of the Trade Act of 1974. MEC's customers who imported crude oil in 1986 accounted for an important part of MEC's crude oil sales decline. CSX had increased sales of crude oil in 1986.

Conclusion

After review of the application and investigation findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd of May 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-12856 Filed 6-4-87; 8:45 am]

BILLING CODE 4510-30-M

The Agreement With the Secretary of Labor To Implement Section 303(g) of the Social Security Act; Unemployment Insurance Program Letter No. 23-87

The President signed into law on April 7, 1986, the Consolidated Omnibus Budget reconciliation Act of 1985 (COBRA), Pub. L. 99-272. The amendments made by Pub. L. 99-272 have made several significant changes affecting the unemployment compensation (UC) program which will require changes in State law and require new agreements with the Secretary of Labor. Consequently, on August 14, 1986, each State Governor was offered an agreement signed by the Secretary of Labor (the original Agreement). Twenty-five States have signed the original Agreement. However, some States have raised questions concerning a State's obligation under the original Agreement. Therefore, the Department of Labor has issued answers to these questions to all State employment security agencies. The questions and answers are contained in Unemployment Insurance Program Letter No. 23-87. Unemployment Insurance Program Letter No. 23-87 is published below:

Dated: May 22, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

Date: May 11, 1987.

Directive: Unemployment Insurance Program Letter No. 23-87.

To: All State Employment Security Agencies.

From: Donald J. Kulick, Administrator, for Regional Management.

Subject: The Agreement with the Secretary of Labor to Implement section 303(a) of the Social Security Act.

1. *Purpose.* To provide questions and answers concerning the Agreement sent to the Governor of each State, on August 14, 1986, (Agreement), to implement the recovery of overpayments authorized by Section 303(g) of the Social Security Act (SSA), and to provide the States an opportunity to modify the Agreement.

2. *References.* Section 303(g), SSA; UIPL 50-86 (51 FR 34273, September 26, 1986).

3. *Background.* Section 3093(a)(5), SSA, and sections 3304(a)(4) and 3306(f) of the Federal Unemployment Tax Act (FUTA), were amended by section 12401 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99-272, which also added subsection (g) to section 303 of the SSA. Section 303(g) (and the related amendments to SSA and Futa) authorize the States, at each State's option, to recover overpayments of unemployment benefits paid under State and Federal programs through an interstate arrangement and by offset between programs. Section 303(g)(1), SSA, provides the basic authority for recovery of overpayments made under State and Federal unemployment compensation (UC) laws through offset from unemployment benefits payable to an individual under another State's UC law or a Federal UC program. Section 303(g)(2) provides that the implementation of the offset of benefits between the Federal and State UC programs (i.e., cross-program offset) will be through formal written reciprocal agreements between the States and the Secretary of Labor.

Consequently, on August 14, 1986, each State Governor was offered an agreement signed by the Secretary of Labor (the original Agreement). Twenty-five States have signed the original Agreement. However, some States have raised questions concerning a State's obligations under the original Agreements. This program letter is issued to answer these questions, to clarify the scope and purpose of section 303(g), and to provide the States with

the opportunity to modify the original Agreement.

4. *Action Required.* State Administrators are requested to:

a. Review the Attachments and make a copy of this Letter and Attachments available to appropriate staff:

b. Notify the appropriate Regional office if after reviewing this information the State decides not to enter into any Agreement with the Secretary at this time;

c. Have their Governor sign the original agreement if they wish to undertake the obligations set forth in section 2 of Attachment I; and,

d. Follow the procedures in the attached Questions and Answers, Section III A and B, Attachment II, if the Governor wishes to modify the original Agreement.

5. *Inquiries.* Direct inquiries to the appropriate Regional Office.

6. *Attachments.* (I) UI Offset Summary and (II) questions and answers on section 303(g), SSA.

Expiration Date: May 31, 1988.

UI Offset Summary

Section 303(g) of the Social Security Act authorizes: interstate offset, intrastate cross-program offset and interstate cross-program offset (as defined in Attachment II, Questions and Answers I.B.).

1. If an Agreement with the Secretary *is not* signed:

a. The State *may* elect to engage in interstate offset (i.e., State-State and Federal-Federal) with one or more States, and

b. The State *may not* engage in either intrastate cross-program offset or interstate cross-program offset (i.e., State-Federal and Federal-State).

2. If the *original* (August 14, 1986) Agreement with the Secretary *is* signed:

a. The State *must* engage in intrastate cross-program offset (State and Federal), and

b. If the State elects to engage in interstate offset with any other State(s), the State *must* engage in (i) an interstate offset (State and Federal) with all other States that participate in the interstate offset program and (ii) interstate cross-program offset with any other such State which has signed an original or modified Agreement with the Secretary.

3. If the *modified* Agreement with the Secretary is signed:

a. The State *must* engage in intrastate cross-program offset, and

b. The State *may* elect to engage in interstate offset with one or more States, and

c. The State *must* engage in interstate cross-program offset with only those States with which it elects to engage in interstate offset that have also signed either the original or a modified Agreement with the Secretary.

Questions and Answers

(I) Section 303(g), SSA; (II) Original Agreement Under 303(g); (III) Modified Agreement; (IV) Impact on State Law of Original or Modified Agreement; (V) Impact on Federal Programs; (VI) Interstate Reciprocal Overpayment Recovery Arrangement and Interstate Recovery Procedures

I. Section 303(g), SSA

A. *Question:* Is participation in the recovery of overpayments by offset provided by Section 303(g) mandatory or optional?

Answer: It is optional. A State must review its own UC law to see if it has authority to engage in the various types of offset programs authorized by Section 303(g) before signing any Agreement.

B. *Question:* What types of offsets are *allowed* under the provisions of Section 303(g)?

Answer: The types of offset allowed by 303(g) are as follows:

1. Interstate Offset

a. the withholding of State UC benefits payable by State A to recover an overpayment made by State B under its State UC program, and

b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State B under a Federal UC program.

2. Intrastate Cross-Program Offset

a. the withholding of State UC benefits payable by State A to recover an overpayment made by State A under a Federal UC program and

b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State A under its State UC program.

Note.—The authority for withholding of UC benefits under one Federal program payable by State A to recover an overpayment made by State A under the same or a different Federal program continues in effect under previously existing statutory authority.

3. Interstate Cross-Program Offset

a. the withholding of State UC benefits payable by State A to recover an overpayment made by State B under a Federal UC program and

b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State B under its State UC program.

C. *Question:* If a State participates in intrastate cross-program offset or interstate cross-program offset, may it elect to *only* recover State overpayments from Federal UC benefits payable but not recover Federal overpayments from State UC benefits payable?

Answer: No. Cross-program offsets are authorized by Section 303(g). SSA, which includes the statutory requirement of a reciprocal agreement between the State and the Secretary of Labor. As provided in Article II of the Agreement, the reciprocal feature of cross-program offset is the essence of the Agreement.

II. Orginal Agreement Under 303(g)

A. *Question:* What is the basic purpose of an Agreement?

Answer: An Agreement fulfills the statutory requirements of section 303(g)(2) that sets the conditions for implementing cross-program offset within and between States.

B. *Question:* By signing the original Agreement with the Secretary, dated August 14, 1986, what is the State's obligation?

Answer: The State must at a minimum: 1) Recover from State unemployment benefits payable to an individual, filing an intrastate claim, any overpayment made by such State under an unemployment benefit program of the United States (such as, UCFE, UCX, DUA, TRA, REPP and FSC) to such individual; and recover from unemployment benefits payable under an unemployment benefit program of the United States to an individual, filing an intrastate claim, any overpayment made by such State under a State unemployment benefit program: and 2) if the State elects to participate in *any* interstate offset it must participate in both interstate and interstate cross-program offset with *all* other States which have entered into an interstate arrangement and have also signed an Agreement with the Secretary.

C. *Question:* By signing the original Agreement with the Secretary, is the State obligated to participate in any offset besides the intrastate cross-program offset?

Answer: Article III of the original Agreement obligates the State to participate in interstate cross-program offsets only if the State elects to participate in *any* interstate offset (immediately or in the future). Article III further obligates the State to participate with *all* States that have elected to implement an interstate offset arrangement if it participates with any State.

D. *Question:* May a State sign the original Agreement if State law precludes it from participating in

interstate offset and/or interstate cross-program offset?

Answer: Yes. The interstate obligation contained in Article III of the Agreement is triggered only when the State elects to participate in an interstate recovery program with another State.

E. *Question:* May a State sign the original Agreement if State law allows recovery by offset for fraud overpayments only?

Answer: No. Section 303(g)(2), provides that:

"(2) Any State may enter in an agreement with the Secretary of Labor under which—

"(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State *any overpayments* made under an unemployment benefit program of the United States to such individual.—(emphasis added)

(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States *any overpayments* made by such State."—(emphasis added)

Therefore, the Federal law does not contain authority to limit the offset Agreement to a specific type of overpayment, such as fraud overpayments.

III. Modified Agreement

A. *Question:* What should a State do if it has signed the original agreement but wishes to participate in interstate offset and interstate cross-program offset with only a limited number of States?

Answer: If a State signed the original Agreement it should terminate that Agreement in accordance with Article VIII. In addition, the State should request a modified Agreement, or prepare a modified Agreement, substituting for Articles III and VII as now written the following language:

"III. The State and the Secretary further agree that if the State elects to participate in any interstate offset program to recover overpayments with any other State(s) that has also signed an Agreement with the Secretary, it will implement cross-program offset with respect to State and Federal benefit overpayment made by the State and such other State(s)."

"VII. This Agreement is effective on and after the date it is signed below on behalf of the State and by the Secretary of Labor, whichever is later, and shall constitute an addendum to the agreements between the State and the Secretary under the programs listed in Article VI."

B. *Question:* What should a State do if it has *not* signed an Agreement with the Secretary of Labor, wishes to sign an Agreement but only wishes to participate in interstate offset with a limited number of states?

Answer: The State should prepare two originals of the modified Agrement with the new Articles III and VII referrred to in Answer III.A. Both originals of the Agreement should be signed by the Governor (or other authorized State official) on behalf of the State and sent to the Unemployment Insurance Service, Attention: Carolyn M. Golding, Director. After the modified Agreement is signed by the U.S. Secretary of Labor, one of the signed originals will be returned to the State for its records. The Agreement would be effective on the date it is signed by the Secretary, or on the date specified in the Agreement.

C. *Question:* Would the modified Agreement obligate a State to participate in interstate offset and interstate cross-program offset?

Answer: No. The State has the option to elect whether it shall participate in interstate offset with any other State or States. The modified Agreement does obligate a signatory State to participate in *interstate cross-program offset* only with those States that the State *elects* to participate with in *any* interstate offset arrangement and which have also signed an original or modified Agreement with the Secretary.

D. *Question:* What other modifications may a State make to the Agreement?

Answer: Article VIII of the Agreement provides that the Agreement may be amended by mutual consent of both parties. If a State wishes to propose any other changes besides the one suggested in Answer III.A., the Agreement should be returned with a cover letter explaining the desired changes. If the Secretary of Labor agrees to the modifications, the revised Agreement will be signed and returned to the State for signature.

E. *Question:* Is there any time limit for a State to sign an Agreement?

Answer: No. However, if a State decides not to sign or to postpone signing an Agreement for any reason (such as pending the enactment of authorizing legislation) it is requested that the State notify the ETA Regional Administrator.

F. *Question:* If, after reviewing these questions and answers, a State wishes to terminate the original Agreement it has previously signed, what should it do?

Answer: The State should provide written notification of termination to the Secretary of Labor, as provided in Article VIII of the Agreement. Termination will be effective 30 days after the postmark date of the notice. Article VIII also expresses the close-out obligations of the State.

IV. Impact on State Law of Original or Modified Agreement

A. *Question:* Does the Agreement affect State law provisions relating to waiver of overpayment recovery?

Answer: No. The Agreement has no effect on State law provisions relating to waiver of overpayment recovery. States should continue to apply these provisions. However, it is the law of the State that established the overpayment (i.e. the Requesting State) that applies, not the waiver provisions (if any) of the law of the Recovering State. In addition, in some Federal programs (UCFE/UCX fraud cases, FSC and TRA) there are Federal statutory provisions on recovery (including waiver) of overpayments, and where such provisions exist State law does not apply.

B. *Question:* In recovering an overpayment for another State, may the Recovering State apply its law pertaining to the limitations on the amount recouped by weekly offset?

Answer: Yes. As in the previous answer, it is the law of the State which is responsible for the action that prevails. In this case, the Recovering State must apply its provisions for limitations on the amount recouped by weekly offset; on this point, the law of the Requesting State is inapplicable. In addition, in some Federal programs (FSC and TRA) there is a statutory limitation on the amount that they may be offset, and where such provisions exist State law does not apply.

C. *Question:* Does the Agreement affect State law provisions establishing a statute of limitations on waiver of overpayment recovery and offset limitations?

Answer: No. State law provisions establishing a state of limitations still apply. The Requesting State's statute of limitations applies to the recoverability of the overpayment (including waiver—see Q and A IV.A.). If the Requesting State's statute of limitations has been reached and the overpayment is no longer legally recoverable by offset, it should not request another State to recover the overpayment.

The Recovering State's statute of limitations is applicable in regard to its authority to offset and will operate to preclude offset where the Recovering State's statute has been reached.

In addition, in some Federal programs (such as UCFE/UCX) fraud cases, FSC and TRA) there are Federal statutory

provisions which are controlling and State law does not apply.

V. Impact on Federal Programs

A. *Question:* Section 243(a)(2) of the Trade Act of 1974, limits recovery by offset of overpayments made under the Act to 50% of the benefit amount otherwise payable. Does this limitation apply when Trade Readjustment Allowances (TRA) are used to recover State or other Federal UC overpayments?

Answer: No. This restriction only applies to the recovery of overpayments made under the Trade Act. Thus it does not apply when TRA benefits are offset to recover State benefit overpayments or other Federal benefit overpayments.

B. *Question:* Section 303(g)(3) does not include Trade Adjustment Assistance (TAA) paid under the Trade Act, other than Trade Readjustment Allowances (TRA), in the definition of "unemployment compensation" covered by section 303(g). Are these other TAA overpayments recoverable by offset of State UI benefits?

Answer: No. The non-TRA portion (job search, relocation, and training related allowances) of a TRA overpayment may not be recovered by offset of State benefits. However, these kinds of TAA overpayments can be recovered by offset of other Federal benefits payable, subject to the limitations in sections 243(a)(2) and 243(c).

C. *Question:* Does the 2-year statute of limitations under 5 U.S.C. 8507 to collect UCFE or UCX fraud overpayment by offsetting UCFE or UCX benefits payable still apply?

Answer: Yes. The statute of limitations on recovering UCFE or UCX fraud overpayments from UCFE or UCX benefits payable has not changed. Although 303(g) has broadened the programs from which UCFE and UCX overpayments may be recovered, the statute of limitations still applies to such recoveries by offset.

D. *Question:* Does Federal law prescribe a statute of limitations for recovery of UCFE or UCX nonfraud overpayments?

Answer: No. State law applies to the recovery of nonfraud overpayments in the UCFE and UCX programs. See 20 CFR 609.11(c-h) and 20 CFR 614.11(c-h).

E. *Question:* DUA benefits are designated for a specific disaster. To which account should DUA overpayment amounts recovered by offset be credited?

Answer: The Federal Emergency Management Administration does not permit pooling of disaster funds. DUA overpayment amounts recovered by offset will be credited to the account for the specific disaster under which the overpayment occurred, consistent with procedures used when an overpayment is collected directly from the claimant.

VI. Interstate Reciprocal Overpayment Recovery Arrangement and Interstate Recovery Procedures

A. *Question:* What is the Interstate Reciprocal Overpayment Recovery Arrangement (Arrangement) referred to in UIPL 50–86?

Answer: The Arrangement is a reciprocal agreement now being developed by the ICESA Interstate Benefit (IB) Committee to facilitate interstate recovery of overpayments.

B. *Question:* Will ETA be involved in the implementation of the Arrangement?

Answer: Yes. ETA is working with the IB Committee to develop the Arrangement and implementing procedures. ETA will issue the procedures as a change to ET Handbook 392 when the Arrangement is made available to the States by ICESA. Both are expected to be made available soon. ETA will have a continuing role in monitoring implementation of the Arrangement to assure compliance with section 303(g) and section 3304(a)(9) of the FUTA.

C. *Question:* If a State becomes a participant in the Arrangement and has not signed a 303(g)(2) Agreement with the Secretary, is it thereby obligated to participate in interstate cross-program offset?

Answer: No, in fact, it may not do so. The purpose of the Arrangement is to establish procedures to facilitate the interstate recovery of State and/or Federal benefit overpayments. If, in fact a State has not entered into an Agreement with the Secretary, it may not participate in the cross-program offset. However, if a State elects to participate in the Arrangement *and* has signed a 303(g)(2) Agreement with the Secretary, it is obligated (by Article III of the original and modified Agreement) to participate in Interstate Cross-Program Offset with all other participants in the Arrangement that also have signed an Agreement with the Secretary.

D. *Question:* May a State elect to participate in the Arrangement and not the Agreement, or vice versa?

Answer: Yes. The provisions of section 303(g) simply authorize a State to elect to participate in interstate and cross-program recovery of overpayments by offset of benefits payable. The Arrangement and the Agreement are separate undertakings, and a State may elect either one, or both, or neither.

E. *Question:* If a State is not a participant in the Arrangement, may it participate in a cooperative interstate offset system with a limited number of States?

Answer: Yes. There is no requirement under section 303(g)(1), to enter into the Arrangement if a State wishes to participate in a more limited program of interstate offset. However, section 303(g)(1) applies to any state electing to participate in any interstate offset program, and it therefore must follow the procedural requirements of section 303(g)(1).

F. *Question:* What are the procedural requirements referred to in Answer VI.E?

Answer: Section 303(g) requires that the offset of an overpayment under a 303(g) program "shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing" as are required by the State law for the recovery of regular benefits. Therefore, any interstate program must provide such procedural safeguards. Further elaboration of this requirement is contained in UIPL 50–86. Such procedures are also required by sections 303(a)(1) and 303(a)(3), SSA, and the Claim Determinations Standard, Sections 6010–6015, Part V of the *Employment Security Manual.*

G. *Question:* Are additional administrative funds available to those States participating in an interstate offset arrangement?

Answer: No. The cost of this activity is to be covered by existing administrative funds. Additional funds are not available. However, States have the flexibility to use base grants as they determine appropriate within the current guidelines.

[FR Doc. 87–12858 Filed 6–4–87; 8:45 am]
BILLING CODE 4510–30–M

Job Training Partnership Act; Identification of Qualified Sources To Administer Training and Employment Programs for the Handicapped

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, Employment and Training Administration, seeks to identify qualified sources which currently operate nationally administered training and employment programs serving the specialized needs of handicapped individuals across the country.

EFFECTIVE DATE: From June 5, 1987 to July 20, 1987.

FOR FURTHER INFORMATION CONTACT: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Room N4641, Telephone: 202–535–0500.

SUPPLEMENTARY INFORMATION: Programs for handicapped individuals are authorized under Title IV, Part D, section 451 of the Job Training Partnership Act. The general purpose of the programs is to increase the number and quality of job opportunities for employable handicapped individuals. The projects provide special outreach services and tailored training, job development, and job placement services. These services address the major conditions which constitute barriers to employment—sight, hearing, epilepsy, mental retardation, and other physical and emotional impairments. The period of performance on approved grants will be for at least one program year (July 1 of one year until June 30 of the next year), operating at sites in at least two or more locations. The grantees would be responsible for planning, designing, and carrying out training and employment programs for handicapped individuals based on their identification of the needs of those individuals. Training and supportive services for handicapped individuals may include, but are not limited to the following:

—Orientation/Counseling,
—Job development/Placement,
—Training (classroom, on-the-job and work experience in job skills for which there is a demand).

The Department of Labor, Employment and Training Administration, is interested in identifying any and all organizations that conduct employment training programs for the handicapped on a national scale. National organizations having the capabilities described here in serving the handicapped are invited to submit complete information to the Office of Grants and Contracts management listed below. Information should include: The total number of employees; descriptions of professional personnel specifically qualified in the training and employment field outlined; description of facilities; an outline of previous training and employment projects; and other available descriptive literature about the organization and its services.

To the extent possible, nationally administered programs for handicapped individuals should be linked to local rehabilitation agencies and programs.

Note.—This is not a Request for Proposals and no selection for funding will result from this notice.

Responses to the notice should have all the information identified in the summary above and should be sent to Department of Labor, Employment and Training Administration, Office of Grants and Contracts Management, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., Room C4305, Washington, DC 20210. *Attention: Sources Sought Desk.*

Signed at Washington, DC, this 1st day of June 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 87–12857 Filed 6–4–87; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut, CT87-1 (January 2, pp. 70, 73 1987).

Rhode Island, RI87-1 (January 2, p. 1024 1987).

Volume II

Oklahoma, OK87-13 (January 2, p. 893 1987).

Volume III

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29th day of May 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-12875 Filed 6-4-87; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-107-C]

A & E Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

A & E Coal Company, Inc., HC 85, Box 1470, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-12649) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the cabs or canopies would shear off roof supports, thereby creating a weakened condition in the mine roof. The cabs or canopies would limit the equipment operator's visibility, increasing the chances for an accident. Due to the construction of the equipment, i.e., the operator on the dumping end of the car rather than between the wheels, there is an increased danger of the operator getting caught in the cables due to the bouncing motion on the end of the car, which could cause an electrical shock.

3. For these reasons, petitioner requests a modification of the standard in mining heights of 58 inches or less.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 6, 1987. Copies of the petition are available for inspection at that address.

Dated: May 27, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-12859 Filed 6-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-106-C]

Allied Coals Inc.; Petition for Modification of Application of Mandatory Safety Standard

Allied Coals Inc., HCR 74, Box 1530, Amburgey, Kentucky 41801 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Allied No. 2 Mine (I.D. No. 15-02288) located in Knott County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because the cabs or canopies would impair the equipment operator's visibility, and create cramped conditions resulting in fatigue. Due to bottom or top rolls, the cabs or canopies would clear the roof of the mine and would shear off roof bolts, creating unsupported roof.

3. For these reasons, petitioner requests a modification of the standard in mining heights of 50 inches or less.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 2203. All comments must be postmarked or received in that office on or before July 6, 1987. Copies of the petition are available for inspection at that address.

Dated: May 27, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-12860 Filed 6-4-78; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-14-M]

Cornell-Young Co.; Petition for Modification of Application of Mandatory Safety Standard

Cornell-Young Company, 4496 Mead Road, Macon, Georgia 31206 has filed a petition to modify the application of 30 CFR 56.18013 (emergency communications system) to its Franklinton Pit (I.D. No. 09-00271) and its Warner Robins Pit (I.D. No. 09-00272) both located in Bibb County, Georgia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that a suitable communication system be provided at the mine to obtain assistance in the event of an emergency.

2. Petitioner states that the mines are surface, water operated sand mines. Trucks equipped with radios enter and depart the mines approximately every 30 minutes. First aid and transportation are available at each mine and the mine foreman roves between the mines.

3. Petitioner further states that the mines are not in secluded, isolated areas but are located adjacent to highly travelled roads in well populated areas

and are within eight miles of large, modern hospitals. Telephones are available within 500 yards of the Warner Robins Pit and within ¼ mile of the Franklinton Mine.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 6, 1987. Copies of the petition are available for inspection at that address.

Dated: May 27, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-12861 Filed 6-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-111-C]

C.R. Howard, Inc.; Petition for Modification of Application of Mandatory Safety Standard

C.R. Howard, Inc., P.O. Box 2178, Elkins, West Virginia 26241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Audra No. 1 Mine (I.D. No. 46-05991) located in Barbour County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded metal locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 2203. All comments must be postmarked or received in that office on or before July 6, 1987. Copies of the petition are for inspection at that address.

Dated: May 27, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-12862 Filed 6-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-113-C]

Gateway Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Gateway Coal Company, Route 2, Box 107, Prosperity, Pennsylvania 15239 has filed a petition to modify the application of 30 CFR 75.1303 (permissible explosives, detonators, blasting devices and shot-firing units; stemming boreholes) to its Gateway Mine (I.D. No. 36-00906) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that explosives certified as permissible, are permissible in use as long as they are stored in surface magazines under conditions that tend to maintain original product character, and are used within 48 hours after being taken underground.

2. Petitioner states that application of the standard would require construction of a permanent surface storage facility, which would subject the explosives to a large fluctuation in temperature (from sub-zero to 95° F) and to a risk of theft and vandalism; or would require ordering explosives on an as needed basis, which would not make the explosives sufficiently available in the event of a roof fall which may be obstructuring escapeways, haulageways or aircources, any of which requires an efficient and prompt clean up. Providing explosives from a surface storage facility or from the supplier would require outside to inside transportation and handling as frequently as once per day.

3. As an alternate method, petitioner proposes to store explosives in underground storage facilities in excess of forty-eight hours. In support of this request petitioner states that:

(a) The five underground storage facilities are centrally located to the active mining areas; and as such, these facilities do not require the handling of explosives over long distances;

(b) By being underground, these facilities keep the explosives more secure and subject them to more constant and desirable temperatures between 55° and 63° F;

(c) By storing explosives underground, they are readily available in the event that a roof fall requires a prompt and efficient clean up; and

(d) By storing explosives underground for periods in excess of 48 hours, the outside to inside handling and transportation of explosives and the inside to outside handling and transportation of explosives is not more frequent then once or twice per month.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 6, 1987. Copies of the petition are available for inspection at that address.

Dated: May 27, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-12863 Filed 6-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-112-C]

Shevon Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Shevon Coal, Inc., P.O. Box 1199, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Shevon Coal, Inc. No. 2 Mine (I.D. No. 15-13879) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In futher support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 6, 1987. Copies of the petition are available for inspection at that address.

Dated: May 27, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-12864 Filed 6-4-87; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-6355 et al.]

Proposed Exemptions; Ameri Trust Company, N.A., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

AmeriTrust Company, N.A. (AmeriTrust) Located in Cleveland, OH

[Application No. D-6355]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (b)(2) and (b)(3) of the Act shall not apply to the proposed receipt of fees by AmeriTrust from the Financial Reserves Fund (the Fund), an open-end

investment company, for which AmeriTrust performs services, in connection with the investment of funds, through a daily automated sweep arrangement, of those voluntary employees' beneficiary association trusts (the VEBA's) for which AmeriTrust acts as investment manager, custodian or directed trustee, under the terms described in this proposed exemption.[1]

Summary of Facts and Representations

1. AmeriTrust is a national banking association authorized to do business under the banking laws of the United States. AmeriTrust presently acts as trustee, custodian and/or investment manager for fourteen VEBA's. Each VEBA is exempt from taxation under section 501(c)(9) of the Internal Revenue Code of 1954 (the Code). The VEBA's are not qualified under section 401(a) of the Code. The applicant represents that AmeriTrust currently has investment discretion with respect to eight of the VEBA's.

2. The Fund is a diversified open-end investment company and is designed to meet short-term investment requirements by providing for the investment of cash in a professionally managed portfolio of domestic money market instruments. Such short-term investments include certificates of deposit, banker's acceptances issued by major banks, commercial paper, obligations issued by the government of the United States or any agency or instrumentality thereof, short-term (one-year or less) corporate obligations and qualified repurchase agreements. Fidelity Management and Research Company (FMR) is the Fund's investment advisor and shares of the Fund are distributed by Fidelity Distributions Corporation (FDC), a subsidiary of FMR and registered as a broker-dealer under the Securities Exchange Act of 1934. The applicant represents that neither FMR nor FDC is a fiduciary as defined in section 3(21) of ERISA or party in interest as defined in section 3(14) of ERISA with respect to any of the affected VEBA's. There is no ownership connection or affiliation, direct or indirect, between AmeriTrust and either FMR or FDC.

3. AmeriTrust is the administrator for the Fund and performs services for the Fund as custodian of Fund assets and as the Fund's transfer, dividend disbursing and shareholders' servicing agent. For these services which it renders to the Fund, AmeriTrust receives a monthly fee at an annual rate of .25% of the average daily net assets of the Fund. The applicant represents that it receives no other consideration or benefits from the Fund.

4. Fund shares have been offered principally to prospective investors who have a fiduciary, custodial or agency relationship with AmeriTrust. Thus, the purchase of such shares would not be restricted to VEBA trusts for which AmeriTrust acts as trustee, custodian and/or investment manager. Shares of the Fund may be purchased or redeemed on a daily basis. A purchaser does not pay any sales charge or redemption fee to the Fund or AmeriTrust upon purchase or redemption of Fund shares. Such prospective purchasers receive a prospectus from the Fund and are entitled to vote all Fund shares held by them.

5. The applicant represents that, currently, the only cash management system available to the VEBA's is manually operated, and requires a $1000 minimum investment, which may require a VEBA to hold cash uninvested for several days. Use of the Fund would enable virtually all cash in a VEBA to be invested daily. In addition, when cash is received into a VEBA currently, it generally remains uninvested for at least one day until an investment transaction is executed. Use of the Fund would enable these assets to be immediately invested via the automatic sweep and therefore provide an immediate return.

6. The applicant represents that a VEBA which elects to participate in the Fund will have cash in the VEBA automatically swept into the Fund, down to the nearest $1.00, on a daily basis, in order to have all of the VEBA's funds invested at all times. AmeriTrust has no discretion with respect to the timing within the day of the sweep either into or out of the Fund. The applicant also represents that the use of such sweep arrangements is customary in the banking industry.

7. The applicant represents that in those cases in which AmeriTrust is a custodian or directed trustee for a VEBA, a fiduciary for the VEBA, independent of AmeriTrust, will receive a current prospectus which describes the Fund, the services provided by AmeriTrust and the fees paid to AmeriTrust. The decision to invest would be made solely by the independent fiduciary. AmeriTrust will continue to receive its standard custodial fees for the VEBA assets invested in the Fund.

8. In the situation where AmeriTrust exercises discretionary investment authority with respect to a VEBA, a fiduciary of the VEBA unaffiliated with AmeriTrust would also receive a prospectus, including fees paid to AmeriTrust, before the investment was made. AmeriTrust would not place any VEBA assets in the Fund unless this independent fiduciary approved the investment in advance. In this situation, AmeriTrust will not charge the VEBA its investment management fee, which is also an annual fee of .25% of assets managed, with respect to VEBA assets invested in the Fund for the entire period of such investment.

9. The applicant represents that increases in fees paid to AmeriTrust by the Fund would be disclosed in a new prospectus issued by the Fund prior to additional sales and purchases. In addition, if AmeriTrust's fee from the Fund were increased, AmeriTrust would reduce by an additional corresponding amount its management fee charged to the accounts for which it exercises investment discretion.

10. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) because: (a) The decision whether to invest in the Fund will be made for each VEBA by a fiduciary of the VEBA independent of AmeriTrust and only after a full disclosure of the fees received by AmeriTrust; (b) the investment of VEBA assets in the Fund will enable those assets to be fully invested on a daily basis; and (c) the Fund is the only available means for AmeriTrust to provide for the daily investment of all of the assets of the VEBA's.

For Further Information Contact: David Lurie of the Department, telephone (202) 8194. (This is not a toll-free number.)

Gaines and Derden Enterprises, Inc. Pension Plan (the Pension Plan) and Gaines and Derden Enterprises, Inc. Retirement Plan (the Retirement Plan; collectively, the Plans) Located in Little Rock, Arkansas

[Application No. D-6940 and D-6941]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section

[1] Since the VEBA's are not qualified under section 401 of the Code, there is no jurisdiction under Title II of the Act pursuant section 4975 of the Code. However there is jurisdiction under Title I of the Act pursuant to section 3(2) of the Act. In addition, the Department is not proposing exemptive relief for transactions covered by section 408(b)(2) of the Act and § 2550.408b-2 of the regulations.

406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past loan (the Loan) by the Plans of $215,000 to Gaines and Derden Enterprises, Inc. (the Employer), a party in interest with respect to the Plans, provided the terms of the Loan were and remain at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Effective Date: If granted, this exemption will be effective November 1, 1986.

Summary of Facts and Representations

1. The Employer, which does business under the trade name of Davies Electric Supply Company, is a closely-held corporation that is incorporated in the State of Arkansas. Fifty percent of the Employer's outstanding shares of stock are each held by Messrs. Charles L. Gaines and William R. Derden (Messrs. Gaines and Derden) who serve as the corporate officers and directors of the Employer. The Employer is a wholesale and retail distributor of a myriad of electrical components ranging from basic residential materials to large commercial project tools and industrial programmable controllers.

2. The Plans, which share common participants, consist of the Retirement Plan and the Pension Plan. As of June 30, 1986, the total assets of the Retirement Plan were $830,786. On that same date, the total assets of the Pension Plan were $126,879. The trustees of the Plans and the decision-makers with respect to the Plans' investments are Messrs. Gaines and Derden.

3. An exemption is requested for the past Loan of $215,000 by the Plans to the Employer. The Loan proceeds are being used by the Employer to finance the purchase of certain real property (the Real Property) that will be used as an addition to and expansion of the Employer's business. The Real Property, which consists of 40,990 square feet of land that is improved with a building containing 8,700 square feet of space, is located on the frontage road parallel to Interstate Highway 30 in Southwest Little Rock, Pulaski County, Arkansas. The Loan was allocated between the Plans such that it involved approximately 22 percent of the assets of the Pension Plan and 22.5 percent of the assets of the Retirment Plan.

4. On November 1, 1986, the first disbursement of the Loan was made in the amount of $167,000. This amount was evidenced by a promissory note and secured by a first mortgage on the Real Property. Following the receipt by the Plans of a $287,262 contribution by the Employer, on March 16, 1987 another disbursement of the Loan was made in the amount of $48,000. The second disbursement brought the total Loan amount up to $215,000.

To evidence the final disbursement of the Loan, the promissory note was consolidated into a new note in the principal amount of $211,789 to reflect principal payments that had been debited from the first promissory note. The Loan carries interest at the rate of 10½ percent per annum and it is payable in monthly installments of principal and interest in the amount of $2,857 over a ten year period. There is no penalty for acceleration of payments in part or in full. Accordingly to the applicants, all payments due under the promissory note have been timely made. In addition, none of the Loan proceeds were disbursed until Clinton State Bank (the Bank) of Clinton, Arkansas, which serves as the independent fiduciary for the Plans with respect to the Loan, determined that all terms and conditions of the Loan are fullfilled and that the Loan was in the best interests of the Plans and their participants and beneficiaries.

5. The Loan is secured by a first mortgage on the Real Property which had an appraised value of $325,000 as of September 17, 1986 according to an appraisal report prepared by Mr. Richard A. Stephens, C.R.E., M.A.I., an independent appraiser from Little Rock, Arkansas. The mortgage has been filed contemporaneously with the deed with the proper state authority to reflect each Plan's interest in the collateral. The mortgage provides that the Real Property will have a value at all times which equals or exceeds 150 percent of the outstanding balance of the Loan. If the value of the Real Property should ever fall below 150 percent of the outstanding balance of the Loan, the Bank will declare the entire promissary note immediately due and payable. In addition, the Real Property has been insured against casualty loss and the Plans have been designated as the loss payees of such insurance.

6. As stated above, the Loan is being monitored and enforced by the Bank in the capacity of the independent fiduciary. The Bank has no direct commercial relationship with the Employer or its principals and no principals of the Employer sit on the Board of Directors of the Bank or vice versa.

The Bank represents that it has more than 40 years of experience in banking and trust department transactions. The Bank represents that it has consulted legal counsel regarding the duties, responsibilities and liabilities that are imposed on a fiduciary under the Act and it asserts that it understands and acknowledges these duties, responsibilities and liabilities in acting as a fiduciary with respect to the Plans.

The Bank represents that the Loan was and remains in the best interests of the Plans and their participants and beneficiaries because the terms of the Loan compare favorably with the terms of similar transactions between unrelated parties. Indeed, the Bank states that it would have made a similar loan to the Employer at an interest rate of 9½ percent which is one percent less than the rate being charged. The Bank also represents that the Loan was an appropriate and profitable investment for the Plans because the Plans are receiving a higher than market yield from the Loan than they would from other investments. In addition, the Bank states that it examined the terms and conditions of the Loan at the time of its making as well as the appraisal of the Real Property and it determined that the Loan was an appropriate and suitable investment for the Plans and their participants and beneficiaries.

The Bank also states that, at the time of the initial Loan disbursement, it examined the Plans' overall investment portfolio, considered the liquidity requirements of the Plans, examined the diversification of the Plans' assets in light of the Loan and considered whether the Loan complied with the Plan's investment objectives and policies. In addition to monitoring the Loan on behalf of the Plans, the Bank states that it will take any actions that are necessary and proper to safeguard the interests of the Plans and their participants and beneficiaries.

7. In summary, the applicants represent that the Loan satisfies the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Bank, which monitors and enforces the Loan on behalf of the Plans as the independent fiduciary, has determined that the Loan was in the best interests of the Plans and their participants and beneficiaries at the time the Loan was made; (b) the Loan is secured by a first mortgage on the Real Property having a fair market value in excess of 150 percent of the outstanding balance of the Loan; (c) the Bank will ensure that the Real Property remains at least equal to 150 percent of the outstanding principal balance of the Loan or declare the entire promissory note immediately due and payable if such level is not maintained; (d) the terms of the Loan generate a higher rate of return to the Plans than they could receive from other

investments with independent third parties; and (e) the Bank has determined that it would have made a similar loan to the Employer as that made by the Plans at a lesser rate of interest than the rate being charged by the Plans.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Carlisle Motors, Inc. Profit Sharing Plan (the Plan) Located in Clearwater, Florida

[Application No. D–6992]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of a parcel of real property by the Plan to Carlisle Motors, Inc. (the Employer) for $2,075,000 in cash, provided that the terms of the transaction were not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction was consummated.

Effective Date: This proposed exemption, if granted, will be effective December 13, 1984.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 89 participants as of December 31, 1984 and net assets of $2,929,563 as of December 31, 1983. The Plan's trustee is the First National Bank of Clearwater (the Trustee). The Employer, a Florida Corporation, is a Lincoln-Mercury dealership established in 1948.

2. In March 1969, the Plan purchased a parcel of improved real property located at 2085 Gulf to Bay Boulevard, Clearwater, Florida (the Property) from Mr. Grover C. Eldridge for $412,000. The Property contains approximately six acres and is improved by the Employer's car dealership. The Plan has leased the Property to the Employer on a continual basis since April 1, 1969 (the Lease).[2]

3. The applicant was informed by legal counsel that the Lease, beginning July 1, 1984, could be considered to be a prohibited transaction. In order to extricate itself from the prohibited lease, the Plan decided to sell the Property.[3] The Trustee had the Property appraised by Mr. Bert F. Finch, Jr., (Mr. Finch), M.A.I. of Forgarty & Finch, Inc. Real Estate Appraisers of St. Petersburgh, Florida. Mr. Finch appraised the Property as having a fair market value of $1,800,000 as of September 20, 1984.

4. The Trustee listed the Property with Lee Arnold & Associates, Inc. the largest commercial real estate brokerage firm in Pinellas County, Florida and with the Clearwater office of Merrill-Lynch Realty, Inc. The brokers were advised, on October 25, 1984, that because of the necessity of correcting the prohibited transaction as quickly as possible that all offers had to be received no later than November 24, 1984, with a closing date no later than December 31, 1984. No offers, however, were forthcoming from the real estate brokers, whereupon the Plan decided to accept an offer from the Employer to purchase the Property.

5. On December 13, 1984 the Plan sold the Property to the Employer for its appraised value of $1,800,000 in cash, plus an additional $25,000 covering all costs associated with the transaction. Further, and as an addition to the purchase price, the Employer pursuant to negotiations with the Trustee, paid the Plan an additional reimbursement totaling $250,000 to compensate the Plan for recent capital improvements made to the Property.

6. In summary, the applicant represents that the transaction safisfied the statutory criteria of section 408(a) of the Act because:

(a) It was a one time transaction for cash;

(b) All costs of sale were paid by the Employer;

(c) The sale terminated an existing prohibited transaction;

(d) The Plan received the appraised value for the Property; and

(e) The Plan's Trustee determined that the transaction was appropriate and suitable for the Plan.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Bermo, Inc. Profit Sharing Plan and Trust (the Plan) Located in Bloomington, Minnesota

[Application No. D–7039]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to loans of money from the Plan to Bermo, Inc. (the Employer), the sponsor of the Plan, and to the personal guarantee of the loans by a party in interest with respect to the Plan, provided the terms of the loans are at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representatives

1. The Plan is a defined contribution plan having 37 participants and total assets of $1,645,910 as of September 30, 1986. The Employer is a closely held corporation engaged primarily in the metal-stamping business. The Employer serves as the Plan administrator. The Richfield Bank and Trust Co. of Richfield, Minnesota is the trustee (the Trustee) of the Plan.

2. The Department granted a previous exemption (Prohibited Transaction Exemption (PTE) 82–9, 47 FR 2432, January 15, 1982) to permit loans of money (the Exempt Loans) from the Plan to the Employer. Under the exemption, the Plan could make loans on a recurring basis to the Employer for a period of five years. The proceeds from the Exempt Loans were used by the Employer for purchases of machinery and equipment. Each loan was collateralized by a promissory note and a security agreement, and had a first lien on the purchased machinery or equipment and in addition was collateralized by specific equipment or assets owned by the Employer. At all times each Exempt Loan was collateralized in an amount not less than 150 percent of the outstanding balance of the Exempt Loan. The maximum length of any loan was 48 months and the interest rate was one percent above the prevailing prime rate of the Trustee. The balances on all Exempt Loans together made under the exemption at all times were not to exceed 25 percent of the market value of the assets of the Plan. An independent Plan fiduciary, the Western Bank and Trust Co. of Marshall, Minnesota acts to certify that each loan was an

[2] The applicant represents that the Lease qualified for relief under the transitional rules provided under section 414 of the Act. In this proposed exemption the Department expresses no opinion as to the applicability of section 414 of the Act to the Lease.

[3] The applicant has agreed to pay any excise taxes which may be found to be due on the Lease.

appropriate investment for the Plan. The outstanding balance of Exempt Loans made under PTE 82–9 was $182,115 as of January 15, 1987.

3. The Plan now proposes to make loans of money (the 1987 Loans) to the Employer over a new five-year period. The aggregate amount of outstanding loans, including any balances remaining on the Exempt Loans made pursuant to PTE 82–9, will not at any time exceed 25 percent of the total assets of the Plan. The five-year period will begin on the date the grant of the exemption for the proposed transactions is published in the **Federal Register**. Subsequent to the expiration of the proposed exemption, the Plan may continue to hold the loans, provided they were entered into during the five-year period. The proceeds from the 1987 Loans will be used by the Employer to purchase plant equipment and machinery (the Equipment). Each item of Equipment purchased through the 1987 Loans will be a new item of equipment. The maximum term of any loan will be 48 months. The interest rate on the 1987 Loans will be set at a rate of at least one percent over the prevailing prime rate of the Trustee. Each loan will be personally guaranteed by Fred Berdass (Berdass), the principal shareholder of the Employer, as to both principal and interest.

4. Each 1987 Loan will be collateralized by a promissory note of the Employer and a security agreement, which will be duly perfected in accordance with Minnesota law. Each loan will create a first lien on the Equipment and will also be collateralized by other equipment or assets owned by the Employer, such that at all times each loan will be collateralized in an amount equal to at least 175 percent of the outstanding balance of the loan. No loan will exceed 80 percent of the purchase price of the Equipment financed, excluding tax and transportation costs. The Employer will adequately insure both the Equipment and any other collateral supporting the loans against fire and other hazards. The Plan will be a named insured in the policies insuring the Equipment which serves as collateral for the 1987 Loans.

5. The First American Trust Co. of Minnesota, located in Marshall, Minnesota (the Bank) will serve as the independent fiduciary with respect to the proposed transactions. The Bank is a successor to the Western Bank and Trust Co., the independent fiduciary named in PTE 82–9. The Employer represents that the Bank is independent of the Employer and that the Bank will operate with complete discretion with respect to the proposed transactions. The Bank will make an independent determination that each proposed 1987 Loan will be an appropriate investment for the Plan and that the terms of each loan are at least equal to those which the Plan could receive in a similar transaction with an unrelated party. Further, the Bank states that its affiliated commercial bank would be willing to lend to the Employer on the same terms as those set forth in the application. The Bank will be responsible for determining the appropriate collateral for each 1987 Loan, for monitoring the payments on the loans, and for enforcing the terms and conditions of the loans on the Plan's behalf. The Bank will bring suit or other appropriate process against the Employer in the event of any default on the part of the Employer. In this regard, the Bank will have the right to enforce full collection of the 1987 Loans. The Bank represents that it has reviewed the personal financial statements of Berdass and that it believes Berdass possesses the financial ability to personally assure repayment of each 1987 Loan. The Bank states that, in its opinion, the 1987 loans are appropriate investments for the Plan and are in the best interests of the Plan's participants and beneficiaries. The Bank certifies that all payments of principal and interest on the Exempt Loans entered into under PTE 82–9 have been received timely and in full and that all other terms of the exemption have been met.

6. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (1) The Bank, an independent fiduciary of the Plan, certifies that the transactions are in the best interests of the Plan and that the terms of the loans are commercially reasonable; (2) each 1987 Loan will be secured by a promissory note of the Employer and a perfected security agreement; (3) each 1987 Loan will create a first lien on the Equipment being purchased through the note and will be collateralized at all times in an amount equal to at least 175 percent of the outstanding balance of the loan; (4) each loan will be personally guaranteed by Berdass; (5) all payments under the Exempt Loans from the Plan to the Employer made pursuant to PTE 82–9 have been received timely and in full; (6) in the event of any default, the Bank will have the right to enforce full collection of the 1987 Loans; and (7) the Bank represents that its affiliate would be willing to make loans on the same terms as the 1987 Loans to the Employer.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Iron Workers Local No. 25 Pension Fund (the Plan) Located in Birmingham, Michigan

[Application No. D–2090]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash purchase of a certain parcel of land by the Plan from Local No. 25, International Assocation of Bridge, Structural and Ornamental Iron Workers, AFL–CIO (the Union), a party in interest with respect to the Plan, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined-benefit, multiemployer pension plan maintained under a collective bargaining agreement between the Union and three employer associations, as well as individual agreements with various other employers of iron workers. As of November 24, 1986, the Plan covered approximately 3,683 participants. Its total assets were valued at $186,401,015 as of April 30, 1986. The Plan is administered by a joint board of employer and Union trustees (the Trustees) with equal representation, who are designated as named fiduciaries for purposes of section 402(a)(1) of the Act and whose duties include, among others, making investment decisions for the Plan. The trustees also serve as trustees of related funds: the Iron Workers Health Fund of Eastern Michigan, the Iron Workers Local No. 25 Vacation Pay Fund, and the Iron Workers Apprenticeship Fund of Eastern Michigan (collectively, the Related Funds), none of which is a party in interest with respect to the Plan, according to the applicants. Three of the Trustees—James Horvath, Norman Wood, and Harold Cooper—are also officers of both the Union and its wholly owned, nonprofit corporation, the Bridge, Structural and Ornamental Iron Workers, Local 25, Labor Temple (the

Labor Temple), which was established in 1942 to hold title to real estate for the benefit of the Union.

2. The Trustees have appointed and authorized Mr. M.E. Woodbeck to act as independent fiduciary and Special Trustee to negotiate and oversee the proposed transaction. In this capacity, Mr. Woodbeck will act as the sole representative of the Plan. Mr. Woodbeck is also a Management Trustee, appointed by the signatory employer associations to the collective bargaining agreement, and chairman of the board of trustees for the Plan and for each of the Related Funds. The applicants represent that Mr. Woodbeck's tenure in these positions is in no way controlled or affected by the Union or its officers. Mr. Woodbeck represents that he has no relatonship whatsoever with the officers, agents, or representatives of the Union and that he has no business dealings, debt relationships, or family relationship with the Union or its principals. He states that he has been associated as a Management Trustee with funds subject to the Act for more than ten years and that he understands and acknowledges his duties, responsibilities, and liabilities under the Act in acting as a fiduciary with respect to the Plan. He agrees to monitor the proposed purchase and to take any appropriate actions to safeguard the interests of the Plan.

3. On or about May 8, 1986, the Union purchased approximately 5.97 acres of real estate located in a commercial industrial park in the City of Novi, County of Oakland, Michigan (the Union Property). The Union Property was purchased from Sullivan/Thorpe Investments, a Michigan co-partnership, and the total purchase price of the Union Property was $250,000.00. The applicants state that Sullivan/Thorpe Investments is not a party in interest with respect to the Plan and has no relationship to the Union, the Plan, or any of the Related Funds. The Union Property is held by the Labor Temple for the Union, which plans to construct a union hall on the Union Property.

4. The Plan wishes to purchase approximately .85 acres of land comprising part of the Union Property to build a free-standing benefit fund administrative office building which will be occupied by the Plan and the Related Funds and which will be adjacent to the union hall.[4]

5. The land which the Plan wishes to purchase (the Land) is vacant industrial-zoned land, .85 acres or 37,026 square feet in size, located on Trans X Drive, approximately ½ mile south of Grand River Avenue and 1½ miles south and east of Novi Road, in Novi, Michigan. Mr. Edward J. McDonnell, of the Edward J. McDonnell Appraisal Company, has appraised the fair market value of the land as $63,000.00 as of July 10, 1986. Mr. McDonnell, who has over 16 years experience as an independent fee appraiser and over 31 years of combined real-estate and appraisal experience, certifies that he has no personal interest or bias with respect to the Land or the parties involved. The applicants represent that Mr. McDonnell has no past relationship with any of the parties to the proposed transaction, has never performed appraisal services for the Union, and has never performed such services or been involved in real-estate transactions with any of the Management or Union Trustees. Mr. McDonnell states that although the highest and best use of the land is light industrial development, its location in an industrial zoned area is not unreasonable in view of its proposed use for an office structure.

6. The purchase price paid by the Union for the Union Property in May of 1986 amounted to $41,876.05 per acre. The Union has agreed to sell the Land to the Plan at the same price per acre, resulting in a cost of $35,595.00 to the Plan for the Land. The proposed purchase will be wholly paid in cash and will include prorated taxes and other minimal costs incurred to close properly and to have all the necessary documents recorded to protect the interests of the respective parties. The Plan will pay no real-estate commissions in connection with the proposed purchase. The proposed purchase price represents approximately 57% of the Land's fair market value as appraised by Mr. McDonnell (see preceding paragraph) and will not exceed the Land's fair market value as of the date the purchase is consummated, according to the applicants.

7. The Plan and the Union have entered into a purchase agreement setting forth the terms and conditions of the proposed purchase, which has been made contingent upon (a) receiving an administrative exemption covering the proposed purchase and (b) receiving a favorable analysis of the proposed purchase as it relates to the Plan's liquidity, diversity, and total overall management of its assets. The applicants state that no portion of the proposed purchase price has yet been paid to the Union. The Plan has also hired an architect to provide the Plan with a building concept and estimated or projected building cost to erect the administrative office building. The architect, Lee Mamola & Associates, of Novi, Michigan, is the same architect employed by the Union for the design and construction management of the proposed union hall on the Union Property. After the proposed purchase is consummated, the Plan will hire contractors to erect the proposed one-story administrative office building.[5]

8. The financial analysis referred to in the preceding paragraph was performed by the Plan's auditor, Ernst & Whinney, which has no relationship to the Union, whose financial statements are prepared by the accounting firm of Berkey, Laws & Berkey, of Harper Woods, Michigan. Ernst & Whinney's analysis, dated September 30, 1986 (the Analysis) covers a financial analysis of the fair market value of the Land, the impact of the proposed purchase on the Plan's liquidity, a comparative analysis of continuing to lease as opposed to constructing administrative offices, and the effect of the proposed purchase on certain requirements of the Act. The Analysis concludes that the proposed purchase price is indeed a fair price for the Land as it is well below the Land's appraised fair market value. The Analysis also determines that the proposed purchase and construction of the administrative office building will not jeopardize either the Plan's ability to pay benefits to participants and beneficiaries or the Plan's short-term cash requirements. In analyzing the lease versus buy alternative, the Analysis indicates that the proposed purchase and building construction would yield a 7.36% rate of return to the Plan, exceeding the Plan's target rate of 7%. Finally, the Analysis shows that 5.31% of the Plan's net assets will be invested in real property if the proposed purchase is made. The Plan's current real-estate holdings, constituting 4.97% of its net assets, are in the form of monies desposited in the National Bank of Washington's Multi-Employer

[4] The Department notes that the sharing of office space by the Plan and the Related Funds would be prohbited under section 406(b)(2) of the Act if at the time of such sharing any of the trustees of the Plan were also the trustees of the Related Funds. This proposed exemption does not cover such sharing. Further, the Department expresses no opinion herein as to the application of Prohibited Transaction Exemption 77-10, 42 FR 33918 (July 1, 1977) to such sharing or as to the application of section 404(a) of the Act to the proposed construction of the administrative office building.

[5] The proposed exemption does not cover the hiring of or the provision of services by either the architect of the construction contractors. Further, the Department expresses no opinion herein as to the application of section 406(b)(2) of the Act to such hiring or the provision of such services.

Property Trust, a pooled real-estate equity fund.

9. Mr. Woodbeck has determined that in light of the independent appraisal of the Land (see 5, above) and of the favorable analysis by the Plan's auditor of the proposed purchase (see 8, above), the proposed purchse is a prudent investment for the Plan and will ultimately inure to the benefit of the Plan participants and beneficiaries. He states that it is clear from the independent appraisal of the Land that the Plan will realize an immediate profit on its investment in the Land in light of the reasonable purchase price negotiated for the Land. In addition, the proposed site of the Plan administrative offices is on valuable commercial real estate in the City of Novi, Michigan, which is a rapidly growing commercial and residential community in Oakland County, Michigan. Mr. Woodbeck explains that the proposed purchase will ultimately enable the Plan to construct administrative offices adjacent to the union hall to serve better the needs of the Plan participants and beneficiaries relating to benefit and claim processing and handling.

Mr. Woodbeck asserts that the proposed purchase will be administratively feasible because the transaction will be a cash purchase and will involve a proration of taxes without the necessity of paying real-estate commissions and because he will act as the Plan's sole representative, thereby avoiding any conflict of interest with the Union in the transaction. He explains that the proposed purchase will benefit Plan participants and beneficiaries both from an investment standpoint, in view of the financial gain the Plan will realize upon the purchase, and from an administrative standpoint, in that the purchase will afford participants and beneficiaries convenient access to the administrative offices of the Plan and all the Related Funds. Finally, Mr. Woodbeck has determined that the terms and conditions of the proposed purchase are similar to the terms and conditions of similar transactions between unrelated parties. This determination is based upon his years of experience in the construction industry and upon his experience in running and managing a major corporation which has in the past been involved in similar land purchase transactions.

10. In summary, the applicants represent that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed purchase price (which equals the same price per acre paid by the Union to acquire the Union Property, which includes the Land) will not exceed the Land's fair market value as of the date the purchase is consummated; (b) the fair market value of the Land has been determined by a qualified independent appraiser and greatly exceeds the proposed purchase price; (c) the Plan's auditor, which is unrelated to the Union, has analyzed the proposed purchase and determined that it will involve a very small percentage of the Plan's assets, it will not jeopardize either the Plan's ability to pay benefits to participants and beneficiaries or the Plan's short-term cash requirements, and that it will be financially advantageous to the Plan to purchase the Land and construct an administrative office building thereon; (d) Mr. M.A. Woodbeck, who is unrelated to the Union (the party in interest in the proposed transaction) and who has experienced both with similar land purchase transactions in his business career and also with the Art's fiduciary requirements in his past service with funds subject to the Act, has been appointed Special Trustee regarding the proposed purchase; (e) Mr. Woodbeck has determined that the proposed purchase would be a prudent investment of Plan assets and would indure to the benefit of Plan participants and beneficiaries, both financially and administratively, for the reasons stated in 9, above; and (f) Mr. Woodbeck will be the sole representative of the Plan with respect to the proposed purchase, which he will monitor, taking any appropriate action to safeguard the Plan's interests.

For Further Information Contact: Mrs. Mirian Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of June, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-12871 Filed 6-4-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-49]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

AGENCY: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Large Space Structures.

DATE AND TIME: June 25, 1987, 8:30 a.m. to 4:30 p.m.; June 26, 1987, 8:30 a.m. to 1 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 10B, Room 647, 600 Independence Avenue, SW., Washington, DC 20546.

FURTHER INFORMATION CONTACT: Mr. Charles Blankenship, Langley Research Center, National Aeronautics and Space Administration, Hampton, VA 23665, 804/865-2042.

SUPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc subcommittees are formed to address specific topics. The Ad Hoc Subcommittee on Large Space Structures, chaired by Dr. John Hedgepeth, is comprised of six members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the subcommittee members and other participants).

Type of Meeting: Open.

Agenda

June 25, 1987

8:30 a.m.—Briefing on Precision Reflector Technology.

1 p.m.—Briefing on Controls-Structures Interaction.

4:30 p.m.—Adjourn.

June 26, 1987

8:30 a.m.—Preparation of Report.

1 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

May 28, 1987.

[FR Doc. 87-12793 Filed 6-4-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities; Meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506:

FOR FURTHER INFORMATION: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506: telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated January 15, 1987, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. Date: June 22-23, 1987
Time: 8:30 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review Challenge Grants applications for museums and historical organizations, submitted to the Office of Challenging Grants, for projects beginning after December 1, 1987.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 87-12817 Filed 6-4-87; 8:45 am]

BILLING CODE 7536-01-M

Theater Advisory Panel (National Resources Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (National Resources Section) to the National Council on the Arts will be held on June 24, 1987, from 9:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 24, 1987 from 4:00 p.m.-5:30 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on June 24, 1987 from 9:00 a.m.-4:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

June 20, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-12819 Filed 6-4-87; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel (New Genres Section); Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (New Genres Section) to the National Council on the Arts will be held on June 22-25, 1987, from 9:00 a.m.-8:00 p.m. and June 26, 1987 from 9:00 a.m.-6:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9) (B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 2, 1987.

[FR Doc. 87-12820 Filed 6-4-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

National Science Foundation Advisory Council; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: National Science Foundation Advisory Council.

Date & Time: June 22, 1987, 9 am–5 pm.

Place: National Science Foundation, Room 543.

Type of Meeting: Open.

Contact Person: Dr. Morris L. Aizenman, Executive Secretary, National Science Foundation Advisory Council, National Science Foundation, 1800 G Street, NW, Room 615, Washington, DC 20550 (202/357–7643).

Summary Minutes: May be obtained from the contact person at the address.

Agenda

9 am–12 Noon: NSF Strategy.

1 pm–4 pm: Economic Competitiveness and Public Support for Science.

4 pm–5 pm: Discussion and Conclusions.

M. Rebecca Winkler,

Committee Management Officer.

June 1, 1987.

[FR Doc. 87–12792 Filed 6–4–87; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Committee on Equal Opportunities in Science and Engineering

The National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering.

Dates: Monday, Tuesday, and Wednesday, June 22, 23, and 24, 1987.

Time: Monday: 9:00 a.m.–5:00 p.m.; Tuesday: 9:00 a.m.–5:00 p.m.; Wednesday: 9:00 a.m.–12:00 p.m.

Place: Room 540.

Type of Meeting: Open.

Contact Person: Mary M. Kohlerman, Executive Secretary, National Science Foundation, Room 420, 1800 G Street, NW., Washington, DC 20550, Telephone: 202/357–7066.

Purpose of Committee: Responsible for all Committee matters relating to the participation in and opportunities for education, training, and research for minorities, women and disabled persons in science and engineering,n and the impact of science and engineering on them.

Minutes: May be obtained from the contact person noted above.

Agenda: The Committee will consider mechanisms top increase participation of minorities, women and disabled persons in Foundation programs, research projects, and all NSF advisory committees. It will also advise the Director of how to modify NSF policies and procedures relating to minority, women, and disabled persons as well as internal distribution of funds to implement this program.

M. Rebecca Winkler,

Committee Management Officer.

June 1, 1987.

[FR Doc. 87–12791 Filed 6–4–87; 8:45 a.m.]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (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).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: NRC Form 313—Application for Material License

3. The form number if applicable: NRC Form 313.

4. How often the collection is required: New applications may be submitted at any time. Renewals are submitted every five years.

5. Who will be required or asked to report: Persons desiring a specific license to possess, use, or distribute byproduct or source material.

6. An estimate of the number of responses: 5,600.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 7.5 hours per response.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: The information submitted on NRC Form 313 is reviewed by the NRC staff to determine whether the applicant is qualified by training and experience and has equipment, facilities, and procedures which are adequate to protect the health and safety of the public and minimize danger to life or property.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Richard D. Otis, Jr., (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 28 day of May 1987.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 87–12879 Filed 6–4–87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–321]

Georgia Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the licensee) for the Edwin I. Hatch Nuclear Plant, Unit 1, located in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action: The amendment would revise the Technical Specifications for Hatch, Unit 1, to: (1) Delete certain valves from the Table 3.7–4 that lists containment isolation valves subject to leak rate testing pursuant to the requirements of Appendix J to 10 CFR Part 50 (i.e., remove the Technical Specification requirements for leak testing these valves), (2) correct erroneous information in Table 3.7–4, and (3) change the pressure at which the main steam isolation valves are required to be leak tested.

These revisions to the Technical Specifications would be made in response to the licensee's application for amendment dated March 4, 1987, as revised April 21, 1987.

The Need for the Proposed Action: Paragraph III.C.2 of Appendix J to 10 CFR 50 requires that containment isolation valves be pressurized with air or nitrogen for leak testing purposes unless such valves are sealed with fluid from a seal system. Table 3.7–4 of the Technical Specifications for Hatch Unit 1 lists the valves that must be pressure tested for leakage. The valves that would be deleted from the table by this amendment are valves that would remain covered by water following a LOCA. These valves, thus, are sealed by a fluid in a seal system and are not required to be pressure tested with air

or nitrogen and should not be listed in the Table 3.7–4. The amendment also would incorporate revisions to the table which correct erroneous nomenclature and valve/penetration relationships. The amendment also would correct the test pressure for the MSIVs to specify a pressure of 28 psig instead of ½ Pa. The original staff evaluation (October 30, 1986) used a test pressure of 28 psig, but the term ½ Pa was erroneously entered in the Technical Specification.

Environmental Impacts of the Proposed Action

A. Occupational Radiological Exposure

Correction of the test pressure for the MSIVs and correction of the nomenclature and valve/penetration relationships would have no impact on occupational exposure. Deletion of the valves required to be pressure tested would have a minor impact on occupational exposure by reducing the number of valves needing testing. The change, if any, would be a decrease in occupational exposure.

B. Radiological Impacts During Plant Operation and Accidents

The amendments would have no impact on radiological release during normal plant operation or under accident conditions. The valves to be deleted from the Table 3.7–4 do not constitute leakage pathways since they are sealed by water. The staff analysis for leakage through the MSIVs was originally performed (SER dated October 30, 1986) at a test pressure of 28 psig. The amendment to the Technical Specification would merely correct an erroneous entry of ½ Pa to the 28 psig used in the staff analysis.

C. Non-Radiological Impacts

The proposed amendments involve systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Actions: Since we have concluded that no adverse environmental impacts are associated with the proposed action, any alternatives would have equal or greater environmental impact and need not be selected.

The principal alternative would be to deny the amendments. This, in effect, would require continuation of unnecessary tests of those valves proposed to be deleted from Table 3.7–4, with an attendant increased exposure potential to plant workers. It would also perpetuate erroneous nomenclature and valve/penetration relationships in the Technical Specifications and a reference to an incorrect test pressure for the MSIVs.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated October 1972 related to this facility.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's requests of March 4, 1987, and April 21, 1987, and did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated March 4, 1987 as supplemented by request dated April 21, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Bethesda, Maryland, this 29th day of May 1987.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, Project Directorate II–3, Division of Reactor Projects—I/II.

[FR Doc. 87–12880 Filed 6–4–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Occupational and Environmental Protection Systems

The ACRS Subcommittee on Occupational and Environmental Protection Systems will hold a meeting on June 22 and 23, 1987, Room 1046, 1717 H Street, NW., Washington, DC

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, June 22, 1987—8:30 A.M. until the conclusion of business

Monday, June 23, 1987—8:30 A.M. until the conclusion of business

The Subcommittee will discuss issues concerning emergency plans, control room habitability update, INPO's briefing on nuclear power plant occupational exposure, and other matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exhange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested person regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to repesent oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634–1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact one of the above named individuals one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 1, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–12890 Filed 6–4–87; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the the staff in evaluating specific problems or postulated accidents, and data needed by the staff

in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, EE 404–4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Environmental Qualification of Connection Assemblies for Nuclear Power Plants" and is intended for Division 1, "Power Reactors." It is being developed to describe a method acceptable to the NRC staff for environmental qualification of quick-disconnect connection assemblies for services in nuclear power plants. The guide endorses IEEE Std 572–1985, "Qualification of Class 1E Connection Assemblies for Nuclear Power Generating Stations."

This draft guide, its draft value/impact statement, and the associated regulatory analysis are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an offical NRC staff position.

Public comments are being solicited on all the drafts, the guide (including and implementation schedule), the draft value/impact statement, and the regulatory analysis. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Divison of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by August 7, 1987.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are ecouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on a automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 29th day of May 1987.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Office of Nuclear Regulatory Research.

[FR Doc. 87–12881 Filed 6–4–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–412]

Duquesne Light Co. et al.; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF–64 to Duquesne Light Company, Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison Company (the licensees) which authorizes operation of the Beaver Valley Power Station, Unit 2, at reactor core power levels not in excess of 2652 megawatts thermal in accordance with the provisions of the license, the Technical Specifications, and the Environmental Protection Plan with a condition limiting operation to five percent of reactor core power (132.6 megawatts thermal).

Beaver Valley Power Station, Unit 2, is a pressurized water reactor located on the southern shore of the Ohio River in Beaver County, Pennsylvania, approximately 22 miles northwest of Pittsburgh and 5 miles east of East Liverpool, Ohio.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on June 1, 1983 (48 FR 24488). The power level authorized by this license and the conditions contained therein are encompassed by that prior notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on March 27, 1987 (52 FR 9979) and May 11, 1987 (52 FR 17651).

For further details with respect to this action, see (1) Facility Operating License No. NPF–64; (2) the Commission's Safety Evaluation Report, dated October 1985 (NUREG–1057), and Supplements 1 through 5; (3) the Final Safety Analysis Report and Amendments thereto; (4) the Environmental Report and supplements thereto; and (5) the Final Environmental Statement, dated November 1985.

These items are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of the Facility Operating License NPF–64 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II. Copies of the Safety Evaluation Report and its supplements (NUREG–1057) and the Final Environmental Statement (NUREG–1094) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 or by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. All orders should clearly identify the NRC publication number and the requestor's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Bethesda, Maryland, this 28th day of May 1987.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 87–12882 Filed 6–4–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–09491 License No. 21–15638–01 EA 87–21]

Mercy Hospital; Order Imposing Civil Monetary Penalty

I

Mercy Hospital (the licensee) 2601 Electric Avenue, Port Huron, MI 48060.

is the holder of Byproduct Material License No. 21–15638–01 initially issued by the Nuclear Regulatory Commission (the Commission/NRC) on June 7, 1973. The license was renewed in its entirety on November 23, 1983 and will expire on November 30, 1988. The license authorizes the licensee to use byproduct material for medical diagnosis and therapy.

II

A routine inspection of the licensee's activities was conducted on December 18, and 30, 1986. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter date March 9, 1987. The Notice stated the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated April 6, 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Two Thousand Five Hundred Dollars ($2,500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referred in Section II above and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland this 1st day of June 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluations and Conclusions

On March 9, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Mercy Hospital for violations identified during a routine NRC inspection. Mercy Hospital responded to the Notice on April 6, 1987. During the inspection, three violations with a total of 11 examples were identified which demonstrated a lack of effective management control and oversight of licensed activities. In its response, the licensee admits the violations occurred as described in the Notice but protests the imposition of a civil penalty because of its belief that it took immediate and substantial corrective action. Provided below are: (1) A summary of the violations, (2) a summary of the licensee's response regarding each violation, (3) the NRC evaluation of the licensee's response, and (4) the NRC conclusion.

Summary of Violations

Nine examples of violations of License Condition No. 17 were identified during the inspection. This Condition requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in the application received June 6, 1983 and the letter dated October 20, 1983. Contrary to these requirements the licensee had failed to: (1) Perform bioassays on personnel handling more than 100 millicuries of iodine-131 in unsealed form; (2) perform accuracy, constancy, and linearity tests of a dose calibrator as required; (3) provide film or TLD badges to nursing personnel caring for brachytherapy patients, (4) measure airflow rates in rooms used for storage and use of xenon-133 on a semiannual basis over a three year period, (5) provide annual instructions in the items specified in 10 CFR 19.12 to ancillary personnel; (6) perform wipe tests with instruments that were capable of detecting contamination levels as low as 100 dpm; (7) perform measurements of packages containing radioactive material; (8) hold quarterly Radiation Safety Committee meetings, and (9) perform annual calibration of survey meters. In addition, the licensee did not: (1) assess contamination levels on the external surfaces of packages containing molybdenum-99/technetium-99m that were offered for shipment, and (2) maintain records of surveys made in unrestricted areas around rooms of patients being treated with iodine-131 for thyroid carcinoma or made prior to disposal of linens and utensils used by these patients.

Summary of Licensee's Response

In its April 6, 1987 response, the licensee described corrective actions that had been taken and will be taken in the future. These actions included: (1) Use of liquid iodine-131 has been discountinued; (2) required tests are now being performed on the dose calibrator, (3) film or TLD badges have been obtained for all nursing personnel; (4) airflow rates were measured in rooms used for storage and use of xenon-133 and will be performed in the future at six month intervals; (5) ancillary personnel have been instructed regarding their work movements around restricted radiation areas and a program has been initiated for new employees to be informed about restricted areas; (6) the wipe test procedure has been modified to use a thin window GM survey meter that will detect 0.1 millirogentgens per hour or a gamma camera when appropriate; (7) required measurements are now being made on packages containing radioactive materials, (8) Radiation Safety Committee meetings are now being conducted as required, and (9) survey meters are being calibrated annually. In addition, (1) packages containing molybednum-99/technetium-99m are now being surveyed on external surfaces, and (2) surveys will be made in rooms of patients being treated with

therapy does of iodine-131 and of the linens and utensils used by these patients. The licensee believed the proposed civil penalty should be mitigated in its entirety based on these corrective actions.

NRC Evaluation

In its response, the licensee protests the imposition of a civil penalty because it had taken immediate and substantial corrective action. The NRC staff has concluded that the violations occurred as stated in the March 9, 1987 Notice and that the licensee's corrective actions were not unusually prompt and extensive. For mitigation to be appropriate, corrective actions must be unusually prompt and extensive. The actions taken by the licensee were only what was necessary to bring its licensed program into compliance with NRC regulatory requirements. The licensee's corrective actions were not unusually prompt since it was noted during the enforcement conference that approximately three weeks after the NRC inspection was completed many of the licensee's corrective actions were still under consideration and had not been presented to the Radiation Safety Committee for review and approval.

NRC Conclusion

Therefore, since the licensee has not provided a sufficient basis for mitigation or remission of the proposed civil penalty, the NRC staff has concluded that a civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 87-12883 Filed 6-4-87; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold a public meeting on June 11 and 12, 1987 in the Congressional Room, Quality Inn, 415 New Jersey Avenue, NW. The meetings will begin at 9:30 AM on June 11 and 8:00 AM on June 12. The Commission was established by Section 9305 of Public Law 99-272.

ADDRESSES: The Commission's office is located in Suite 510, 2120 L Street, NW., Washington, DC 20037. Its telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will cover a number of issues. The morning of June 11 will be devoted to discussion of interim policy changes under consideration for inclusion in the budget reconciliation process. The afternoon will be devoted to issues related to payment options for radiologists, anesthesiologists and pathologists. The issues to be covered on June 12 include the use of consensus panels, issues related to the MAAC and the participating physician program, assistance at surgery and plans for the Commission's next report to Congress due in March 1988.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 87-12886 Filed 6-4-87; 8:45 am]

BILLING CODE 6820-SE-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25-XX; Transport Airplane Crashworthiness Handbook

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25-XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) concerning acceptable certification methods for demonstrating compliance with the crashworthiness requirements of the Federal Aviation Regulations (FAR). This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holdiays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 431-2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Comments should identify AC 25-XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

The proposed AC provides guidance for demonstrating compliance with the crashworthiness requirements Part 25 of the FAR that apply to airplane cabin interiors. There are three principal areas of concern: (1) Protecting airplane occupants from crash impact; (2) Minimizing development and severity of crash fires; and (3) Providing for rapid evacuation of airplane occupants. The AC consolidates in one document relevant policy and guidance materials previously issued in letters and orders.

Issued in Seattle, Washington, on May 14, 1987.

Darrell M. Pederson,

Acting Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 87-12790 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 2, 1987.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission (s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0205
Form Number: 5452
Type of Review: Resubmission
Title: Corporate Report of Nontaxable Dividends

Description: Form 5452 is used by corporations to report their nontaxable distributions as required by Internal Revenue Code section 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.
Respondents: Farms, Businesses
Estimated Burden: 1,190 hours
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–12873 Filed 6–4–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitteed to OMB for Review

Date: June 2, 1987.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB for review and clearance under the Papework Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0055
Form Number: 1001
Type of Review: Revision
Title: Ownership, Exemption, or Reduced Rate Certificate
Description: This form is used by owners of certain types of income to report to a withholding agent both the ownership and any reduced or exempt tax rate under tax conventions or treaties, and if appropriate, to claim a release or tax withheld at source. The withholding agent uses the information to determine the appropriate without withholding.
Respondents: Individuals, Businesses
Estimated Burden: 78,300 hours
Clearance Officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, Office of Managment and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–12874 Filed 6–4–87; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF TREASURY

Internal Revenue Service

Condensed Hardcopy To Automate Manual Processing System (Project Champs)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service is planning to conduct a pilot program during the 1988 filing season, for individual income tax returns (Forms 1040, 1040A and 1040EZ) computer printed in a specified format by paid preparers. Participants must have secured prior authorization from the Service. Tax practitioners, automated preparers, software companies, service bureaus and other interested parties can obtain copies of the preliminary specifications, including forms, by writing or calling the Service. Comments on the program are welcome.

DATE: Expressions of interest are requested by June 30, 1987. Applications to participate in the pilot must be received by September 1, 1987.

ADDRESS: Internal Revenue Service, 1111 Constitution Avenue NW., PM:PFR:R, Washington, DC, 20224, Attn: Erik Puskar.

FOR FURTHER INFORMATION CONTACT: Technology Research Office at (202) 376–0388 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Millions of computer-prepared returns are received by the Internal Revenue Service each year, and the Service is exploring methods to utilize the flexibility provided by computer preparation to achieve efficiencies of processing. The Service has recently completed a successful pilot test of electronic filing. However, some computer preparers may be unable to file in such a manner.

Hence, the Service is planning a test of a new scannable condensed "answer sheet" return, the Form 1040–OCR, which will contain only applicable entries and associated line numbers. All taxpayer-furnished information required on current forms will be required on the 1040–OCR; however, IRS pre-printed text (line entry descriptions, instructions, logos, etc.) will be omitted and only the applicable line numbers and entries will be printed. To provide further compression, the requirement that schedules and forms be on separate pages will be eliminated. Most tax data will be presented in columnar fashion. In this way, almost all tax data will fit onto one page. A separate page containing a jurat and signatures will also be required. Direct Deposit of refunds will be available to filers of these returns. An example of such a return is provided with this announcement.

When received by the Service, 1040–OCR returns will be optically read and converted to magnetic tape. This approach produces savings to the IRS. Taxpayers and preparers will also benefit in terms of reduced costs of return preparation and reduced paper and printing costs.

The returns will be required to be printed on regular white bond paper. Forms W–2 and other supporting materials will be attached to the signature page.

Various means are available for preparers to provide taxpayers with explanations of the data entries on answer sheet returns (for example, blank returns or tax form instructions might be used). If deemed desirable, a tailored explanation might also be provided with the answer sheet. At their option, preparers might furnish clients with copies of their returns which more closely resemble the forms provided in tax packages.

Requests from prospective filers should include an estimate of volumes of individual returns expected to be filed in 1988.

Dated: May 22, 1987.

Guerry G. Notte,

Deputy Assistant Commissioner, (Planning, Finance and Research).

BILLING CODE 4830–01–M

JOE Q. & MARY Q. TAXPAYER 123-45-6789 PAGE 1 of X

Direct Deposit of Refund

---

1. Financial institution: ANYBANK, ANYTOWN, US
2. Routing transit number: 091901480
3. Depositor account number: 9800242064928
4. Type of depositor account: C
5. Source code: 1
6. Owner of depositor account: 1

Adjusted Gross 17227 Total Tax 1249 Refund 503

Under penalties of perjury, I declare that I have examined this return and accompanying statements and the account information shown above for direct deposit of refund, and to the best of my knowledge and belief, they are true, correct, and complete. If applicable, I consent that my refund be directly deposited as designated. If joint return and the refund is to be directly deposited, this is an irrevocable appointment of the other spouse as an agent to receive the refund. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

_____/_____
Your signature Date

_____/_____
Spouse's signature (If filing jointly BOTH must sign) Date

Preparer Signature _____ Date _____ Self employed _____
SSN: 789012345 EIN: 11 2233445
Firm name: VILLAGE TAX SERVICE
Address: 244 VILLAGE DR. ANYTOWN, US 11111

1111

1987 U.S. INDIVIDUAL INCOME TAX RETURN 1040-OCR PAGE 2 OF X

JOE Q. & MARY Q. TAXPAYER
123 MAIN ST.
P.O. BOX 2001
ANYTOWN, US 11111

P ZZ 123-45-6789 SALESMAN
S XX 987-65-4321 RECEPT

			FORM 1040				
2	MARRIED JT	23	18039	35	17221	45	1249
6A	SELF	30	812	36	3120	49	1249
6B	SPOUSE	31	812	37	14101	55	1249
6B	2	32	17227	38	TAX TABLE	56	1752
6C	JON	33	17227	38	1407	63	1752
6C	1	34B	12	40	1407	64	503
6F	3	34D	12	41	158	65	503
7	18039	34E	6	44	158	99	118021
			SCHED.W				
1A	9917	3A	9917	5A	9917	6	8122
1B	8122	3B	8122	5B	8122	8	812
99	63051						
			FORM 2441				
1	1	3	608	4C	8122	7	158
2A	NO	4A	9917	5	608	9	158
2B	NO	4B	8122	6	26	99	27720
			FORM W-2				
P	EIN:998877665	9917	1202	699	N	99	998889483
S	EIN:887766554	550	8122	573	N	99	887775799
			PREPARER INFORMATION				
THOMAS M. BRADY				SSN:543210987		SE	
VILLAGE TAX SERVICE				EIN:112233445			
ANYTOWN, U.S. 11111				SAN:0102			

DIRECT DEPOSIT: 091901480 9800242064928 C 1 1
PAPER DOCUMENT INDICATOR: 000100000 99 9800150263450

[FR Doc. 87-12842 Filed 6-4-87; 8:45 am]
BILLING CODE 4830-01-C

1988 Electronic/Magnetic Media Filing Test; Form 1065, Form 1041 and Form 1120S Returns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Electronic/magnetic media filing test.

SUMMARY: A growing number of tax preparation firms use computers to prepare tax returns. To take advantage of this trend, the Internal Revenue Service (IRS) is planning to continue in 1988 the pilot test begun in 1987, in which qualified filers were given the opportunity to file Forms 1065 and 1041 via electronic transmission or on magnetic media. In addition, the IRS plans to extend the electronic and magnetic media filing capability to Forms 1120S for the first time in 1988 for 1987 tax returns. These returns will be filed in the IRS Service Center in Andover, MA beginning in January 1988.

DATE: Expressions of interest are requested by July 17, 1987. Applications to participate in the pilot must be received by September 1, 1987.

ADDRESS: Assistant Commissioner (Planning, Finance and Research), Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224 (Attn: Technology Research Office). Telephone 202–376–0388 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Electronic or magnetic media filing eliminates most of the manual processes required to handle paper returns, thus reducing the time required to complete processing the returns, and increasing the quality of the final product. The IRS is currently preparing the draft version of a Revenue Procedure which will be available by late June 1987 and will communicate the requirements for participation in this test. Generally, the Revenue Procedure will call for the transmission, either electronically or via magnetic media, of all the data currently supplied on the paper return, including the appropriate schedules and attachments. In addition, filers will be required to transmit to the IRS, subsequent to the transmission of an electronic or magnetic media return, a separate from with certain key tax information from the return and the signatures of both the preparer and taxpayer, as well as the various supporting documents which normally accompany a return.

For 1988 the program will cover:

The Form 1065 Return with Schedules D and K–1, and Forms 3468, 4562, 4797, and 8308. New for 1988 will be the ability to file Fiscal Year and Amended returns.

The Form 1041 Return with Schedules D and K–1, and Forms 6251, W–2 and W–2P. New for 1988 will be the ability to file Schedules C and E, Forms 3468, 4562, 4797 and 4952. Fiscal Year and Amended returns will also be accepted.

The Form 1120S Return with Schedules D and K–1 and Forms 3468, 4562, 4797 and 4952 as well as Fiscal Year and Amended returns.

Guerry G. Notte,

Deputy Assistant Commissioner, (Planning, Finance and Research).

[FR Doc. 87–12843 Filed 6–4–87; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

The United States Advisory Commission on Public Diplomacy will conduct a meeting in Room 600, 301 4th Street, SW., on June 10 from 11:00 am to 12:30 pm.

The meeting will be closed to the public because it will involve a discussion of classified information relating to VOA modernization. (5 U.S.C. 552b(c)(1).)

Please call Gloria Kalamets, (202) 485–2468 for further information.

Dated: May 27, 1987.

Charles Z. Wick,

Director.

[FR Doc. 87–12773 Filed 6–4–87; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms 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, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: June 1, 1987.

By direction of the Administrator:

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits.
2. Self-Evaluation Supplement to Equal Opportunity Compliance Review Report.
3. VA Form 27–8734b.
4. This information is necessary to determine compliance with the Age Discrimination Act of 1975 when proprietary post-secondary schools at less than college level employ 15 or more persons and have age distinctions not required by law in their programs or activities.
5. Annually.
6. State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; and Small businesses or organizations.
7. 14 responses.
8. 7 hours.
9. Not applicable.

[FR Doc. 87–12796 Filed 6–4–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 108
Friday, June 5, 1987

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 DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:05 a.m. on Tuesday, June 2, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks: Names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

In calling the meeting, the Board determined, on motion of Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 3, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-12923 Filed 6-3-87; 11:19 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 9, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities and to establish one branch:

First Bank, Troy, North Carolina, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Vass, North Carolina, office of First Security Savigns and Loan Association, Inc., Aberdeen, North Carolina, a non-FDIC-insured institution, and for consent to establish the Vass, North Carolina, office of First Security Savings and Loan Association, Inc. as a branch of First Bank.

Application for consent to merge and to establish one branch:

First Bank, Troy, North Carolina, an insured State nonmember bank, for consent to merge, under its charter and title, with The Bank of Candor, Candor, North Carolina, and for consent to establish the sole office of The Bank of Candor as a branch of the resultant bank.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Divison of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum regarding realignment of the Division of Bank Supervision's regional offices.

Memorandum re: Proposed amendment to the FDIC Statement of Policy regarding Applications for Federal Deposit Insurance by Operating Non-FDIC-Insured Institutions, which amendment would resolve the question of whether full scope audits should be conducted by certified accounting firms or by other accounting firms doing business in the state.

Memorandum re: Proposed Statement of Policy for Disclosure of Financial and Other Information by Insured State Nonmember Banks, which policy statement would recommend that insured State nonmember banks make available to the public upon request financial data and management discussion and analysis of significant events covering the previous two calendar years as well as future plans.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 — 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: June 2, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-12924 Filed 6-3-87; 11:19 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 9, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Request for relief from reimbursement under the Truth in Lending Simplification and Reform Act:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: June 2, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–12925 Field 6–3–87; 11:19 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, June 10, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendment to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) implementing the Bank Secrecy Act compliance provision of the Anti-Drug Abuse Act of 1986. (Proposed earlier for public comment; Docket No. R–0595)

Discussion Agenda

2. Proposed Federal Reserve Board 1988 budget guideline.

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTRACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–12915 Filed 6–3–87; 10:51 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, June 10, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. 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: June 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–12916 Filed 6–3–87; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 11:00 a.m., Wednesday, June 10, 1987.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

MATTERS TO BE CONSIDERED:.

Regulation of equity risk investments by insured institutions; direct investments, certain land loans and certain nonresidential construction loans

Regulatory capital requirements of insured institutions

Jeff Sconyers,

Secretary.

[FR Doc. 87–12993 Filed 6–3–87; 3:53 pm]

BILLING CODE 6720–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND PLACE: 9:30 a.m., Wednesday, June 10, 1987.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456, (202) 357–1100.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review NCUA Long Range Plan.
4. Review of Central Liquidity Facility Lending Rate.
5. Insurance Fund Report, including Briefing on Normal Operating Level.
6. Chartering Policy Review.
7. Proposed Guidelines for Compliance with the Bank Bribery Law.

Recess: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Wednesday, June 10, 1987.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Establishment of Board Policy With Regard to Providing Form 5300 Data. Closed pursuant to exemption (8).
3. Board Continuance of Direct Agent Membership in the Central Liquidity Facility for Agent Member. Closed pursuant to exemption (8).
4. Appeal of Decision Denying Insurance Application. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Special Assistance under section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. Review of Delegations of Authority. Closed pursuant to exemption (2).
7. Board Briefings. Closed pursuant to exemption (2), (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Acting Secretary of the Board, Telephone (202) 357—1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 87–12978 Filed 6–3–87; 3:23 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 8, 1987:

A closed meeting will be held on Tuesday, June 9, 1987, at 2:30 p.m. An open meeting will be held on Thursday, June 11, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters many also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 9, 1987, at 2:20 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settelement of injunctive actions.

Access to investigative files by Federal, State, or Self-Regulatory authorities.

To amend injunctive action.

Opinions.

The subject matter of the open meeting scheduled for Thursday, June 11, 1987, at 10:00 a.m., will be:

1. Discussion of whether and how to amend Rule 10b–4 (17 CFR 240.10b–4), the short tendering rule, in light of the second recent decision of the Court of Appeals for the Second Circuit in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Jack Bobker.* For further information, please contact M. Blair Corkran at (202) 272–2853.

2. Consideration of a proposed report resulting from the Commission's study pursuant to section 105 of the Government Securities Act of 1986. That study examines the use of the exemption in section 3(a)(2) of the Securities Act of 1933 for securities guaranteed by banks and the use of insurance policies to guarantee securities. For further information, please contact Joan E. McKown at (202) 272–2433.

3. Consideration of whether to adopt an amendment to Rule 6–07 of Regulation S–X. The amendment would require all registered open-end management investment companies to account for net costs incurred under a Rule 12b–1 plan as expenses. For further information, please contact Robert E. Plaza (202) 272–2107.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin S. Fogarty at (202) 272–3195.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–12991 Filed 6–3–87; 8:45 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 108
Friday, June 5, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, 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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM87-18-000; Order No. 471]

Public Utilities Policies Act: Primary Energy Source for Qualifying Small Power Production Facilities; Interpretation of "Waste Natural Gas"

Correction

In rule document 87-11705 beginning on page 19308 in the issue of Friday, May 22, 1987, make the following correction:

On page 19310, in the third column, the fifth through eighth lines should have read **"Statement of Interpretation Under the Public Utility Regulatory Policies Act of 1978".**

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Eligibility for Underpayment Due a Deceased Beneficiary

Correction

In rule document 87-11677 beginning on page 19135 in the issue of Thursday, May 21, 1987, make the following corrections:

1. On page 19135, in the third column, in the **SUPPLEMENTARY INFORMATION**, in the last line of the second complete paragraph following the quoted CFR text, "decreased" should read "deceased".

2. On the same page, in the same column, in the **SUPPLEMENTARY INFORMATION**, in the third line under **Comments**, "of" should read "on".

§ 404.305 [Corrected]

3. On page 19136, in the first column, in § 404.305, the 11th line of paragraph (b) should read "justice system, you may not become entitled".

BILLING CODE 1505-01-D

federal register

Friday
June 5, 1987

Part II

Environmental Protection Agency

40 CFR Parts 707 and 766

Polyhalogenated Dibenzo-p-Dioxins/ Dibenzofurans; Testing and Reporting Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 707 and 766

[OPTS-83002C; FRL-3212-1]

Polyhalogenated Dibenzo-p-Dioxins/ Dibenzofurans; Testing and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document promulgates regulations under sections 4 and 8 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2603 and 2607 for certain chemicals which may be contaminated with certain chlorinated and brominated dibenzo-p-dioxins (HDDs) and dibenzofurans (HDFs). HHDs and HDFs have been recognized as having potential public health and environmental significance because of their potential for industrial toxic effect at very low doses. The regulations promulgated under this document require analytical testing for certain chemicals for HDD/HDF contamination, submission of existing test data on contamination of these chemicals with HDDs/HDFs, submission of health and safety studies on HDDs/HDFs, and submission of worker allegations of significant adverse reactions to HDDs/HDFs. A summary of the requirements of this rule is set forth under **SUPPLEMENTARY INFORMATION,** below.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on June 19, 1987. This rule shall be effective on July 6, 1987.

FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, DC 20460, Telephone: (202-554-1404).

SUPPLEMENTARY INFORMATION: This rule requires manufacturers and importers of 12 organic chemicals to test their chemicals for the presence of certain chlorinated and brominated dibenzo-p-dioxins and dibenzofurans. This testing will also be required for 20 additional organic chemicals not currently manufactured or imported in the United States if their manufacture or importation should resume.

Manufacturers, importers, and processors of the 12 chemicals must also submit existing test data on contamination of these chemicals with HDDs or HDFs, health and safety studies on HDDs/HDFs, and consumer or worker allegations of significant adverse reactions to HDDs/HDFs; the same information on the 20 additional chemicals is required should manufacture or importation resume.

If either the testing required under this rule, or the existing test data on contamination submitted under this rule show that any of these chemicals contain any HDDs/HDFs in concentrations above the Levels of Quantitation (LOQ) designated in this rule, the manufacturers and/or importers must submit the following information with respect to the chemicals: (1) Production volume, process, use, exposure, and disposal data; (2) unpublished health and safety studies, and (3) records of allegations of significant adverse reactions.

This rule also requires the submission of process and reaction condition data by importers and manufacturers of chemical substances made from any of 29 precursor chemicals to determine whether there is a need for dioxin and furan testing of the chemical substances made from these precursor chemicals.

If testing of a chemical under this rule shows the chemical does not contain HDDs/HDFs, this rule provides for termination of export notification normally required under section 12(b) of TSCA, 15 U.S.C. 2611(b), for a chemical subject to section 4 test rules.

I. Organization of this Final Rule

This is a final rule issued after consideration of comments submitted in response to a proposed rule published in the **Federal Register** of December 19, 1985 (50 FR 51794), an amendment to the proposed rule published in the **Federal Register** of October 23, 1986 (51 FR 37612), and all relevant information submitted to or otherwise obtained by EPA.

The preamble to this final rule begins with the historical background (Unit II), and continues with a short summary of changes from the provisions proposed (Unit III). Unit IV discusses findings and considerations under section 4 of TSCA; Unit V discusses costs of testing and reporting; and Unit VI discusses the availability of testing facilities and personnel to perform the proposed testing. Unit VII discusses EPA's rationale for issuing information gathering rules under section 8 of TSCA. Unit VIII discusses the relationship of this rule to export notification requirements under section 12(b) of TSCA; Unit IX discusses compliance and enforcement; Unit X describes the rulemaking record; and Unit XI lists references used by EPA in preparing this rule. Requirements EPA must meet under other authorities before it may issue a rule are discussed in Unit XII.

II. Background

A. Regulation of HDDs/HDFs

EPA has long recognized the potential public health and environmental significance of 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD). 2,3,7,8-TCDD exhibits delayed biological response in many species and is lethal at exceptionally low doses to aquatic organisms, birds, and some mammals. It has been shown to be carcinogenic, teratogenic, fetotoxic, and acnegenic. In addition, 2,3,7,8-TCDD has been shown to adversely affect the immune response in mammals. EPA also recognizes the potential health significance of a variety of tetra- through hepta-halogenated dibenzo-p-dioxins and dibenzofurans (HDDs and HDFs) that are structurally related to 2,3,7,8-TCDD in that they are chlorinated or brominated at the 2,3,7 and 8 positions on the molecular structure (Refs. 5 and 15). Limited *in vivo* and *in vitro* data support the structure-activity based argument that laterally substituted 2,3,7,8-HDDs/HDFs share qualitative toxicity properties with 2,3,7,8-TCDD. There is also evidence that 2,3,7,8-TCDD, some of the other HDDs/HDFs, and by implication the remainder of the HDDs/HDFs may be hazardous to human health and the environment at low levels. These 2,3,7,8-substituted tetra- through hepta- dibenzo-p-dioxins and dibenzofurans, as well as 2,3,7,8-TCDD, are the subjects of this rulemaking. Hereafter, unless otherwise stated, this document will refer to tetra- through hepta- chlorinated and brominated dioxins and dibenzofurans substituted at the 2,3,7 and 8 positions as a group by using the term "HDDs/HDFs." The 2,3,7,8-HDDs/HDFs have been measured in a number of commercial chemicals (Ref. 43). EPA has reason to believe that they also appear in a number of other commercial chemicals which are structurally similar to those in which HDDs/HDFs have been measured, and are manufactured under conditions favorable to HDD/HDF formation.

EPA's National Dioxin Strategy (Ref. 32), issued in December 1983, offers a comprehensive overview of EPA's past, present, and planned activities in this area. EPA's past regulatory efforts on HDDs/HDFs focused on a number of products and processes that could generate HDDs and HDFs or could otherwise lead to human or environmental exposure to these substances. These activities were noted

in the preamble to the proposed rule under Unit I. Since that time EPA has taken the following additional actions: (1) A final agreement between EPA and manufacturers of wood preserving products containing pentachlorophenol, subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) was reached regarding analysis and maximum permissible limits in pentachlorophenol for HDDs; (2) treatment standards under the Resource Conservation and Recovery Act (RCRA) for dioxin-containing hazardous waste were proposed January 14, 1986 (51 FR 1602), and promulgated November 7, 1986 (51 FR 40572, 40615); (3) cancellation of the dioxin-contaminated herbicides 2,4,5-T and silvex were completed in February 1985; (4) a notice of intent to cancel most non-wood preservative registrations of pentachlorophenol was published on January 21, 1987 (52 FR 2282); (5) a Dioxin Update Committee (Ref. 40) of scientific experts was convened to determine their views in the areas of human health effects, immunotoxicity, bioavailability, mechanism of action and appropriate risk assessment procedures for 2,3,7,8-TCDD; and (6) a favorable review was issued by the Science Advisory Board of the application of Toxicity Equivalency Factors developed by Drs. Barnes and Bellin to estimate the toxicity of congeners of HDDs/HDFs other than 2,3,7,8-TCDD (Ref. 35). In addition, the following regulatory activities are underway within EPA to control or eliminate potential human or environmental exposure to HDDs/HDFs: RCRA listing of HDDs/HDFs as "acutely hazardous" wastes; RCRA land ban disposal rule; evaluation of waste streams from pentachlorophenol wood treaters; municipal waste combustion guidelines and evaluation of ash residues from municipal combustion; establishment of National Pollutant Discharge Effluent Standards (NPDES) discharge limits, and numerous Superfund site cleanup activities.

B. Background to This Final Rule

On October 22, 1984, the Environmental Defense Fund and the National Wildlife Federation filed a citizens' petition under section 21 of TSCA, 15 U.S.C. 2620. The petition (Ref. 14) requested that EPA commence certain regulatory actions related to certain HDDs and HDFs and initiate related investigations and research.

More specifically, the petitioners asked EPA to use its authority under TSCA to analyze aggregate hazards posed by multi-media releases of the specific HDDs/HDFs subject to this rule (those substituted at the 2,3,7 and 8 positions on the benzene rings) and to take action under TSCA to commence an integrated, multi-media effort to reduce the risks from the release of these chemicals.

Although the petitioners acknowledged that EPA in its Dioxin Strategy (Ref. 32) has recognized the need for a multi-media approach in cleaning up contamination, they believe that EPA has not taken sufficient action to prevent future contamination from the continued generation of HDDs and HDFs as contaminants during the manufacture of other chemicals and materials. The petitioners requested that EPA take a number of specific regulatory and information-gathering steps under TSCA to regulate the HDDs/HDFs generically, as a class of chemicals.

EPA decided that, in general, it would deny the request to regulate the specified HDDs/HDFs under a multi-media TSCA approach for two reasons: (1) The Agency was already proceeding to gather extensive data and initiate regulation under other, more appropriate statutes, and (2) EPA did not have the data needed to make a finding of unreasonable risk under section 6 of TSCA, the provision of the Act that authorizes substantive regulation of chemicals. EPA did decide, however, to grant part of the petition and on December 19, 1985 (50 FR 51794) proposed this rulemaking under sections 4 and 8 of TSCA to gather additional information on HDDs/HDFs in commercial chemicals. EPA will review the data submitted as a result of this rule to decide whether additional regulatory action under section 6 of TSCA is warranted to limit or control the further manufacture, processing, distribution in commerce, and/or use of chemicals contaminated with HDDs/HDFs.

EPA received 13 comments to the proposed rule during the public comment period, which closed on February 18, 1986. On March 4, 1986, EPA held a public hearing in Washington, DC where three organizations presented testimony. A transcript of this meeting is in the public docket file for this rule. EPA also held a meeting closed to the public on March 4, 1986, at the request of Great Lakes Chemical Co. (Great Lakes), to receive confidential business information (CBI) from Great Lakes and to request additional CBI on listed chemicals manufactured by the company. A transcript of the meeting and a copy of letters in which EPA requested specific data are included in the rulemaking record for this rule. A second public meeting was held April 22, 1986, in Washington, DC, at the request of the Chemical Manufacturers' Association (CMA), to allow CMA to present the Agency with a proposal for an alternative procedure for collecting the needed data. This procedure and EPA's evaluation of it are discussed under Unit IV of this preamble.

As a result of comments made at these meetings and other information received by EPA, the Agency amended the proposed rule and solicited public views and data on whether to collect process and reaction condition data on 18 additional chlorinated and brominated benzenes under section 8(a) of TSCA (51 FR 37612, October 23, 1986). The Agency received five comments to that proposed amendment and responds to those comments in appropriate sections of this preamble.

Also in response to comments, EPA has amended 40 CFR Part 707 to provide for termination of reporting for export purposes under section 12(b) of TSCA when testing shows no contamination of a chemical by HDDs/HDFs above the LOQs.

EPA has considered all the comments received and other relevant information obtained by the Agency, and has modified other parts of the rule appropriately. The comments are addressed under the appropriate sections of this preamble.

EPA believes that production, processing, distribution, use, and disposal of the listed chemicals may present an unreasonable risk of injury to human health and the environment because of their potential for contamination by chlorinated and brominated dibenzo-p-dioxins and dibenzofurans. EPA believes these contaminants may present a health risk at very low levels, down to 0.1 part per billion (ppb) for 2,3,7,8-TCDD, the most toxic congener, and for 2,3,7,8-tetrabromodibenzo-p-dioxin (TBDD), believed to be equally as toxic. Therefore, this target level of quantitation has been set for 2,3,7,8-TCDD and 2,3,7,8-TBDD, with higher levels for the remaining congeners based on toxicity equivalent to that of 2,3,7,8-TCDD. These levels are targets, and EPA expects testing laboratories to make a good faith effort to reach these targets. EPA's Director of the Office of Toxic Substances (OTS) will determine whether good faith efforts are made, advised by a panel of experts in analytical chemistry convened by EPA. In cases where good faith efforts are made, EPA will accept results higher than the target LOQs. EPA also believes

that the differences in cost to test for HDDs/HDF at 0.1 ppb or 10 ppb or even 100 ppb are very small because the major part of the cost of testing is incurred by separation of matrix and clean-up of sample, and this cost will be approximately the same for these levels.

III. Comparison of Proposed and Final Rule

A. Testing Requirements Under Section 4

Under section 4 of TSCA, explained in the proposed rule under Unit II.B., EPA proposed to require testing of 14 currently manufactured or imported chemicals and 20 chemicals not currently manufactured or imported. In this rule, EPA is requiring testing for HDD/HDF contamination of 12 currently manufactured or imported chemicals, and 20 chemicals not currently manufactured or imported if their manufacture or importation resumes. The two chemicals removed from the list are 2,4-Dichlorophenoxyacetic acid and 2,4-Dichlorophenoxybutyric acid, chemicals which are both pesticides and pesticide intermediates. Contamination of these two chemicals by HDDs/HDFs will be determined by a Data Call-In Program conducted under FIFRA. The 12 chemicals, which are subject to testing as of the promulgation date of this rule, are listed below with their Chemical Abstract Services (CAS) registry numbers.

CAS No.	Chemical name
79-94-7	Tetrabromobisphenol-A.
118-75-2	2,3,5,6-Tetrachloro-2,5-cyclohexadiene-1,4-dione.
118-79-6	2,4,6-Tribromophenol.
120-83-2	2,4-Dichlorophenol.
1163-19-5	Decabromodiphenyloxide.
4162-45-2	Tetrabromobisphenol-A-bisethoxylate.
21850-44-2	Tetrabromobisphenol-A-bis-2,3-dibromopropylether.
25327-89-3	Allyl ether of tetrabromobisphenol-A.
32534-81-9	Pentabromodiphenyloxide.
32536-52-0	Octabromodiphenyloxide.
37853-59-1	1,2-Bis(tribromophenoxy)-ethane.
55205-38-4	Tetrabromobisphenol-A diacrylate.

(EPA has assumed that a chemical is currently manufactured if it was manufactured since January 1, 1984.)

The 20 chemicals, which will be subject to testing after their manufacture or importation resumes, are listed below.

CAS No.	Chemical name
79-95-8	Tetrachlorobisphenol-A.
87-10-5	3,4',5-Tribromosalicylanilide.
87-65-0	2,6 Dichlorophenol.
95-77-2	3,4-Dichlorophenol.
95-95-4	2,4,5-Trichlorophenol.
99-28-5	2,6-Dibromo-4-nitrophenol.
120-36-5	2[2,4-(Dichlorophenoxy)]-propanoic acid.
320-72-9	3,5-Dichlorosalicyclic acid.
488-47-1	Tetrabromocatechol.
576-24-9	2,3-Dichlorophenol.
583-78-8	2,5-Dichlorophenol.
608-71-9	Pentabromophenol.
615-58-7	2,4-Dibromophenol.
933-75-5	2,3,6-Trichlorophenol.
1940-42-7	4-Bromo-2,5-dichlorophenol.
2577-72-2	3,5-Dibromosalicylanilide.
3772-94-9	Pentachlorophenyl laurate.
37853-61-5	Bismethylether of tetrabromobisphenol-A.
.....	Alkylamine tetrachlorophenate.
.....	Tetrabromobisphenol-B.

Manufacturers of any listed chemical may request an exclusion or waiver from testing for any of four reasons: (1) Detailed process and reaction condition data for the chemical show the absence of conditions. conducive to HDD/HDF formation; (2) existing test data on the chemical meet the testing requirements of this rule in terms of Quality Assurance/Quality Control (QA/QC) and best effort to analyze at lowest possible LOQs; (3) an affirmation signed by a responsible company official that the chemical is produced at levels of 100 kilograms per year or less, and is used only for research and development purposes; and (4) the manufacturer provides evidence that the chemical, due to the cost of testing, will either be taken off the market or will not reach the market, and the chemical can be shown to result in no unreasonable risk. This last exclusion/waiver is intended to provide an opportunity for EPA to grant relief from testing requirements in circumstances where the cost of testing would preclude production of a chemical and no unreasonable risk would result if the chemical were produced. Requests for exclusions/waivers must be submitted within 60 days of the effective date of this rule. Persons who plan to resume manufacture, import or processing of a chemical listed for testing must apply for an exclusion 60 days prior to actual such resumption. EPA will issue in the **Federal Register** a notice of receipt of any requests for exclusion under this rule, and a notice of its decision on each such request.

Persons required to test under this rule must, within 60 days of the effective date, or 60 days after they become subject to the rule, submit to EPA either a letter of intent to test or an application for exemption/waiver. For chlorinated chemicals, persons who submit a notice of intent to test must submit to EPA, within 12 months of such submission, chemical matrix-specific test protocols sensitive enough to quantitate to the target LOQs specified in this rule, or if one or more of those levels are not possible for a given matrix, for the lowest possible level of quantitation achievable. For brominated chemicals, the protocols must be submitted within 24 months of submission of the notice of intent to test. Should testing be required in the future for a chemical in which both chlorine and bromine occur, and neither predominates, testing would be required for both chlorinated and brominated HDDs/HDFs. For a discussion of requirements for such protocols, see Unit IV.B.2. and §§ 766.10, 766.12, 766.14, 766.16, and 766.18 of this rule.

LOQs for each congener have been adjusted based on toxic equivalency to 2,3,7,8-TCDD, using the Toxic Equivalency Factors developed by Drs. Barnes and Bellin of EPA (Refs. 4 and 35). Using very limited data, and in the absence of data to the contrary, brominated HDDs/HDFs have been assumed to be as toxic as their chlorinated counterparts.

The rule requires that these target LOQs be achieved through the use of high-resolution gas chromatography (HR GC) with high resolution mass spectral detection (HR MS), unless another method can be demonstrated to reach the target LOQs as well or better.

EPA will convene a panel of analytical chemists employed by the U.S. Government and expert in HDD/HDF analysis to review the protocols and offer recommendations where necessary to ensure that the methods are capable of accurately and precisely measuring HDDs/HDFs at the targeted or the lowest possible levels. During this review process EPA will take into account the possibility that interferences may not allow quantitation to the levels specified and, in those cases where good faith efforts have been made to reach the target LOQ, the Agency may agree to an analytical protocol which results in a higher LOQ. This determination will be made by the Director of the Office of Toxic Substances based on the recommendation of the expert panel.

To facilitate the development of extraction, cleanup, and analysis procedures in these protocols, EPA will provide a guidance document titled, "Guidelines for the Determination of Polyhalogenated Dibenzo-p-dioxins and Dibenzofurans in Commercial Products" (Ref. 24). This guidance document has been adjusted to allow (QA/QC) as follows: the level of reproducibility is plus/minus 20 percent, recovery levels for spiked internal calibration standards are 50 to 150 percent.

Within 6 months of the completion of EPA review of the protocols, test results must be submitted to EPA.

To summarize, as a result of consideration of comments, EPA made some changes from the proposal. Two chemicals manufactured both as pesticides and as isolated intermediates

of pesticide products, 2,4-Dichlorophenoxyacetic acid and 2,4-Dichlorophenoxybutyric acid, were deleted from the list of chemicals to be tested. LOQs were modified to take into account Toxic Equivalency Factors (TEFs) developed by EPA for the different HDD/HDF congeners. The timeframes for submission of protocols and test results have been modified. QA/QC requirements have been adjusted. Testing for one chemical manufactured by Dow Chemical Company (Dow) has been excluded as a result of comments submitted on the proposed rule. The rule provides procedures whereby companies may present to EPA information that may convince the Agency to exclude their chemicals from testing or waive the testing requirements.

Finally, the regulations under TSCA section 12(b) have been amended to provide termination of reporting for export purposes when data have been submitted showing no HDDs/HDFs present above the LOQs. These changes and the reasons therefor are discussed in the appropriate places later in this preamble.

B. Reporting Requirements Under Section 8

Under section 8(a) of TSCA, EPA may require chemical manufacturers and processors to maintain such records and submit such reports as the Agency may reasonably require. EPA has determined that certain chemical manufacturers must submit information to assist the Agency in evaluating the risk from chemicals potentially contaminated with HDDs/HDFs. The data required to be submitted under section 8 will be used to complete a comprehensive overview of uses, exposures, risks, and advantages of chemicals containing or potentially containing the HDDs/HDFs so that EPA may assess the need for and nature of future regulatory control measures.

This rule requires manufacturers (including importers) and processors of the 12 chemicals listed for testing to submit, 90 days after the effective date of this rule, any available test results, with necessary protocols, which show the results of any existing testing of their chemicals for concentrations of HDDs/HDFs. These test data may also be used to support an exclusion from testing. Persons who manufacture or import any of the 20 chemicals not currently in production must submit this information within 90 days of the resumption of manufacture or importation.

The manufacturers, importers, and processors of the 12 chemicals must also submit, under section 8(c) of TSCA, allegations in their possession of significant adverse reactions to HDDs/HDFs and, under section 8(d) of TSCA, any unpublished health and safety studies they may have on HDDs/HDFs. This information must be submitted to EPA within 90 days from the effective date of this rule, or 90 days after the person begins manufacture or import, whichever is later.

In addition, should the testing conducted under this rule or the existing test data submitted under section 8 of TSCA show that particular chemicals contain HDDs/HDFs above the designated LOQs, the manufacturers (including importers) of those particular chemicals must submit, under section 8(a), production volume, process and reaction conditions, exposure, use and disposal data as specified on EPA Form 7710–51. Submitters may request copies of the form from the TSCA Assistance Office, or submit the data required by the form. In addition, these manufacturers and importers must then submit, under section 8(c) of TSCA, records of alleged adverse reactions to the tested chemicals, and, under section 8(d) of TSCA, unpublished health and safety studies on the tested chemicals. This section 8(a), (c), and (d) information must be submitted 90 days after the submission of a positive test result as defined at § 766.3.

If testing data from this rule show that for a particular chemical, some manufacturers report HDDs/HDFs significantly above the designated LOQs and others show no contamination, EPA may require through publication of a notice in the **Federal Register**, that all manufacturers and importers of that chemical submit process and reaction condition data. This means that manufacturers who have reported no contamination may be required to supply data.

Finally, under section 8(a) of TSCA, manufacturers (except small manufacturers) of chemicals using any of certain listed precursor chemicals as feedstocks or intermediates must submit data on manufacturing process and reaction conditions for the chemicals they manufacture using these precursors. These precursor chemicals are not themselves contaminated, but can, during further processing and under certain reaction conditions, lead to formation of HDDs/HDFs in other chemicals. Should EPA learn from this data gathering process that reaction conditions favorable to HDD/HDF formation exist, EPA may propose additional chemicals for testing.

The original December 1985 proposal listed 12 precursor chemicals. After considering comments, however, EPA amended the proposal and opened a comment period to accept comments on the addition of 18 chlorinated and brominated benzenes to the list of precursor chemicals.

One of these 18 added chemicals, pentachloronitrobenzene (PCNB), was removed from the list after comments received in response to the proposed amendment showed that this chemical is not currently manufactured in the U.S., is imported only for use as a registered active ingredient (pesticide use only), and as such is regulated under FIFRA. All details concerning manufacturing process, intermediates, reactions and product chemistry for this chemical have been submitted to EPA as required under FIFRA's special Data Call-In letter of May 8, 1985. Because this chemical is not subject to TSCA jurisdiction at this time, it has been deleted. Should EPA receive information indicating that PCNB manufacture or importation resumes for non-pesticidal uses subject to jurisdiction under TSCA, this chemical may again be added to the list of precursors subject to the reporting requirements outlined above. This final rule thus incorporates all 29 chemicals into the precursor list.

The complete list of the 29 precursor chemicals appears below.

CAS No.	Chemical name
85-22-3	Pentabromoethylbenzene.
87-61-6	1,2,3-Trichlorobenzene.
87-84-3	1,2,3,4,5, Pentabromo-6-chlorocyclohexane.
89-61-2	1,4-Dichloro-2-nitrobenzene.
89-64-5	4-Chloro-2-nitrophenol.
89-69-0	2,4,5-Trichloronitrobenzene.
92-04-6	2-Chloro-4-phenylphenol.
94-74-6	4-Chloro-o-toloxy acetic acid.
94-81-5	4-(2-Methyl-4-chlorophenoxy) butryic acid.
95-50-1	o-Dichlorobenzene.
95-56-7	o-Bromophenol.
95-57-8	o-Chlorophenol.
95-88-5	4-Chlororesorcinol.
95-94-3	1,2,4,5-Tetrachlorobenzene.
97-50-7	5-Chloro-2,4-dimethoxyaniline.
99-30-9	2,6-Dichloro-4-nitroaniline.
99-54-7	1,2-Dichloro-4-nitrobenzene.
106-37-6	Dibromobenzene.
106-46-7	p-Dichlorobenzene.
108-70-3	1,3,5-Trichlorobenzene.
108-86-1	Bromobenzene.
108-90-7	Chlorobenzene.
117-18-0	1,2,4,5-Tetrachloro-3-nitrobenzene.
120-82-1	1,2,4-Trichlorobenzene.
348-51-6	o-Chlorofluorobenzene.
350-30-1	3-Chloro-4-fluoronitrobenzene.
615-67-8	Chlorohydroquinone.
626-39-1	1,3,5-Tribromobenzene.
827-94-1	2,6-Dibromo-4-nitroaniline.

EPA made only two changes to reporting requirements under section 8 of TSCA. After considering comments, EPA added the 17 chlorinated and brominated benzenes to the original 12 precursor chemicals. In addition, EPA deleted a number of reporting requirements for chemicals manufactured from the precursors. Specifically, requirements for all data

other than process and reaction conditions have been eliminated. These changes and the reasons therefor are discussed in the appropriate places in this preamble.

IV. Findings and Considerations

A. Findings Under Section 4(a)

Section 4 of TSCA authorizes EPA to require, by rule, that chemical manufacturers or processors conduct tests to develop data relevant to the determination that the chemicals do or do not present an unreasonable risk of injury to health or the environment. EPA must make a number of findings before it may issue a section 4 rule. Under section 4(a)(1)(A), EPA must find that a chemical may present an unreasonable risk of injury to health or the environment, that there are insufficient data and experience upon which the effects of activities involving the chemical can reasonably be determined or predicted, and that testing of the chemical is necesssary to develop such data.

EPA makes four findings under section 4(a)(1)(A) of TSCA with respect to the 32 chemicals listed in this final rule. First, EPA finds that these chemicals may present an unreasonable risk of injury to health or the environment because they may be contaminated with HDDs/HDFs, which may be highly toxic even at trace levels. Second, EPA finds that there are insufficient data upon which the effects of these chemicals on health or the environment could reasonably be determined because EPA has very little data on whether there is any HDD/HDF contamination and, if so, the levels of such contamination. Third, EPA finds that analytical testing is necessary to develop data on HDD/HDF contaminant levels because such testing is the only way to determine conclusively whether and at what levels HDDs/HDFs are present. Fourth, EPA finds that this analytical testing is relevant to determining whether activities involving the 32 substances do or do not present an unreasonable risk. Further, EPA finds that the cost of testing for the presence of these contaminants at the levels proposed by EPA is reasonable given the potentially highly toxic nature of these HDDs/HDFs.

In support of these findings, EPA adopts the analysis set forth in the preamble to the proposed rule under Unit IV.A. and V., modified as discussed below. These modifications were made as a result of consideration of comments and other relevant information. Below, EPA discusses the comments received on its proposed findings, and the Agency's response. Discussion of each comment also contains a reference to the person(s) who submitted it.

1. *EPA's legal authority to require analytic testing under section 4 of TSCA—Comment 1:* EPA lacks legal authority under section 4 of TSCA to require analytical testing for impurities in chemicals. Section 4 does not explicitly refer to testing for contamination, but rather limits EPA to requiring testing on "health and environmental effects." Section 4(b)(2)(A) describes the "effects" and "characteristics" for which testing is permitted and does not mention tests for contamination. This position is supported by the legislative history. An early Senate version of TSCA (S. 776 (1975)) contained specific language allowing contaminant testing. That language was left out of the final version of TSCA, thus indicating that Congress did not intend to allow contaminant testing under section 4. (CMA pp. 6–9; Vulcan p. 1).

Response to Comment 1: EPA disagrees with this narrow reading of TSCA. EPA interprets section 4 to allow the testing of chemicals to obtain data relevant to a determination of unreasonable risk. These data include the types of information which would be generated by testing under the proposed rule. EPA rejects the position taken by these commenters, which would limit section 4 to toxicity testing, rather than "effects" testing.

Section 4(a) provides that EPA, after making certain findings, may require testing of a chemical—

> to develop data . . . which are relevant to a determination that . . . [the chemical] does or does not present an unreasonable risk of injury to health or the environment.

Section 4(b)(2)(A) states that the effects for which test standards may be prescribed include a number of specific effects "and any other effect which may present an unreasonable risk of injury to health or the environment." In addition, characteristics for which standards may be prescribed include specific characteristics and "any other characteristic which may present such a[n unreasonable] risk."

The potential for a chemical to be contaminated with dangerous impurities, such as HDDs, falls within the "effects" or "characteristics" of that chemical which would be relevant to whether the chemical may present an unreasonable risk. Requiring analytical testing of the type discussed in the proposed rule— the levels at which a particular toxic contaminant, such as HDDs, is present in a chemical substance—is an important factor in any determination of unreasonable risk because it provides EPA with information from which human and environmental exposure to the contaminant can be assessed. Moreover, information on the amount of the contaminant in a chemical substance allows the Agency to better assess the hazard of that particular chemical substance. Finally, requiring chemical manufacturers to conduct such analytical chemistry testing is consistent with the well-defined Congressional intent in enacting TSCA that "adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substance and mixtures[.]" TSCA section 2(b)(1).

The fact that section 4 does not specifically mention contaminant testing is not dispositive. The types of tests listed in section 4 are only examples.

Finally, CMA's reference to S. 776 does not support CMA's position. S. 776 provided that, if EPA determines that a chemical may present an unreasonable risk, the Agency shall "prescribe standards for a test protocol for such substance." A test protocol is specifically defined as a method to be followed in tests to "determine the effects of the manufacture, processing, or distribution in commerce of a chemical substance." The bill goes on to state that in prescribing the protocols, EPA:

> shall require that information pertaining to all relevant factors with respect to the applicable chemical substance be developed. Such factors include—
>
> (A) the effects of the substance on human health, and the magnitude of human exposure; and,
>
> (B) the effects of such substance on the environment, and the magnitude of environmental exposure.
>
> (2) Standards for test protocols . . . may require that tests be performed, in accordance with those protocols, for carcinogenicity, mutagenicity, teratogenicity, acute toxicity, subacute toxicity, chronic toxicity, cumulative properties, synergistic properties, clinical effects, epidemiological effects, ecological effects and other effects of such substance which might cause unreasonable risk to human health or the environment.

CMA apparently argues that the language referring to the "magnitude of exposure" was deleted from the final version of TSCA and, thus, supports the position that Congress limited EPA's authority to "effects" testing. CMA cites no further explanation in the legislative

history for the deletion of the "magnitude of exposure" language.

EPA views the legislative history as supportive of its position. Both S. 776 and the final version of TSCA indicate an intention that "relevant" factors be tested. There is an additional parallel between the two versions, indicating they both refer to the same types of testing. S. 776 refers to factors relevant to health effects and magnitude of exposure; TSCA refers to factors relevant to "unreasonable risk." Plainly, unreasonable risk includes elements of toxicity and exposure.

CMA's interpretation of the legislative history, regardless of the effect of deleting the "magnitude of exposure" language, does not affect this rule. Contaminant testing, as noted above, is "effects" testing.

2. *Comments on EPA's approach to this rule—Comment 2:* Before requiring testing under section 4 of TSCA on HDDs/HDFs, EPA should use TSCA section 8(a) authority to collect extensive exposure data, specifically information on production, process, use, and disposal. Only then can EPA determine whether there may be an unreasonable risk requiring testing under section 4(a). This approach (collecting section 8(a) information before proposing section 4 testing rules) is the Agency's standard approach to responding to recommendations for testing chemicals made by the Interagency Testing Committee (ITC) under section 4(e) of TSCA. The Agency could use the SNUR provision to gather information on the chemicals. (CMA at pp. 2–4; Dow at p. 2; Great Lakes at p. 2; pp. 3/4 in comments to proposed amendment adding additional precursor chemicals).

Response to Comment 2: EPA disagrees with this comment. The amount of exposure information needed to test under section 4 of TSCA, which requires a finding that a chemical "may" present an unreasonable risk, need not be as extensive as that needed to regulate under section 6 of TSCA, which requires a finding that a chemical "will" present an unreasonable risk. The comments confuse the type of information and level of detail needed to issue a section 4 testing rule with information needed to issue requirements under section 6 of TSCA.

Furthermore, when EPA has information, as it does for HDDs/HDFs, that a chemical may be highly toxic at very low levels, the amount of exposure data needed to make a section 4(a) finding may be even less definitive. For HDDs/HDFs the major uncertainties are their presence and levels of concentration in commercial chemicals. If HDDs/HDFs are present, even at low levels, the toxicity of that chemical may be high based on the impurity.

In addition, EPA believes that it would be counterproductive to obtain section 8(a) exposure data on chemicals potentially contaminated with HDDs/HDFs if testing shows that these contaminants are in fact not present. This would also delay the Agency's ability to concentrate its attention on those chemicals contaminated and to determine whether regulation to reduce exposure is necessary. Only if contamination is present above the LOQs will EPA collect the detailed process, reaction condition, production, use, exposure, and disposal data to determine whether the chemical does in fact present an unreasonable risk of harm to human health or the environment.

Finally, EPA disagrees with the suggestion that, instead of section 4 testing rules, SNURs under section 5(a) of TSCA should be used to gather information on particular uses of the chemicals subject to this rule. EPA believes the logic behind this comment is reversed. Doing a SNUR before testing these chemicals would only prolong the regulatory process unnecessarily. The Agency should first gather general information on HDD/HDF levels in the manufactured chemical and then consider whether particular downstream uses should be subject to regulatory requirements. At that point, EPA could decide such issues as whether potential downstream uses should be subject to SNURs or whether substantive regulatory requirements under section 6 of TSCA should be promulgated. Further, gathering information on specific uses first would be counterproductive, since it is a useless exercise to promulgate a SNUR if, in fact, HDDs/HDFs are not present in the manufactured chemical. Finally, a SNUR could not be used to obtain information on ongoing uses.

Comment 3: EPA must establish an exposure pattern for each chemical to be tested. (CMA at pp. 2 and 4).

Response to Comment 3: EPA does not agree. As noted above, information required to make a section 4(a) unreasonable risk finding is not as extensive as that required to regulate under TSCA section 6. Furthermore, under section 26 of TSCA EPA is authorized to take action under the Act with respect to categories of chemicals. Categories of chemicals include groups that are similar in molecular structure, in physical, chemical or biological properties, in mode of entrance into the human body or into the environment or in some other way suitable for classification. The chemicals subject to this rule all have the possibility of being contaminated with HDDs/HDFs based on chemical structure, known pathways to contamination, and manufacturing conditions which are conducive to the formation of HDDs/HDFs. The HDDs/HDFs are also suitable for categorization also because, as discussed more fully in the preamble of the proposed rule and elsewhere in this preamble, HDDs/HDFs are structurally similar, certain of the HDDs/HDFs are highly toxic even at low exposure levels, there are numerous important physical/chemical similarities between the HDDs/HDFs and these physical similarities have been related to the induction of toxic effects. Thus, EPA is justified in considering these chemicals as a class for section 4 testing purposes.

EPA believes there is potential for human exposure to each of the 32 chemicals when they are manufactured, processed, distributed in commerce, used or disposed of at the levels of concern stated in this rule.

Comment 4: In order to set analytic targets for impurity analysis (LOQs), EPA must collect exposure data on each individual chemical using section 8(a) of TSCA. (CMA at pp. 3 and 4; p. 4 in comments to proposed amendment adding precursors).

Response to Comment 4: EPA disagrees. As with the comments discussed above, this comment confuses the data needed to determine a level at which testing will be required with the "action" level at which regulation may be imposed under section 6 of TSCA. The preamble to the proposed rule made this distinction clear (50 FR 51800 (column 2)). EPA indicated that any action level would be derived for each individual chemical based on its contamination levels and its potential for exposure, and taking into account cost of testing and benefit to society resulting from information generated by such testing. For testing purposes the Agency chose levels that could possibly present risks of concern, using generic exposure scenarios, choosing the worst cases to ensure that EPA has adequate data to evaluate any potential risk resulting from low levels of all 7 HDDs and 8 HDFs occurring in a single chemical. Thus, the Agency can catch in its analytical net any use that could potentially cause unreasonable risk.

Comment 5: EPA has adequate information under TSCA not only to require testing under section 4, but also has all data needed to regulate the chemicals immediately under section 6, and should do so. (EDF p. 2).

Response to Comment 5: EPA disagrees. EPA lacks important data required to make the finding of unreasonable risk required by section 6, as detailed in its response to the EDF/NWF Petition at 50 FR 4426 (January 30, 1985). EPA has determined that it can find that the listed chemicals may present an unreasonable risk, as required by section 4 of TSCA, and therefore can gather the data needed to determine whether these chemicals present an unreasonable risk and whether regulation of these chemicals under section 6 of TSCA is appropriate.

Comment 6: EPA has not demonstrated that reductions below 0.1 ppb are feasible for all HDDs and 1.0 ppb for all HDFs. EPA only referenced Dow Chemical Company's studies of 2,3,7,8-TCDD reductions during the manufacture of a pesticide, 2,4,5-T; these studies only show reduction of one congener to a 10 ppb level. (CMA at pp. 22 and 23). This comment, apparently, is meant to support the position that EPA cannot make a finding of unreasonable risk for purposes of this rule.

Response to Comment 6: This comment also confuses the nature of the TSCA section 4(a) finding with the TSCA section 6(a) finding. EPA can justify testing a chemical based on the limited data indicating that Dow was able to reduce 2,3,7,8-TCDD levels in its product, thereby showing that regulation may be feasible (Ref. 12). EPA does not comment on whether such information would justify setting particular contaminant levels in products.

Comment 7: The risks from exposure to contaminants at low levels may be much lower than predicted, based on the low risk from exposure to the substance itself. Reducing the level of impurities will have negligible effects on risks from use of the commercial substance. The unreasonable risk determination must be made on the risk from the commercial substance as marketed; other determinations are useless from a risk reduction standpoint. (Dow at pp. 5 and 6).

Response to Comment 7: The effect of an impurity on risk, of course, depends on the nature of the impurity. The data on contamination of the chemical with HDDs/HDFs, gathered from this rulemaking, will be used by EPA to examine the risk from exposure to the chemical when the Agency considers regulation under section 6 of TSCA.

Comment 8: EPA must consider the conditions of use for the chemicals listed for testing, especially when the conditions involve elevated temperatures which increase the possibility of exposure to both residual HDDs/HDFs and newly formed HDDs/HDFs. Plastics workers are commonly exposed to decomposition products during equipment plugging and/or malfunctions, and firefighters and consumers are exposed to such products during fire-related exposures. (Workers' Institute for Safety and Health pp. 1 and 2).

Response to Comment 8: EPA has considered worker exposure to a chemical contaminated with low levels of HDDs/HDFs in its generic exposure scenarios. Issues of combustion products which may pose an unreasonable risk are not immediately applicable to a consideration of whether to test a chemical for HDDs/HDFs. If such contamination is found, however, this issue will be considered in the determination of unreasonable risk under section 6.

Comment 9: CMA believes that all companies required to test will be willing to do so if the program is a reasonable one. The key to CMA's reasonable program is establishment of reasonable LOQs, based on a full exposure and risk assessment for each chemical, and on demonstrated capability to analyze HDDs/HDFs in chemical matrices. The companies required to test will be willing to begin by summer (1986) and provide results within 1 year. (Transcript to April 22 meeting, pp. 5 and 6; p. 4 in comments to proposed amendment adding additional precursors.) CMA also believes the companies would be willing to provide the section 8 data required to establish exposure for each chemical to determine a reasonable LOQ based both on exposure and capability. (Transcript at pp. 7 and 8.)

Response to Comment 9: EPA's concerns with a voluntary testing program lie chiefly in the lack of enforcement powers, and the potential for lost time if CMA and EPA could not arrive at an agreement on the testing conditions. CMA implies that the Agency must collect exposure data for each chemical, and perform a risk assessment to set an LOQ for each HDD/HDF for each chemical. Then the Agency must further revise its LOQ based on what has been done in the past to analyze HDDs/HDFs in commercial chemicals. EPA rejected that approach in response to comments 2 and 3. However, to meet CMA's concerns about the low level of the LOQs as proposed, EPA has adjusted the LOQs somewhat, based on toxicity equivalencies to 2,3,7,8-TCDD. This system allows higher LOQs for higher halogenated HDDs/HDFs, which CMA has said will be the more difficult congeners to analyze. EPA has also set the LOQ not as an inflexible level, but rather as a target to be met if possible, given a reasonable amount of time both for an experienced analyst and for required equipment. All of these adjustments should considerably reduce CMA's concerns.

3. *Comments on proposed findings under section 4(a)*—a. *Unreasonable risk.* EPA bases its unreasonable risk determination on the analysis contained in the preamble to the proposed rule (50 FR 51797–51800 and 51805–51806). The data and analysis described therein with the modifications discussed below justify a finding under TSCA section 4(a) that the chemicals subject to this rule may present an unreasonable risk, such that testing of the chemicals for HDDs/HDF is required at the LOQs described in this rule. The toxic potential of HDDs/HDFs carry considerable weight in making this determination. Two of the HDDs/HDFs which have been tested for carcinogenicity are quantitatively estimated to be potent carcinogens. Many of the remaining HDDs/HDFs, all of which are structurally similar to the two which have been tested in long term studies, have been shown to produce toxic effects in animals and exhibit biological activity in *in vitro* and *in vivo* studies at very low levels. These HDDs/HDFs may be present as impurities in certain chemicals based upon reactions which can reasonably be expected to occur under conditions expected to exist during their manufacturing processes. Therefore, people may be exposed to these chemicals and their associated impurities during production, processing, distribution in commerce, use, and disposal of these chemicals, and may thereby be at risk of potential adverse health effects associated with these impurities.

There is an indication that exposure to chemicals contaminated with 2,3,7,8-TCDD at levels as low as 0.1 ppb may pose a significant risk to workers who manufacture the chemicals. Therefore, the testing levels have been set as low as reasonably attainable, with target LOQs beginning at 0.1 ppb and adjustments for each congener based on its toxicity relative to that of 2,3,7,8-TCDD, the most toxic congener. EPA expects manufacturers to make good faith efforts to reach the target levels, but will allow reporting of higher levels if it determines, based on review of the protocol and the results of testing under those protocols, that the manufacturer has made a good faith effort to measure HDDs/HDFs as low as possible in his or her chemical. An additional reason for targeting 0.1 ppb as the LOQ for 2,3,7,8-TCDD is that the specification of this

LOQ as a target at the outset of the methods development program for a particular product can be factored into the estimated costs necessary to achieve the target LOQ; therefore, the actual cost per sample should not be significantly affected. If the requirement for a higher target LOQ were specified at the outset of preliminary method development and then lowered after initial method development were completed, an increase in cost of analysis per sample would be expected due to requirements for total reanalysis. EPA has found no reason to alter its determination that the overall costs of testing are reasonable. See Unit V, below.

Elimination or preclusion from the market due to cost of testing for individual manufacturers and individual chemicals has been considered, and EPA has allowed manufacturers to file a request for exclusion from the testing requirements if the manufacturer can also show that the chemical will not present an unreasonable risk of injury to health or the environment. Additional reasons for which an exclusion from testing may be granted are: (1) The manufacturing process is such that conditions which may lead to formation of HDDs/HDFs are not present; (2) the pre-existing test data are adequate under this rule; and (3) the chemical is produced in quantities of 100 kilograms or less per year and is used for research and development purposes. Discussion of the comments on toxicity and exposure appears below. Discussion of the comments on cost appears in Unit V.

(i) *Toxicity.* The toxicity discussion in the preamble to the proposed rule (50 FR 51797–51798) applies to EPA's toxicity finding on HDDs/HDFs. One isomer, 2,3,7,8–TCDD has been estimated by EPA's Carcinogen Assessment Group (CAG) to be the most potent of 55 suspected human carcinogens (50 FR 51798, column 1). The other HDDs/HDFs subject to this rule appear to be qualitatively similar to 2,3,7,8-TCDD in their toxic action and appear to have strong structural and chemical reactivities similar to 2,3,7,8-TCDD (50 FR 51798). As discussed below, EPA sees no reason to change these basic aspects of its toxicity finding. However, EPA has changed its determination in one respect. Rather than considering all HDDs/HDFs to be as toxic as 2,3,7,8-TCDD, EPA has used TEFs to relate the toxicity of each HDD/HDF to the toxicity of 2,3,7,8-TCDD. These TEFs have been developed by the EPA and have been favorably reviewed by the Agency's Science Advisory Board (SAB) (Ref. 35). In addition, all comments submitted in response to EPA's proposal were favorable to use of the TEFs.

Comment 10: EPA has overestimated the toxic potential of HDDs/HDFs. This is because EPA incorrectly relies on the incremental cancer risk for lifetime exposure to 2,3,7,8-TCDD developed by the Agency's CAG. This calculation is that the incremental cancer risk is 1 in a million if an individual is exposed to 0.006 picograms per kilogram of body weight per day (pg/kg/day) based on a linear low-dose model. Instead, EPA should base its determination of potency on a No Observed Effect Level (NOEL), such as that developed in an analysis by the Canadian Ministry of Environment (Environment Canada). Environment Canada recommends a maximum Allowable Daily Intake (ADI) for 2,3,7,8-TCDD of 10 pg/kg/day, which is 1,000 times higher than the EPA risk level. (CMA at pp. 14 and 15.) The Environment Canada assessment is more appropriate because it is based on the determination that 2,3,7,8-TCDD is an animal cancer promoter and not a cancer initiator. Thus, the linear no-threshold model used by EPA is not appropriate. (Dow at pp. 4.)

Response to Comment 10: EPA disagrees that it has overestimated carcinogenic potency for purposes of this rule. Rather EPA has employed a scientifically acceptable method to determine potency. This determination applied a no-threshhold, linear low-dose, multi-stage mathematical model to the results of a 2,3,7,8-TCDD feeding study by Kociba 1978 (see Ref. 34) that showed statistically significant incidences of tumors in the liver, lungs, hard palate, and nasal turbinates of female rats.

EPA believes that the no-threshold, linear low-dose model is appropriate for a number of reasons. First, while there is no conclusive proof that 2,3,7,8-TCDD is a cancer initiator, the biological half-life and prolonged retention time of this compound in the human body may result in "promoter effect" which is essentially irreversible (Ref. 26). Thus, although 2,3,7,8-TCDD is not a proven cancer initiator, the no-threshold, linear low-dose model is appropriate because of the plausible mechanistic model of tumorigenesis, which suggests that there is some risk of tumor formation at any level of exposure. Second, for chronic exposure of 2,3,7,8-TCDD, experimental evidence suggests a linear dose-response relationship in the low dose region for tumorigenesis and enzyme induction (Ref. 36). Finally, for 2,3,7,8-TCDD the mechanisms of carcinogenesis (the biochemical changes that ultimately result in the manifestations of cancer) are unknown. See EPA's *Health Assessment Document for Polychlorinated Dibenzo-p-Dioxins* at pages 2 through 7 (hereafter "HAD") (Ref. 34); also see Ref. 27. According to the Office of Science and Technology Policy (OSTP), (50 FR 10371; March 14, 1985), a linear low-dose model, such as the one used by EPA, is the preferred risk assessment approach if mechanisms of carcinogenesis for a chemical are not known. The EPA Guidelines for Carcinogenic Risk Assessment (51 FR 33861, September 24, 1986) agree with the OSTP policy on this point.

With respect to the promoter versus initiator issue, EPA agrees that all evidence points to the fact that 2,3,7,8-TCDD, and by implication the HDDs/HDFs in this rule, are potent cancer promotors. However, current EPA policy is contained in the Agency's Guidelines for Risk Assessment and the HAD, which concludes that 2,3,7,8-TCDD should also be treated as a cancer initiator as well as a promoter, based on a series of animal studies with 2,3,7,8-TCDD and other compounds (Ref. 34 at 11–58 and 11–59). This approach is endorsed by EPA's SAB (Ref. 35). While it is true that some experts believe that 2,3,7,8-TCDD is only a cancer promoter, and not a cancer initiator (Ref. 36), and that some agencies in other countries have acted on that belief, EPA has, at least for purposes of this testing rule, maintained the current Agency position to treat the HDDs/HDFs as complete carcinogens (capable of both promotion and initiation).

In any case, the promoter vs. initiator issue may be irrelevant for risk assessment purposes, even if 2,3,7,8-TCDD is only a promoter. The threshold model is appropriate for a promoter if the effects from the promoter are assumed to be reversible if the promoter is removed. Thus, one may estimate a level (reference dose) which would be accepted to be without risk of harmful effects in humans by applying an uncertainty factor to a threshold or NOEL level. Because retention time and biological half-life of 2,3,7,8-TCDD is so long (up to 8 years; Ref. 26), and because its "promoting action" may not be reversible, it may not be possible to estimate a Reference Dose for use in a threshold model which takes into account the manifestation of prolonged effects from multiple promoters/initiators. EPA believes that this approach more completely addresses the question of simultaneous exposure to multiple initiators in the environment at the same time, as well as exposure to accumulative doses of compounds with

long half-lives in the human body, such as 2,3,7,8-TCDD.

Environment Canada based its determination that 10 pg/kg/day is an acceptable level of exposure to 2,3,7,8-TCDD in humans on the fact that reproductive and cancer studies show no observable effects in animals at a dose of 0.001 μg/kg/day, and set this level as the NOEL. The NOEL is the level at which there would be no difference in risk between the populations exposed to 2,3,7,8-TCDD and populations not exposed. A safety factor of 100 was applied in order to arrive at the 10 pg/kg/day level. Such an approach does not address the question of simultaneous exposure to multiple initiators in the environment at the same time, and exposure to accumulative doses of compounds with long half-lives in the human body, such as 2,3,7,8-TCDD.

Thus, the difference between the 10 pg/kg/day level adopted by Environment Canada and the 0.006 pg/kg/day level used by EPA reflect differences in views of the mechanism of action by which these compounds effect their toxicity, as well as attempting to estimate the effect of multiple or additive initiators. EPA's approach is therefore acceptable from a regulatory standpoint.

Comment 11: Evidence against EPA's unduly high estimates of toxic potency for HDDs/HDFs can be seen in results from human epidemiology studies. Exposures to 2,3,7,8-TCDD among herbicide manufacturing workers were high enough to produce readily discernible cancer excesses if potency were as high as EPA suggests. No such excesses have been found. Further, if EPA's potency values were correct, and if background exposures to HDDs/HDFs 30 to 40 years ago were similar to current background exposures, as suggested by Czuczwa, *et al.* (Refs. 9 and 10), a discernible upward trend in cancer mortality beginning 15 to 20 years ago would have been observed. This is not the case. In both the herbicide worker study and the predicted background levels, the number of excess cancer deaths predicted by EPA exceeds the sensitivity of measurement by a factor of 10. Therefore, the EPA potency estimate is at least ten times too large. (CMA at pp. 15 and 16.)

Response to Comment 11: EPA disagrees that the results from the epidemiology studies cited above show that EPA's estimate of the potency level for 2,3,7,8-TCDD is too high. EPA has always maintained that the Agency's estimate of toxic potency for 2,3,7,8-TCDD is in fact an upper limit; that is, the Agency does not think that the potency is likely to be greater than the given estimate and, in fact, may be less. While it may be true that the real potency may be something less than EPA's suggested upper limit, it is not clear that the scientific data base available at this time presents evidence strong enough to support some other (lower) estimate.

Further, epidemiologic studies are inherently capable of detecting only comparatively large incidences of cancer, and confounding factors such as long latency periods, bias, and poor exposure characterization often affect the adequacy of the study. The use of data by Czuczwa, *et al.* cannot be used to identify general population exposure levels, because neither study was of a statistical design from which one could infer general U.S. exposures. Czuczwa studied two lakes in Michigan, Lake Siskiwit and Lake Huron. These studies of the lake sediments show that HDDs/HDFs were deposited in lake sediments beginning around 1940, generally increasing thereafter, and that the distribution of congeners found corresponds with present-day concentrations of congeners associated with emissions from combustion of fuel and wastes. While these studies were not directly intended to address the question of general environmental levels of HDDs/HDFs, Czuczwa notes that the levels of HDDs and HDFs in the Great Lakes Basin may be higher than in other areas of the U.S. due to heavy chemical production and waste incineration.

Commenters suggested a comparison between general background levels of HDDs/HDFs and cancer mortality trends. Such a comparison is limited due to the inability to characterize general population background exposure to HDDs/HDFs. While EPA has no reason to believe that the HDD/HDF levels found by Czuczwa, *et al.*, are representative of levels in the rest of the U.S., there does appear to be a plausible basis for the hypothesis that background levels of HDDs/HDFs exist in the general population. The sources of these background levels are likely to be dispersed, and could include point sources (such as suggested by Czuczwa's Great Lakes Basin data above) that lead to general contamination of the food chain, up to and including mother's milk, for example.

If one hypothesized that general population exposures have been increasing in the last 30 to 40 years, although it is not possible to identify level or magnitude of increase, one might expect to see increases in cancer mortality. In reality, however, the incidence of most forms of cancer is generally steady or declining, with the notable exception of lung cancer (directly attributable to cigarette smoking), which is on the increase, particularly among women. Without a definitive link between general background levels of HDDs/HDFs in the environment as well as in the general population, and the current increase or decrease of specific types of cancer, the increase (or decrease) in excess cancer mortality attributable to exposure to HDDs/HDFs in the environment or the individual cannot be accurately predicted, as suggested above by CMA.

Examination of total neoplastic mortality is insensitive for this type of ecologic analysis due to a high background incidence, but examination of site-specific mortality can yield information. It is not unreasonable to look at connective tissue and soft tissue cancer mortality since a limited amount of evidence suggests this may be a target site. From this ecologic examination, an increase in connective tissue and soft tissue cancer mortality rates is seen for all races (white and nonwhite) and sexes (male and female).

The epidemiologic evidence from both Sweden and New Zealand regarding HDD exposure from contaminated herbicides and the incidence of cancer in humans have been subjected to considerable scrutiny due to poorly characterized exposure estimates and other confounding factors, but emphasizes that the epidemiological inference supporting the relationship between human exposures to phenoxy herbicides contaminated with TCDD and the occurrence of soft tissue sarcoma remains strong. EPA believes the association reported in the two Swedish soft tissue sarcoma studies are strong enough to make it unlikely that they have resulted entirely from random variations, bias, or confounding factors. A similar view has been expressed by Dr. Aaron Blair, of the National Cancer Institute (NCI), who after evaluating existing human data regarding dioxin and cancer summarized that,

> The epidemiologic evidence regarding dioxin exposure and cancer is contradictory. In fact the contradiction is striking. On one hand we have the Scandinavian studies where striking excesses of lymphoma (5-fold) and soft tissue sarcomas (3–5 fold) occur and on the other hand studies from New Zealand find no risk or only slight risk of these tumors. As it stands now the epidemiologic data are not persuasive regarding one interpretation over the other. The high relative risk seen in the Swedish studies, however, cannot be dismissed (Ref. 40).

Regarding the analysis of HDDs/HDFs in adipose tissue from persons from the St. Louis, Mo. area, the analysis of 35 samples, of which 8 showed detectable HDD/HDF levels, is too small a sample size to be representative of the U.S. population as a whole. Furthermore, the samples were not taken from a statistically-designed study. The epidemiologic studies are limited in their ability to be compared with the animal-based prediction of human cancer risk.

The issue of determining exposures in epidemiologic studies is a perennial one, confounded even more by the potential for background exposure and the existence of background levels in the general population, as discussed above. Although scientific conjecture and subsequent relative studies in the U.S. and elsewhere have not yet resolved these discrepancies, EPA maintains that this suggestive link is indicative of the unresolved concern relating 2,3,7,8-TCDD exposure to cancer in humans. Until these concerns are resolved, EPA will continue to interpret these studies as suggestive evidence of the potential carcinogenic effect of 2,3,7,8-TCDD.

Comment 12: EPA has overlooked the fact that animal species vary greatly in their toxic response to HDDs/HDFs. (CMA at p. 14.)

Response to Comment 12: EPA is aware that there is a wide species difference in toxicity for HDDs/HDFs. For 2,3,7,8-TCDD, science has been unable to determine why such variation exists, or where humans fit into the spectrum of other mammals. This issue was discussed in an EPA SAB hearing November 4, 1986, where the SAB noted that the species difference in toxic responses to different HDDs/HDFs is likely to be due to genetic, metabolism, and absorption factors. The SAB acknowledged the lack of data in these areas and encouraged EPA to sponsor research on metabolism and on carcinogenicity of untested congeners.

In the absence of data, EPA cannot say that the human is more or less sensitive than any other species. EPA's Carcinogenicity Risk Assessment Guidelines indicate that for regulatory purposes EPA will choose the most sensitive species. For HDDs/HDFs, moreover, the cause for concern is that those HDDs/HDFs which have been tested show toxic responses at very low levels. See Unit IV.A.1.a. of the proposed rule.

Comment 13: EPA assumes without verification that all HDDs/HDFs are carcinogenic, although most have never been tested for carcinogenicity. (CMA at p. 14).

Response to Comment 13: This comment misinterprets the nature of EPA's decision in this rulemaking. EPA acknowledges that few of the HDDs/HDFs have actually been tested for carcinogenicity. Only 2,3,7,8-TCDD and a mixture of 2,3,7,8-substituted Hx CDDs have been tested, but they are the most potent animal carcinogens evaluated by EPA to date. The basis of the toxicological finding in this rule is the structural activity relationships among the HDDs/HDFs. Experimental data have accumulated which clearly indicate a link between intracellular biochemical mechanism and whole animal toxicities from exposure to HDDs/HDFs. The occurrence of these biochemical phenomena appear to be closely related to the structure of the HDDs/HDFs; the more similar the structure to 2,3,7,8-TCDD the more toxic is the compound. (Refs. 3, 21, and 22). Limited *in vivo* and *in vitro* data support the structure/activity argument that 2,3,7,8-substituted HDDs/HDFs share qualitative toxicity properties with 2,3,7,8-TCDD (see 50 FR 51798). This similarity of response is noted in a wide range of toxic endpoints including limited carcinogenicity and teratogenicity results. Therefore it is prudent to consider that similar HDDs/HDFs have similar toxic potentials, including carcinogenicity (Ref. 4).

Comment 14: EPA incorrectly refers to "suggestive" epidemiological evidence linking 2,3,7,8-TCDD to the occurrence of cancer. All studies other than those of a single investigator have not found any such link and this study has been subjected to significant criticism. (CMA at p. 14).

Response to Comment 14: EPA does not mean to state that epidemiological studies are persuasive regarding any interpretation. The epidemiological evidence is contradictory. See Response to Comment 11 above. However, the high relative risk of certain Swedish studies of herbicide workers cannot be totally dismissed. Furthermore, a recent study of farmers in Kansas provides additional evidence that epidemiological evidence is suggestive of a positive link between excess cancers and exposure to a HDD-containing herbicide (Ref. 18).

Comment 15: In setting LOQs EPA should use the Toxic Equivalency Factors (TEFs) developed by the Agency. (Dow at p. 6; March 4, 1986, Hearing Transcript at pp. 12 and 13, 20 and 21; CMA at pp. 39 and 40).

Response to Comment 15: EPA requested comment on the use of its TEFs in the preamble to the proposed rule, 50 FR 51800, column 2. Since that time the concept has been reviewed favorably by the Agency's Risk Assessment Forum, the Risk Assessment Council, and the SAB (Ref. 35). Moreover, the response both from comments and from the public meetings was favorable toward using TEFs to set LOQs, although the various parties recommended different approaches to their use. CMA advocated using the TEFs along with actual exposures to each congener to develop LOQs. In contrast, the Environmental Defense Fund (EDF) recommended applying the TEFs so that the sum of all HDD/HDF congeners found in any chemical would not exceed 0.1 ppb. This would involve an analysis to determine which congeners were present, and an application of the TEFs to determine the level of quantitation for each. (March 4, 1986, Hearing Transcript at pp. 33 and 34). This would necessitate levels in the parts per trillion range, which EPA believes is not generally achievable in chemical matrices, based on experience in EPA laboratories.

Since EPA has elected to treat the chemicals as a class for purposes of this rule, EPA has rejected setting LOQs on a chemical-by-chemical basis, as noted above in response to comment 4. With respect to EDF's scheme, EPA believes that these LOQs would be too low to be reasonably and accurately measured.

EPA has decided to use 0.1 ppb as a target level for 2,3,7,8-TCDD, because the Agency's generic assessment of risk shows a potential worst-case risk from dermal exposure to workers from that congener present at that level, and has set target LOQs for all other congeners at some level above 0.1 ppb because those congeners are, according to the TEF scheme, likely to be less toxic than 2,3,7,8-TCDD.

With regard to the brominated species, EPA had a different problem since the TEFs have been set only for chlorinated HDDs/HDFs. Thus, EPA had the choice of setting the LOQs for the brominated HDDs/HDFs at the same level as their chlorinated counterparts, based on the assumption that the brominated counterpart is equally toxic, or of leaving the LOQ for brominated HDDs/HDFs at the proposed level of 0.1 ppb. Very little data have been collected on brominated HDDs/HDFs, but that which have been collected suggest that brominated HDDs/HDFs are generally as toxic as their chlorinated analogues (Ref. 25).

For purposes of this rule, EPA has assumed equal toxicity, and has adjusted the LOQs for brominated HDDs/HDFs to match those of their chlorinated analogues.

The new LOQs are as follows: 0.1 ppb for T_4HDDs; 0.2 ppb for P_5HDDs, 2.5 ppb for Hx_6HDDs; 100 ppb for Hp_7HDDs; 1.0

ppb for T_4HDFs; 1.0 ppb for P_5HDFs; 10 ppb for Hx_6HDFs; 100 ppb for Hp_7HDFs.

Comment 16: EPA should eliminate the heptahalogenated congeners from the testing requirement because toxicity for these congeners is orders of magnitude less than that of 2,3,7,8-TCDD. (CMA at p. 42).

Response to Comment 16: EPA agrees that its TEF scheme indicates that the heptahalogenated congeners are considerably less toxic than 2,3,7,8-TCDD, but does not agree that they should be dropped from the testing requirement. In chemicals which have been tested, such as pentachlorophenol, the heptachlorinated dioxins are present in such large quantities that they could produce a toxic effect, even though their individual toxicity is many times lower than that of 2,3,7,8-TCDD (Refs. 4 and 8). In addition, the higher halogenated congeners have a tendency to dehalogenate in the presence of light to lower halogenated, and more toxic, congeners. (April 22, 1986, Hearing Transcript at pp. 46 and 47; comments submitted by Cambridge Isotope Laboratories (CIL)). There is also some evidence that higher halogenated HDDs/HDFs may have longer half lives in the human body, thereby enhancing their toxic potential (Ref. 26). For these reasons EPA has not removed the heptahalogenated congeners from the testing requirement, but has adjusted the LOQs based on the TEFs.

Comment 17: EPA should not have excluded iodinated and fluorinated species from this rule. Studies suggest that fluorinated dioxins are more biologically active than chlorinated or brominated ones and there is the possibility that fluorinated compounds could replace chlorinated or brominated compounds. (March 4, 1986, Hearing Transcript at p. 9; EDF at p. 5; p. 2 in comments to proposed amendment adding additional precursors).

Response to Comment 17: EPA has decided not to focus on the fluorinated and iodinated compounds in this rule. Straight substitution of fluorine or iodine for chlorine or bromine produces compounds with considerably different physicochemical and biological properties, thus indicating that fluorine and iodinated compounds would not be good substitutes for chlorinated or brominated compounds as commercial products. However, it is possible that fluorinated and iodinated compounds (which may theoretically be predisposed to HDD/HDF contamination) may be used to formulate commercial chemical products on an increasingly larger scale in the future. At the present time, however, the use of these compounds in the manufacture of commercial chemical products is small in comparison to the number of products using chlorinated or brominated chemicals.

Development of the analytical methodology, including appropriate standards, necessary to ensure accurate analysis with appropriate QA/QC procedures for the iodinated and fluorinated compounds does not appear to be cost effective at this time. There is no indication that any commercial laboratory is attempting to make such standards, and the cost of developing standards was one of the major costs of this final rule.

EPA may receive information, either as a result of the reporting requirements in this rule, or from information reported to the Agency in response to requirements promulgated under TSCA or other statutes, on the production, use, or disposal of these iodinated or fluorinated compounds. In the event this information indicates that these chemicals are being used on an increasingly frequent basis to replace chlorine and bromine in the manufacture of chemicals to which persons may be exposed, EPA will investigate, as it has for the chlorinated and brominated chemical compounds in this final rule, the potential for contamination with HDDs/HDFs, the likelihood of subsequent human exposure and the potential for unreasonable risk.

(ii) *Exposure.* EPA's proposed rule estimated exposure to the HDDs/HDFs subject to this rule by analyzing the risks that could theoretically occur if the chemicals subject to testing were contaminated with 2,3,7,8-TCDD, and by implication the other HDDs/HDFs, in the 0.1 ppb to 1.0 ppm ranges. The Agency applied these ranges to representative exposure scenarios consisting of dermal exposure to a household cleaner and to chemicals in the workplace. Theoretical risks resulting from the 0.1 ppb and 1.0 ppm contamination levels in the representative exposure scenarios were calculated using Lifetime Average Daily Dose (LADD) values in the multistage linear low-dose model discussed above. (See 50 FR 51798–51799). The risks ranged from a theoretical 1 in 1 occurrence for occupational dermal exposure at a contaminant level of 1 ppm to an individual risk level of approximately 4 in 10 million for consumer exposure to household cleaners contaminated at 0.1 ppb.

EPA acknowledges that much of the exposure analysis in the proposal indicated a higher risk than may be expected; however, after analysing the comments on its exposure modeling, the Agency has concluded that, for purposes of this rule, the 0.1 ppb LOQ is an appropriate target level for testing 2,3,7,8-TCDD. This is based on modifications to the existing occupational exposure scenario, which indicates there could be potential risk to chemical workers from 2,3,7,8-TCDD exposure at 0.1 ppb. The same target LOQ has been set for 2,3,7,8-TBDD. As noted above, the target LOQs for the other HDDs/HDFs have been adjusted upward using the TEFs. Analysis for any HDDs/HDFs in chemical matrices down to 0.1 ppb will be very difficult, but especially difficult for higher halogenated HDDs/HDFs. However, the toxicity of the HDDs/HDFs in this case may be expected to decrease with the degree of halogenation, so that use of the TEFs adjusts the LOQs upward for the higher halogenated congeners. EPA has also set the LOQs as a target, since the levels set may not be achievable in some chemical matrices. A review of the cost of analysis on a per-sample basis at these target levels indicated that the differences in costs associated with analysis at higher levels are not appreciably significant if the target LOQ is specified at the outset in analytical method development. If the target LOQ were established at a higher level before allocation of resources for method development, then lowered to a more conservative target level, an increase in cost per analysis would be expected because of reanalysis at the lower level. The exposure scenarios show that the risks posed by exposure to workers at the 1 ppm range may be substantial. Therefore, EPA has decided that the modified occupational dermal exposure scenario provides an adequate basis for choosing 0.1 ppb as the appropriate target testing level for the tetra HDD/HDF congeners, which are those of greatest concern to the Agency. Choosing the 0.1 ppb level as the lowest testing level will allow EPA to evaluate any of the potential risks resulting from low levels of all the HDDs/HDFs once the testing data are submitted, and will allow the Agency to catch in its analytical net any use that could potentially cause unreasonable risk, including possible new uses.

In addition, it is better to analyze these compounds at low levels when they are first created, rather than wait until they have entered environmental pathways, such as food chains and water supplies, and may have caused widespread contamination. In addition, because these compounds are difficult to monitor at trace levels in the environment using standard techniques, they are best analysed when they are first created in the manufacturing

process for later prediction of environmental contamination.

EPA's responses to comments on its exposure analysis are discussed below.

Comment 18: EPA's consumer exposure scenario based on a household cleaner is not representative of the uses of the chemicals subject to this rule, since none of those chemicals are used in such products and many are used almost exclusively in applications in which they are bound into polymeric matrices and thus are unavailable for human exposure. In fact, the household cleaner scenario is based on use of phenolic compounds in pesticides, which are not subject to TSCA jurisdiction. (CMA at pp. 18 and 19.)

Response to Comment 18: EPA concludes that the household cleaner scenario is relevant to this rulemaking. While the specific scenario used by EPA on household cleaners is based on a pesticide use not subject to regulation under TSCA, EPA has no indication that the chemicals subject to this rule may not be in products intended for similar uses that may be subject to TSCA. For example, no comments indicated that particular chemicals are not or could not be used for some kind of sprayed application or might not have some potential high exposure pattern. Indeed, there is some evidence that the use of certain chemicals may possibly result in high exposure patterns, most notably compounds used as additive or blended fire retardants, or as dye carriers for textile dyes. An additive fire retardant is topically applied to the desired materials (e.g., fabric, wood, synthetics), rather than incorporated into the product matrix by physical bonding or chemical reactivity (Ref. 13).

Since EPA has some indication that chemicals related to chemicals subject to this rule may be used in high exposure situations, manufacturers of the chemicals subject to this rule have an affirmative duty to inform the Agency that the chemicals, in fact, are not used in high exposure situations, and could not be used in high exposure situations. After all, manufacturers should have such information in their possession and in many cases may represent the only way in which EPA may obtain it. Instead, CMA, the representative of the industry, only states that none of the chemicals to be tested is "currently" used in household cleaner applications and that "many" of the chemicals are used "almost exclusively" in bound matrices. (CMA at 19). EPA assumes this statement does not refute the Agency's determination that the chemicals could possibly be used in high exposure situations or that some are currently being used other than in bound matrices. Indeed, while a particular manufacturer may feel confident that its current uses are in totally bound matrices, the same manufacturer may develop a new high exposure use in the future or another manufacturer may be currently producing the same chemical for a high exposure use.

The household cleaner analysis, therefore, which shows individual risks at 4 in 10 million for the 0.1 ppb level and individual risks of 4 in 1 thousand at the 1.0 ppm level, merely indicates that EPA, for testing purposes, should be concerned with some intermediate level, if no other risk scenario were to apply. Of course as noted above and more fully discussed below, the dermal occupational scenario gives EPA reason to believe that the 0.1 ppb level may be of concern for some HDDs/HDFs.

Comment 19: Even if EPA's calculations regarding risk of the household cleaner scenario are relevant to this rule, the Agency's calculations are unrealistic. A realistic scenario demonstrates that this use would not pose an unreasonable risk even if 2,3,7,8-TCDD were present at 1 ppm. If a disinfectant with active ingredients present at 0.1 percent levels were contaminated with 1 ppm HDDs/HDFs, once weekly usage, even assuming 100 percent absorption, over 55 years would yield a LADD of 4.8×10^{-10} mg/kg/day (4.8×10^{-7} μg/kg/day). This is two orders of magnitude less than EPA's LADD of 2.7×10^{-5} μg/kg/day. (CMA at pp. 18 and 19).

Response to Comment 19: EPA rejects this comment. The Agency's calculations at the 1 ppm contamination level are reasonable. The difference between the two calculations results from CMA's assuming active ingredients present at 0.1 percent and EPA's assumption of a 4.5 percent active ingredient concentration. EPA's assumption comes from a common household cleaner label. CMA gives no reason for assuming a 0.1 percent level, or why that level is more appropriate than EPA'S level. The remainder of the difference is accounted for by EPA's assuming a 70-year lifetime exposure and CMA's assuming 55 years CMA gives no reason why EPA's assumption is incorrect, or why EPA should deviate from its usual assumption. In any event, the difference between these two assumptions is negligible for analytical purposes.

EPA's individual risk analysis at 1 ppm concentration in household cleaners of 4 in 1,000, therefore, is a reasonable calculation and gives EPA cause for concern.

Comment 20: A more relevant worst-case consumer exposure scenario would be the leaching of chemicals from plastic handles containing flame retardants. This shows a negligible consumer exposure. This exposure scenario, even with chemicals contaminated with HDDs/HDFs at 1 ppm, shows a worst-case LADD at 1.3×10^{-9} mg/kg/day (1.3×10^{-6} μg/kg/day). (CMA p. 20).

Response to Comment 20: EPA disagrees that the plastic handle scenario is the worst-case consumer exposure scenario that should be used for this rule. As noted above, EPA believes that the appropriate analysis to use is the household cleaner scenario. Furthermore, the LADD calculated by CMA would still present a risk of concern for testing purposes under EPA's linear low-dose risk assessment model, because CMA's calculated worst-case LADD of 1.3×10^{-9} mg/kg/day (1.3×10^{-6} μg/kg/day) would still yield oncogenic risk estimates higher than 1×10^{-6}. This level can be used as a trigger for testing purposes, given EPA's other concerns with respect to the chemicals subject to this rule.

Comment 21: EPA's worker exposure scenarios are unrealistic. The Agency assumes that both hands are immersed in the chemical daily, despite the fact that in some cases, such as 2,4-dichlorophenol, a single such incident would cause severe thermal and chemical burns. Similar burns would be expected for most of the chemicals to be tested as they are high-melting solids. In fact, using medical records from certain chemical companies showing average worker dermal exposure of less than 2 cm_2 skin surface per year, and assuming the material contains 1 ppm 2,3,7,8-TCDD, the LADD would be only 8.7×10^{-11} mg/kg/day (8.7×10^{-8} μg/kg/day). This contrasts with EPA's LADD of 0.1 ppb of 2.11×10^{-6} μg/kg/day (or 2.11×10^{-5} μg/kg/day at 1 ppm.) (CMA at pp. 20 and 21).

Response to Comment 21: EPA's exposure scenario is not a statement by the Agency that workers would, in fact, immerse their hands in vats of chemical liquids; rather, the scenario is a quantitative surrogate for the types of exposures that may occur in a chemical plant, usually as a result of accidental spills, resultant cleanup efforts involving the lack of protective clothing (e.g., gloves, goggles, etc.), and instances of worker negligence in handling small amounts of potentially hazardous chemical substances. Thus, EPA's intent was not to suggest that worker exposure results from total immersion of the hands in chemical liquids, but rather to provide a worst-case estimate based on the total unprotected area of the hands which could be exposed resulting from

these types of spills, cleanup efforts, or improper handling practices.

In response to comments regarding the reasonableness of EPA's estimate of worker exposure, EPA re-evaluated its occupational exposure estimates. EPA contacted representatives of OSHA, NIOSH, the American Industrial Hygienists and the American Council of Government Industrial Hygienists to solicit data on the reasonableness of EPA's exposure assumptions (Ref. 42). Although EPA's contacts were unable to provide estimates for the entire chemical synthesis industry (because of substantial differences among the processes, worker activities and industrial hygiene practices), they did agree that the assumption that a skin area equal to both hands, exposed to a chemical each day, is too high. Based on their information EPA believes a more reasonable estimate ranges from the area of 1 hand to the area of one-half of 1 hand exposed to the chemical substance during each time, or event, when the worker is exposed, or an estimate of 10 percent of the skin area equivalent to 2 hands exposed each day.

To estimate the number of times a worker is exposed to a chemical each year, EPA used as a surrogate an estimate of 77 as the average number of drumming, bagging and transfer operations per year. Then EPA calculated the LADD assuming that both an area equal to one-half of 1 hand and an area equal to 1 hand, was exposed to the chemical substance each time. The LADD for one half of 1 hand exposed, if the chemical is contaminated at 0.1 ppb is 2×10^{-7} μg/kg/day. The LADD for 1 hand exposed, if the chemical is contaminated at 0.1 ppb, is 4×10^{-7}; both LADD's result in a risk of 10^{-5}. If the assumption is made that only 10 percent of the skin area of a worker's 2 hands will be exposed to the chemical substance each work day, the LADD is 2×10^{-7}, again resulting in a risk of 10^{-5} (Ref 42).

Minor differences in several other assumptions account for the remaining difference in the LADDs, but these differences are insignificant. For example, EPA assumed the liquid film thickness on exposed skin surfaces at 1.8×10^{-3} cm; the density of the liquid at 1.38 gm/cm^3, and the number of years of exposure at 70 years. CMA assumed liquid film thickness at 1.5×10^{-3} cm, a liquid density of 1.3 gm/cm^3 and 55 years for lifetime exposure.

EPA believes that CMA's suggestion of an average dermal exposure of less than 2 cm^2 skin surface per year is unrealistic based on normal chemical manufacturing practices, including accidental spills and resulting cleanup efforts involving lack of protective clothing, and even isolated instances of worker negligence in handling such chemical substances. Unless the event is serious or widespread enough to cause a slowdown or halt of the production process, the event usually goes unreported. The estimate of skin area exposed during chemical manufacture by the personnel contacted by EPA are orders of magnitude larger than CMA's 2 cm^2 per year (Ref. 42).

Comment 22: Hypothetical worker inhalation exposures show extremely low LADDs and would not justify the LOQs in this rule. (CMA at p. 21).

Response to Comment 22: Because of the very low vapor pressure of 2,3,7,8-TCDD in its pure form (1.7×10^{-6} mm/Hg), inhalation toxicity scenarios were included in a support document (Ref. 43) but were not used to calculate exposures for purposes of this rule. These calculations can provide LADDs which may be useful in assessing an overall estimate of risk when considered with risk estimates based on other routes of exposure but, taken alone, do not allow a meaningful evaluation of potential risk. While EPA is unable to state whether risk from inhalation exposure, alone, is significant, such risk adds to the Agency's concern when considered with risk from possible dermal exposure.

(iii) *Exclusions and waivers.* EPA will exclude chemicals from testing based upon submission of prior test data which satisfy TSCA section 4(a)(1)(a)(i) requirements, or submission of detailed process and reaction condition data which show that conditions known to be conducive to HDD/HDF formation are not present. EPA will waive testing requirements for any chemical produced in quantities of 100 kg/year or less for purposes of research and development. When production of that chemical exceeds 100 kg/year, the waiver expires, and the producer then becomes subject to the testing requirements in this rule. EPA will also waive testing requirements for those developmental chemicals that, due to the costs of testing, either will be taken off the market or will not reach the market. While EPA believes that a potentially highly toxic chemical should not be marketed if it cannot bear the costs of testing, the Agency will consider a waiver to testing in appropriate circumstances.

If a manufacturer has a developmental chemical that, due to the costs of testing, either will be taken off the market or will not reach the market, it may apply for a waiver by submitting information to EPA that shows such adverse market effects. EPA will evaluate that information to determine whether the manufacturer's allegations of market effects will, in fact, occur. If EPA agrees with the manufacturer, the Agency will then weigh the potential risks of the chemical against the costs of testing to determine whether testing is warranted under this rule even at the developmental stage. EPA will grant the waiver, with appropriate conditions, if the risks do not outweigh the costs of testing for that particular chemical. These criteria are similar to those EPA employs in evaluating whether chemical substances should be restricted under section 5(e) of TSCA.

EPA expects this waiver to be applicable only to chemicals manufactured in amounts of no more than 2,000 to 5,000 total pounds annually. Preliminary analysis of data submitted for this rule shows that this waiver will apply to only one chemical produced by Arco Specialty Products Division, which was recently sold to Horsehead Industries.

b. *Insufficient data.* In the preamble to the proposed rule EPA stated that, with the exception of some data on 2,3,7,8-TCDD and even less data on several related congeners, the Agency has little or no data on concentrations of HDDs/HDFs in commercial chemicals upon which to base a determination of unreasonable risk (58 FR 51800). EPA received comments relative to this issue on two chemicals, and discusses those comments below. As a result of the data submitted, the Agency has excluded 1 grade of decabromodiphenyl oxide produced by DOW, for which a 2-year bioassay and an analysis for HDDs/HDFs in the test article was done. For Tetrabromobisphenol-A, the other chemical on which comments were received with respect to insufficient data, the Agency sees no reason to change its determination that existing data is insufficient and thus testing is necessary to obtain that data.

Comment 23: Existing bioassay data plus chemical analysis for HDDs/HDFs for decabromodiphenyl oxide provide all data needed to show absence of unreasonable risk. Acute, 28-day feeding, mutagenicity and 2-year feeding studies found no significant adverse toxicologic effects for decabromodiphenyl oxide. An analysis of the test article used in these studies for the presence of HDDs/HDFs revealed none present at 1.0 ppb, the lowest level achievable in the analysis. (CMA p. 24, Dow pp. 5–6).

Response to Comment 23: EPA has examined the data submitted on decabromodiphenyl oxide in which toxicology and carcinogenesis studies

were performed by NTP, along with a chemical analysis for the presence of HDDs/HDFs. The toxicology and carcinogenesis studies were performed on both rats and mice, at doses of 0, 25,000 and 50,000 ppm in the diet. Results included increased incidences of neoplastic nodules of the liver in low dose males, and in high dose groups of each sex, equivocal evidence of carcinogenicity for male mice as shown by increased incidences of hepatocellular adenomas or carcinomas (combined) in the low dose group and of thyroid gland follicular cell adenomas or carcinomas (combined) in both dosed groups, and no evidence of carcinogenicity for female mice. An accompanying analysis by NTP with appropriate QA/QC and using GC/MS, showed no HDDs/HDFs in the 2 samples analyzed at the level of 1 ppb. While EPA does not necessarily concur with the fact that the tests show no unreasonable risk, the Agency does agree that testing under this rule would not be warranted, in view of the extensive bioassay data combined with existing test data with adequate QA/QC. Therefore, EPA will exempt the grade of decabromodiphenyl oxide produced by Dow for the research NTP project, provided Dow can supply evidence showing which grade was produced for the NTP project. If Dow produces other grades by different processes, or produces by the same process a grade in which higher temperatures or more alkaline conditions occur, that grade will have to be tested under this rule.

Comment 24: The Interagency Testing Committee (ITC) has determined that Tetrabromobisphenol-A (TBBPA) should not be recommended for health effects testing, and EPA has accepted that recommendation. Thus, the compound, containing whatever HDD/HDF impurities may be present, has already been found to demonstrate absence of unreasonable risk. (CMA pp. 24 and 25 and Dow pp. 5 and 6).

Response to Comment 24: EPA did not find that TBBPA did not present an unreasonable risk to human health in accepting the ITC's recommendation to not require health effects testing. A determination that a chemical does not present an unreasonable risk can only be made after extensive testing. The issue of contamination by HDDS/HDFs was not examined at the time TBBPA was evaluated as a candidate for testing by the ITC, and the short-term tests which showed low mammalian toxicity would not be capable of identifying the latent toxic effects characteristic of 2,3,7,8-TCDD. However, in September 1986, a paper was presented which showed HDD contamination of TBBPA (Ref. 30). Therefore, there is a basis for requiring testing of TBBPA in this final rule, and this finding is not inconsistent with EPA's earlier decision not to include health effects testing of TBBPA.

c. *Necessity for testing.* EPA has determined that testing is necessary to generate data on which to base toxicity and exposure, because such data are fundamental to the assessment of risk, and because the analytical data generated by required testing in this final rule is currently not available in any accessible or usable form for purposes of assessing these potential risks. No comments other than those already addressed in comments 23 and 24 above were received on the necessity for testing.

EPA has decided, however, that it is not necessary to test under TSCA two chemicals originally proposed for testing. These chemicals are 2,4-Dichlorophenoxyacetic acid (2,4-D) and 2,4-Dichlorophenoxybutyric acid (2,4-DB). Both are registered pesticides as well as isolated intermediates used to produce pesticides. Used as pesticides, they are subject to testing under FIFRA. Used as pesticide intermediates, they are subject to testing under TSCA. At the time this rule was proposed, plans had not been completed to require testing of these pesticides under FIFRA, so they were listed in the proposed rule. EPA plans to require under FIFRA equivalent testing of pesticides for contamination by HDDs/HDFs. EPA believes that testing these two chemicals under TSCA would be duplicative and unnecessary, particularly since EPA does not expect them to be used for non-pesticide purposes. Accordingly, they will not be subject to the testing provisions of this final rule under TSCA, but instead are subject to the FIFRA Data Call-In program. They will be subject to the same testing provisions as chemicals listed for testing in this final rule, including target LOQs, the same methods, QA/QC procedures, and under the same deadlines as the chemicals listed for testing in this final rule.

EPA has also examined another chemical that has both pesticide uses, as well as non-pesticide uses subject to TSCA jurisdiction, and has decided, similarly, that testing is not necessary under this rule because that chemical is being tested under Data Call-In provisions of FIFRA. This chemical, pentachlorophenol, was not originally proposed for testing, but EPA subsequently learned that it has non-pesticide uses. Nevertheless, EPA has decided that testing under TSCA is not necessary for pentachlorophenol because such testing would be duplicative of the testing under FIFRA. However, because pentachlorophenol has uses other than as a pesticide, data collected through the OPP Data Call-In will be available for OTS review and evaluation.

B. Requirements Under Section 4(b)

Section 4(b) of TSCA, discussed in detail in the preamble to the proposed rule (50 FR 51797, cols. 1 and 2), requires EPA to deal with a number of issues before promulgating a test rule. Section 4(b)(1) sets forth three additional issues to be included in a test rule. First, EPA must identify the chemical substances for which testing is required under the rule. Second, EPA is to include "standards for the development of test data." Third, section 4(b) requires EPA to specify the period within which persons required to conduct tests shall submit data to EPA. In determining the standards for development of test data and the period for submission of data, EPA's considerations shall include the relative costs of the various test protocols and methodologies that may be required and the reasonably foreseeable availability of facilities and personnel needed to perform the testing required. Section 4(b)(3)(B) sets forth the criteria for determining who should test.

The preamble to the proposed rule discusses the section 4(b) considerations (50 FR 51800). Below, EPA discusses the comments received on these issues and the changes the Agency has made to its final regulation.

1. *Identification of substances to be tested.* EPA chose the chemicals for testing based on two broad criteria. Some chemicals have actually been tested in the past and found to contain 2,3,7,8-substituted HDDs/HDFs. The others are chemicals which EPA has good reason to believe are contaminated based on structural similarities with the chemicals actually tested, and the use of manufacturing process conditions believed to aid the formation of dioxins and dibenzofurans. Thus, these listed chemicals contain carbon and utilize chlorinated and/or brominated compounds in their manufacture and are manufactured under circumstances that include high temperature or pressure and the presence of alkaline conditions.

Contamination of the listed chemicals is expected to occur during manufacture. Thus, the focus of the testing is on detecting contamination at the beginning of the manufacturing chain to allow EPA to draw conclusions about the degree of contamination during further processing

of the chemical. Comments on chemical identification are discussed below.

Comment 25: The process and reaction conditions under which brominated phenolics are produced make it unlikely that dioxins or furans of concern will be formed. These chemicals should be removed from the list of chemicals to be tested. (Great Lakes p. 17; p. 4 in comments to proposed amendment adding additional precursors; Ameribrom p. 2.)

Response to Comment 25: Confidential data detailing the manufacturing process and reaction conditions were submitted by these commenters. These commenters provided detailed data to substantiate their claim that the processes under which certain chemicals are produced are different from those assumed by EPA, and that reaction conditions are such that HDDs/HDFs would not be expected to form. EPA has asked several clarifying questions about the process and reaction condition data submitted. The response to these questions will form the basis for a decision by EPA to exclude or waive a company from testing certain specific chemicals based on a process different from that expected by EPA and reaction conditions not expected to form HDDs/HDFs.

Even if the exclusions or waivers are granted, EPA will not remove the chemicals from the list, however, since another manufacturer may use the process specified by EPA to produce these chemicals, thus making production of HDDs/HDFs likely.

Comment 26: EPA's list of chemicals to be tested is too narrow, and must be broadened to include all chemicals likely to be contaminated with HDDs/HDFs, as were included on the list of 238 chemicals from which EPA chose those to be tested under this rule. (EDF at p. 5; p. 2 of comments to proposed amendment adding additional precursors.)

Response to Comment 26: EPA disagrees. The list of 238 chemicals which was widely circulated in July 1985, to get early comment from all segments of the community most involved with HDD/HDF analysis, was compiled from every available reference in which chemicals theorized to contain HDDs/HDFs were listed. Its purpose was as a starting point for additional analysis. Its circulation was to get input on chemicals or classes of chemicals which should or shouldn't be included, and the reasons therefor. The breakdown of this list is detailed in Reference 43 to this rule. EPA first looked for chemicals which in the past have been tested and found to contain HDDs/HDFs. Chemicals structurally similar to these chemicals, with a theoretical chemical pathway to HDD/HDF formation, and manufactured under conditions likely to produce HDDs/HDFs have been listed for testing. For the other chemicals, there is not a strong theoretical basis at present to conclude that the chemicals are contaminated with significant levels of HDDs/HDFs, due to lack of any documented pathway for HDD/HDF formation and lack of favorable process conditions. In several cases chemicals were not listed because contamination would occur from a contaminated feedstock chemical, which was already listed. The rationale is that a chemical testing contaminated will undergo further investigation, including investigation of contamination of all chemicals produced from the known contaminated chemical. Thus testing at this time is not indicated for the downstream chemicals. Finally, those chemicals with uses only as pesticides were separated into a separate list.

The result of this selection process is the list of 32 chemicals, 12 manufactured and 20 not currently manufactured, which are required to be tested under this rule.

Comment 27: EPA has omitted the halogenated anilines and benzenes and most diethyl ethers from consideration for testing, although the publication "Dioxins" (Ref. 15) and the support document (Ref. 43) cite these chemicals as highly likely to be contaminated. Further, it is well known that heating halogenated benzenes will yield PHDDs. (EDF p. 4.)

Response to Comment 27: EPA disagrees that halogenated anilines and diethyl ethers should be added as a class of compounds. Although the halogenated anilines were cited as highly likely to be contaminated (Ref. 43), the formation of HDDs/HDFs during their manufacture is dependent on specific reaction criteria of heat, pressure, alkalinity and duration of reaction employed in manufacturing the chemical. In most cases such conditions are not believed to be present in their manufacture. However, several halogenated anilines are listed as precursor chemicals, since they are believed to be conducive to the formation of HDDs/HDFs, and the application of heat during the synthesis of other chemicals could produce HDDs/HDFs in those other chemicals. Conversely, pentachlorobenzene, which may be predisposed to HDD/HDF contamination during synthesis, would require dechlorination in an aerobic environment at high temperatures to produce chlorinated dioxins or furans. This combination of reaction conditions is unlikely under current manufacturing processes.

Diethyl ethers are not discussed in either Reference 43 or in the publication "Dioxins" (Ref. 15).

As a result of EDF's comments and additional information received after publication of the proposed rule, EPA issued an amendment to the proposed rule (51 FR 37612; October 23, 1986), proposing to add 18 chlorinated and brominated benzenes to the original list of 12 precursor chemicals. This rule adds 17 of those chemicals to the category of precursor chemicals and requires reporting under section 8(a) of TSCA on chemicals made from those precursors. If process and reaction condition data submitted show that HDDs/HDFs are likely to be formed, additional chemicals may be listed for testing.

Comment 28: EPA should require testing of precursor chemicals. (EDF p. 5.)

Response to Comment 28: EPA disagrees. The precursor chemicals are listed separately because they do not meet EPA's criteria for testing, namely, the reaction conditions needed to form HDDs/HDFs are not present. All published research shows that heat, pressure and alkalinity, or some combination of these conditions, are needed for the formation of HDDs/HDFs.

These chemicals are listed as precursors because the application of the listed conditions during further chemical processing may occur, and may produce HDDs/HDFs in the final chemical substance produced. Reporting of process data and reaction conditions will help EPA determine whether any of the chemicals manufactured from these precursors should be proposed for testing.

Comment 29: EPA does not specify what grade of substance must be tested. (Dow p. 19.)

Response to Comment 29: EPA requires that manufacturers test chemicals which are listed in this final rule in all grades normally marketed in active commerce only if manufacture occurs by different processes. If manufacturing occurs by the same process under variable conditions, the test substance may be a single grade: the grade subject to the most intense heat and alkalinity for the longest duration. If these two factors do not differ for the various grades, the test substance should be the grade with the highest volume of sales. In the test protocol, the manufacturer must tell the Agency how many grades of the chemical are produced and describe the

reasons for choosing the grade to be tested.

2. *Standards for the development of test data.* This term is defined under section 3(12) of TSCA and refers to the prescription of the information for which test data are to be developed and any analysis to be performed on such data. It also includes the manner in which the data are to be developed, the specification of any test protocol or methodology, and any other requirements needed to provide assurance of the reliability and adequacy of the data. These standards should be differentiated from analytical standards, which are reference chemical materials used to calibrate and quantitate specific substances.

a. *General analytical method consideration.* The analytical procedures specified in this final rule for the quantitative measurement of HDDs/HDFs in commercial products include: (1) The quantitative extraction or partitioning of the analytes from the commercial product; (2) separation of the HDDs/HDFs from interferences present in the extract; and (3) separation, identification and quantitatio.n of HDD/HDF congeners, using high-resolution gas chromatography (HRGC) and high-resolution mass spectrometry (HRMS) or low-resolution mass spectrometry (LRMS), if it can be shown to be as effective as HRMS for a particular matrix.

The most significant difference in the analysis of HDDs/HDFs in commercial products in comparison with environmental and biological samples will be the extraction and cleanup procedures. The physical and chemical properties of environmental and biological matrices are typically different enough from the properties of the analytes to allow relative ease of separation. In contrast, the commercial products, in most cases, may be structurally similar to the analytes, complicating the separation and necessitating the complete removal of the matrix to avoid interferences in the final determination (Ref. 24). The analyst is therefore confronted with a choice of two basic options in achieving final analysis: (1) The analyst can develop sample preparation procedures that effectively separate the commercial product matrix from the HDDs/HDFs that allow for LRMS analysis at the LOQs designated in this final rule; or (2) the analyst can elect to prepare samples in which some potential interference remains, but rely on the resolving capabilities of HRMS to distinguish the difference from HDDs and HDFs and potential interference at the LOQ. The option for use of LRMS is viable only to the extent that the analyst can demonstrate that the LOQ specified in this final rule can be achieved using this method.

b. *Detection method.* In the proposed rule, EPA chose HRGC/HRMS as the analytical method of detection (see 50 FR 51801, unit IV.B.2.b.).

Comment 30: EPA has failed to consider that the differences in the nature of halogenated compounds would present problems in loss of sample during the detailed extraction and cleanup procedures necessary to prepare samples for analysis by HRGC/MS. Dow states that extensive experience exists with samples of the chlorinated species, while very little work has been done on the brominated species. Dow predicts that problems with chemical reactivity and heat and light stability will present major problems in preparing these brominated species for analysis. (Dow p. 14; CMA p. 45).

Response to Comment 30: EPA agrees with these observations, and, based partly on these comments, has extended the required reporting deadline for submission of study plans for the analysis of totally brominated compounds for an additional year after the effective date of this final rule. The deadline for reporting the results of analyses of these compounds is within 6 months after EPA review of these study plans.

EPA has extended these deadlines because of the lack of experience in analyzing brominated compounds for HDDs/HDFs at these low levels. An extension of a year will provide time to modify and perfect for brominated compounds the methods used to analyze chlorinated compounds. The additional time also allows more freedom in scheduling available laboratory capacity to perform these analyses.

Comment 31: Dow noted that the HRMS recommended for testing would not scan the atomic mass unit range but would use single ion monitoring. Because of the difference in atomic mass between chlorine and bromine, Dow asserts, many of the instruments used for molecular ions up to octachlorodioxins and octachlorofurans are not suitable for any brominated materials above the tribrominated compounds (e.g., tetra thru hepta). This will result in the necessity of procuring a separate instrument for detection of the chlorinated and brominated congeners. Dow notes that their instrument, a quadrupole mass spectrometer with molecular ion capability up to 600 atomic mass units, would allow analysis up to and including the pentabrominated congeners, but would not allow similar analysis of hexa- or heptabrominated congeners. (Dow p. 14).

Response to Comment 31: EPA agrees that Dow may need a separate instrument to analyze for higher brominated HDDs/HDFs, but notes that newer quadrupole instruments capable of extending detection at the higher atomic mass units required for the brominated HDDs/HDFs are available (Ref. 36). EPA recognizes that the analyses of these compounds can possibly best be achieved using magnetic sector focusing instruments. This final rule does not define the resolution mode (increment of mass/mass of interest) necessary to complete the analysis. Since HRMS magnetic sector instruments may be operated in either high or low resolution modes, the analyst has the opportunity to define instrument parameters to meet the requirements for a specific analysis.

This does not mean that manufacturers required to analyze brominated dioxins and furans must make large additional investments in new intrumentation solely for the purpose of completing analyses for these chemicals. EPA expects that these manufacturers will make arrangements to contract these analyses out or lease time on available instruments using their own analytical support staff to perform analyses, rather than commit the funds necessary to purchase these instruments.

c. *Method sensitivity.* As EPA discussed in the proposed rule a chief concern in using any analytical method is the ability to achieve the desired level of detection/quantitation.

Comment 32: There is a definite possibility of decreasing analytic sensitivity as the analyses for the more highly substituted HDDs/HDFs are attempted. There are three reasons for this predicted loss in sensitivity: (1) The additional halogens will result in lower volatility and thus greater tendency for the compound to either adsorb or find cold sites in the column, thereby preventing elution or detection; (2) the mass spectrometer will experience a loss in sensitivity as the degree of halogenation of a congener increases, because the mass spectrometer detects molecules, rather than grams of substance. Thus, higher halogenated congeners, having fewer molecules than lower halogenated congeners, will be more difficult to detect and quantify (3) a considerable additional loss in sensitivity (40 to 50 percent) can be expected in going from tetra to hepta

halogenated congeners because, in the case of the tetra halogenated congeners, 3 major molecular ions carry approximately 38 percent of the ion current, while in the hepta halogenated congener, 6 major molecular ions carry 23 percent of the ion current. These 3 factors can be expected to result in a loss of 50 percent analytical sensitivity in going from the tetra to the hepta halogenated congeners. (CMA p. 28).

Response to Comment 32: EPA did, in fact, consider this situation, and generally agrees with this comment on the loss of analytical sensitivity. However, LOQs have been adjusted based on toxicity of the congeners relative to the toxicity of 2,3,7,8-TCDD. This adjustment has allowed the LOQ for the heptahalogenated dioxins to rise to 100 ppb, 3 orders of magnitude less sensitive than that proposed. The LOQ for all congeners higher than tetra have been adjusted so that all are less sensitive than the 0.1 ppb and 1 ppb proposed for HDDs and HDFs respectively. These adjusted LOQs should more than compensate for the predicted loss of analytical sensitivity for the higher halogenated congeners, since the loss of analytical sensitivity from tetra- to heptahalogenated is only 50 percent, and the adjusted LOQs offer a level 3 orders of magnitude higher.

d. *Quality assurance/quality control (QA/QC) procedures.* In the proposed rule, EPA specified QA/QC requirements, including reproduceability of ±10 percent for at least 2 analyses of the same isotopically labeled HDDs/HDFs spiked to a concentration of the LOQ, and determination of the LOQ by recovery within 70 to 130 percent of the amount spiked for the internal calibration standard which has run through the entire chemical analysis. Otherwise documented corrective actions must be taken and the sample set must be rerun.

Comment 33: EPA has set QA/QC requirements that are far too stringent. Crummet et al. reported in their review of a human adipose study (Ref. 7) that 8 of the world's most experienced laboratories in HDD/HDF analysis reported highly variable results (e.g., more than 50 percent higher or lower than background and spiked levels). Recovery of spiked samples ranged from 27 to 100 percent. Crummet et al. also found that, although interlaboratory agreement is good for experimental work, many values still differ by 100 percent or more, even in matrices (tissue) that are not nearly so difficult to extract or cleanup as chemical product samples. Experienced laboratories, Crummet observes, have not achieved reproducible spiked sample results "within ±10 percent of each other," and recoveries "within 70 to 130 percent of the amount spiked," as EPA specified, and such an expectation on replicate samples at the LOQ specified is not scientifically sound. Analytical chemists always strive for narrow limits but recognize that this cannot be achieved unless they are operating orders of magnitude above the LOQ since that value is defined as the limit where they can first assign a legitimate quantitative number to the concentration. The generally accepted lower limit of recovery has been 50 percent and changing this percentage of required recovery could greatly increase the protocol development and the analysis costs." (Dow p. 15–20 CMA p. 30).

Response to Comment 33: EPA agrees that the reproducibility and recovery requirements are overly stringent for the LOQs specified, and, based on the observations outlined above, will accept an adjustment in precision to ±20 percent, and an adjustment in recovery to 50 to 150 percent. The internal standards added at initial sample preparation are subjected to each phase of extraction, separation and cleanup as experienced by the native HDDs/HDFs which may be present in the sample. Thus, the final quantitation using the ratio of responses of the native HDD/HDF to the internal standard pairs compensates for the recovery through the method.

e. *Analytical standards.* In specifying HRGC/HRMS to perform the analysis in the proposed rule, several possible methods of quantitation were examined, based on analytical standards of 2,3,7,8-HDD/HDF compounds in concentrations similar to the concentration range of interest (0.1 ppb for 2,3,7,8-HDDs and 1.0 ppb for 2,3,7,8-HDFs) found in chemical products to be tested.

Quantitation using internal standards was selected as the preferred method in the proposed rule, because the use of internal standards can provide continuous monitoring of extraction efficiency and method precision in the analysis of actual product samples; thus the internal standards may provide information on matrix effects. Since the HDD and HDF compounds of greatest concern are those substituted at the 2,3,7,8 positions, EPA specified that these compounds (isotopically labeled) be used as reference standards in the proposed rule. These analytic standards are expected to be available from at least one manufacturer at the time this rule becomes effective. (See comments to the proposed rule submitted by Cambridge Isotope Laboratories).

Comment 34: CMA's review of the availability of standards required indicates only 1 of the required 30 brominated and 23 of the 30 required chlorinated standards are available. (CMA p. 38).

Response to Comment 34: EPA relies on comments submitted by Cambridge Isotope Laboratories in which its president, Dr. Joel Bradley, states that all chlorinated and brominated standards required in the proposed rule will be available by the time this rule is promulgated, with the possible exception of 1,2,3,4,6,7,8- and 1,2,3,4,7,8,9-HpBDF.

3. *Period for submission of test data.* EPA proposed that manufacturers subject to the testing requirements of this rule submit protocols developed for the analytical methodology within 6 months after promulgation of a final rule, and that test results for the listed chemicals be submitted no later than 1 year after EPA review of protocols for analytical methodology.

Comment 35: EPA should extend the time for completing the analyses for all chemicals, and analyses for brominated congeners should be extended even more. All previous work has been done on chlorinated compounds, and even that is state-of-the-art. In addition, the brominated HDDs/HDFs are expected to present additional problems such as chemical reactivity and heat and light instability. (CMA p. 45; Dow p. 13; Ethyl p.1; Vulcan p.1; Ameribrom p.1; Great Lakes p.1).

Response to Comment 35: EPA agrees that the time should be extended for development of protocols, since most of the methods development work will be done during that period. However, the time allowed for actual analysis, once the method has been developed, can be decreased from 1 year to 6 months. Further, EPA agrees that additional time is needed to adapt and develop methods for analysis of the brominated congeners, since very little work has been done in this area. Therefore, EPA has adjusted the schedule for development of methods and submission of protocols to 1 year for predominantly chlorinated compounds and 2 years for predominantly brominated compounds. Time for analysis has been adjusted to 6 months after EPA review of the protocol.

Comment 36: EPA should require tiered testing within the testing scheme for brominated chemicals so that brominated diphenyl ethers are tested before brominated phenolics and their derivatives, and so that Tetrabromobisphenol-A is tested before any of its derivatives. The rationale for this scheme is that the more difficult

analytical problems posed by the brominated diphenyl ethers will facilitate the development of an analytical method for the phenolics, and that Tetrabromobisphenol-A as the parent compound should be tested before its derivatives, since the only source of HDDs/HDFs in the derivatives would be from the parent compound. (Great Lakes pp. 46 thru 50).

Response to Comment 36: EPA agrees with the expected difficulty of testing diphenyl ethers, since the molecule is so similar to the HDF molecule that separation of the matrix will be difficult. However, the logic of testing the more difficult compound first seems reversed. In any case, the decision about which compounds to test first is an internal management decision to be made by each manufacturer depending on the circumstances. EPA has added an extra year to the timetable for testing of brominated compounds, and believes each manufacturer should determine testing priorities within that time.

EPA listed the derivatives of Tetrabromobisphenol-A because the contamination is expected to result from manufacturing conditions the same as or similar to those for the parent compound, not as a result of a contaminated feedstock, as would be the case if the contamination is expected to result from the parent compound. However, EPA will leave testing order or priority up to each manufacturer.

4. *Persons required to test.* Persons required to test has been fully discussed in the preamble to the proposed rule under Unit IV.B.4. (50 FR 51803, Dec. 19, 1985). EPA has found that there is insufficient data and experience upon which to determine or reasonably predict the effects of the manufacture, processing, distribution in commerce, use, and disposal of the chemicals subject to the testing requirements of this rule. Therefore, in accordance with section 4(b)(3)(B) of TSCA, manufacturers and processors are responsible for testing.

It is expected that in all cases subject to this rule, testing will be performed by each of the manufacturers on the most appropriate grade of the substance they produce, and that part of the cost of testing will be passed on to the processors through the pricing mechanism, thereby enabling them to share in the costs of testing. Section 4(c) of TSCA permits a manufacturer to obtain exemptions from testing if the substance it produces is equivalent to a test substance and testing the substance would result in generation of duplicative data. A manufacturer will not be permitted to obtain an exemption based upon another manufacturer's testing unless it can demonstrate that the substance it produces is equivalent to the substance being tested. A manufacturer must designate the test substance it believes is equivalent to the substance it produces and submit detailed, complete process and reaction condition data to substantiate its claims of equivalence.

Processors will be called upon to sponsor testing only if manufacturers fail to do so; however, in some cases processors may be required to provide reimbursement directly to those sponsoring this testing. If the manufacturer does not submit a letter of intent to perform testing within the 45-day period, EPA will issue a notice in the **Federal Register** to notify all processors of the subject chemical. The notice will state that EPA has not received letters of intent to perform testing and that current processors will have 45 days to submit either a letter of intent to perform the test or an exemption application for such testing. Each processor who submits a letter of intent to perform testing will be obligated to submit a proposed study plan and, ultimately, to perform testing. If processors are required to sponsor testing, they may apply for exemptions from testing by submitting process data to demonstrate equivalence.

If no manufacturer or processor submits a letter of intent to perform testing, EPA will notify all manufacturers and processors, either by notice in the **Federal Register** or by letter, that all exemption applications will be denied and that within 30 days all manufacturers and processors will be in violation of the rule until a proposed study plan is submitted for required testing.

5. *Chemical screening methods.* In the preamble to the proposed rule, EPA noted that all chemical screening methods investigated were either as expensive as the required testing or were unreliable. EPA requested comments and information on the availability of a screening method which could be used to determine whether the full-scale analysis would be necessary.

Comment 37: EPA should allow a manufacturer to test for the most likely congener to form based on predictive reaction chemistry, and if that congener was not quantifiable, discontinue further testing. Dow cited an analytical effort in which reaction chemistry predicted that dichloro dioxins would predominate, and analysis ratified that prediction. (Dow p. 10; April 22 Transcript pp. 86 and 87).

Response to Comment 37: EPA finds three drawbacks to this approach. First, the predicted congener may or may not be formed according to the most probable reaction pathway. For example, in the case of pentachlorophenol, reaction conditions favorable to the formation of dioxin should yield a predominance of octachlorodioxins as reaction products; yet a large number of lower chlorinated dioxins are routinely observed as well. Additionally, under this scheme, a significant level of a congener different from that predicted or analyzed for would never be measured or reported. Finally, any chemical subjected to this type of screen would have to undergo extraction and cleanup identical to that required for the required HDD/HDF analysis. Because extraction and cleanup comprise most of the testing cost for a given sample, very little economic advantage would be realized by adopting such a screen.

Comment 38: EPA should allow a screen for total dioxins at a level of 0.1 ppb, and, if none were found, the chemical could be considered "clean," with no further analyses necessary.

Response to Comment 38: EPA finds this approach acceptable in terms of evaluating the chemical from a potential health risk standpoint, but EPA did not propose this screen, believing it unacceptable to manufacturers in degree of difficulty and cost of the method. As noted above in the Dow comment, the chemical subjected to such a screen would necessarily undergo extraction and cleanup procedures identical to a sample prepared for the standard HDD/HDF analytical methods now in use; thus EPA believes no substantial cost saving would be realized, and the manufacturer could incur large additional costs to test for congeners if the screen resulted in HDDs/HDFs above the level of 0.1 ppb.

EPA has not found a perfect chemical screening method which is acceptable both in terms of sensitivity and cost effectiveness when compared to the analytical approach outlined in this final rule. However, EPA will consider results from a screen for total HDDs/HDFs at a level of 0.1 ppb for HDDs/HDFs, or 0.1 ppb for HDDs and 1.0 ppb for HDFs, for which a protocol must be submitted and reviewed by EPA. The screen must be carried out using acceptable methods as described in the protocol reviewed by EPA.

Should EPA identify a chemical screening method which it believes suitable both in terms of sensitivity and cost, EPA may amend this rule to permit submission of results from that method.

Since the publication of the proposed rule, EPA has further investigated the

possibility of chemical screens and has identified the following chemical screening methods:

a. *Derivative testing.* This method relies on the conversion of lower halogenated dioxin or furan compounds to the octahalogenated configuration and the analysis for the presence of these octahalogenated species. At present, there is disagreement among industry and academia as to the efficacy and validity of this method as a predictor or screen for higher substituted PHDDs/PHDFs, primarily because of the unresolved issue of yield (e.g., to what degree the conversion from the lower halogenated to the octahalogenated configuration takes place). At least one investigator, however, has had limited success in converting lower substituted PCBs to fully substituted octachlorinated biphenyl (Ref. 36).

b. *Reverse phase chromatography with UV detector.* A calculated LOQ of 0.167 ppb has been achieved on internal standards (5ng/30g) of isotopically labeled 2,3,7,8-TCDD (Ref. 36). EPA has not yet determined whether this method is applicable as a chemical screen in terms of reliability or laboratory reproducibility on a consistent basis.

c. *Short column GC with halogen detector.* The halogen detector is a very sensitive instrument which relies on electron capture or conductivity detection to calculate the amount of halogenated species. The short column GC can be used to separate other interferences which are normally not able to be isolated using standard methods for sample extraction and cleanup. However, one investigator reported that in using this method in analyzing pentachlorophenol, the chlorinated diphenyl oxide almost never separated, often giving false positives in the analysis.

d. *Total GC separation with MS as detector.* This method relies on the separation of the various PHDD/PHDF homologs using gas chromatography, after which mass spectrometry is used to detect the individual homolog. This is made possible by defining the "window of separation" for each homolog.

6. *Bioanalytical screening methods.* In the preamble to the proposed rule, EPA noted that it had investigated radioimmunoassay (Refs. 1 and 23); arylhydrocarbon hydroxylase (AHH) induction (Refs. 6 and 28); cytosol receptor assay (Ref. 2); an early life stage bioassay (Ref. 17) and an *in vitro* keratinization assay (Ref. 20). As outlined in the proposed rule, the primary advantages of the radioimmunoassay, the AHH and the cytosol receptor assay are relatively low cost and rapidity. The disadvantage of these techniques in general is that they do not necessarily respond to specific isomers of HDDs and HDFs; they respond to other compounds such as halogenated biphenyls, azobenzenes, and nonhalogenated polynuclear aromatic hydrocarbons, and each technique is less sensitive than available mechanical analytical methods. The *in vitro* keratinization or E.L.S. bioassays more recently have provided possibly more specificity for determining the presence of 2,3,7,8-HDDs/HDFs. Both techniques have been demonstrated to give roughly comparable results with HRGC/MS analysis of total PCDDs and PCDFs in a PCB fire soot (Ref. 16), and fly ash from a municipal incinerator (Ref. 17).

It is important to note that each of the bioassay techniques is most sensitive to the presence of 2,3,7,8-TCDD as opposed to other HDDs/HDFs. It is speculated that the relative response to other HDDs and HDFs might be dependent on halogen substitution in the 2,3,7,8 positions and ultimately to the toxic potential of the compound. It is also important to note that the range of compounds evaluated with each of these bioassay techniques is somewhat limited. EPA believes that evaluation of commercial products for the presence of HDDs and HDFs with any of these bioassay techniques could be a valuable screening tool, particularly in terms of time and resources necessary for the chemical preparation and instrumental analyses of these chemicals. At this time, EPA does not have sufficient data to determine the adequacy of these bioanalytical techniques and whether they are sensitive enough to achieve the level and specificity of detection necessary to quantitate 2,3,7,8-HDDs/HDFs at very low levels. Additionally, the economic advantage of these methods relies in large measure on the number of samples run; only in large (bulk) analyses would significant savings in cost be realized over other recommended methods such as GCMS, etc. For such bulk sample analyses, the method also must be standardized in terms of reproducibility and reliability; it must be available for routine analyses on a large scale. These methods, while currently undergoing further development, are not yet acceptable for screening purposes.

V. Economic Analysis of Final Rule

A. Estimated Cost of Testing Program Under Section 4(a)(1)(A)

This portion of the preamble presents EPA's estimate of the total cost of this rule and reviews the potential marketplace effects identified by EPA. The estimated costs and expected impacts are discussed in detail in the economic analysis prepared in support of this rulemaking. Much of the information reviewed in the economic analysis is CBI and is not available for public review. This analysis is in the rulemaking record for this rule. A non-CBI version of the economic analysis has been prepared and is available for public review. Estimated costs and expected economic impacts of the rulemaking are summarized below.

Information incorporated in the economic analysis was found in a variety of sources; a detailed account of the specific information sources used in the economic analysis is available in the public record. In brief, EPA contractors initially provided estimates of the production volumes, process, and uses of each chemical, as well as the identity of each manufacturing or importing firm. These data were verified by review of the available technical literature, and by direct contact between EPA and representatives of the manufacturing firms. In those cases where information was not available directly from industry sources or from the literature, estimates were made from the best available information. Much of the information submitted to the EPA from manufacturers was claimed confidential.

Assessment of the potential for significant adverse economic effects on the chemical industry as a direct result of this rule was performed using EPA's standard method for measuring impacts of TSCA section 4 testing rules. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of each chemical: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. If there is no indication of significant adverse effect for an individual chemical, no further economic analysis is performed; however, if a potential for significant adverse impact is identified for a specific chemical, a more comprehensive and detailed analysis is conducted which more precisely reviews the magnitude and distribution of expected impact on that chemical. In keeping with the worst-case cost methodology incorporated in the economic analysis, at each point in the analysis where a wide range of costs can be justified, a highest cost scenario has been assumed so as not to

underestimate the potential burden borne by the firms subject to testing.

Of the 32 chemicals subject to this testing rule, 12 have been identified as chemicals currently being manufactured or imported. Fourteen firms have been identified as manufacturers or importers of one or more of these twelve chemicals. Because each manufacturer uses a unique production process and unique equipment and raw materials which could lead to contamination of the chemical by HDDs/HDFs, each manufacturer/importer is required to test its own chemical product. In total, 32 unique chemical products have been identified by EPA as subject to this testing rule.

The total cost for performing the requisite testing on the 32 chemical products is estimated at $2.37 million. This estimate of the total cost of the testing program is composed of three elements: development of analytical methods for the determination of HDDs/HDFs in the subject chemicals, synthesis of analytic standards, and the analysis of each sample.

1. *Methods Development.* Testing for the specified HDD/HDF congeners in commercial chemical products will require that methodologies for preparing and testing samples be developed for each chemical. Testing firms are free to use the most cost effective method of clean-up and analysis that they can identify to meet the test requirements and QA/QC requirements. EPA believes that it is in the best interest of the testing firms to coordinate their method development activities in order to minimize total cost.

EPA estimates that the upper bound cost for methods development for the testing specified in this rule is $1.25 million. In the economic analysis for the proposed rule, EPA estimated methods development costs at $600,000. In comments to the proposed rule, several commenters questioned this cost estimate, including Great Lakes Chemical Company, which claimed that the actual methods development costs would be equivalent to 10 person-years of analytic chemist labor valued at $125,000 per person-year. The total cost for methods development would then be $1.25 million. Due to the difficulty of projecting costs prior to the performance of the methods development, EPA has adopted this estimate as a reasonable upper bound.

2. *Synthesis of analytical standards.* To conduct the sample analyses, any requisite analytical standards which are not available will have to be manufactured. The acquisition cost for commercially available standards are included in the cost of each sample analysis, but costs for synthesizing and producing standards that are not commercially available upon the promulgation of the rule are a unique cost of the rule. EPA estimates that there will be no unique cost for analytic standard manufacture due to this rule.

In the economic analysis supporting the proposed rule, the cost for analytic standards was estimated at $182,000. This estimate was based upon the manufacture of 18 standards which were unavailable at that time. In comments to the proposed rule, one commenter, Cambridge Isotope Laboratories (CIL), responded that CIL was in the process of manufacturing for commercial sale the 18 unavailable standards. Subsequent communications between EPA and CIL have demonstrated to the satisfaction of EPA that the standards are indeed available at this time. Therefore, costs for the synthesis of analytical standards due to this rule are estimated at $0.

Other commenters to the proposed rule commented that the costs for analytic standard synthesis were underestimated because EPA had not taken into account additional (non 2,3,7,8-substituted) standards which would be required to conduct the sample analyses. EPA has concluded that there will be no additional cost because the additional standards are not necessary to conduct the sample analyses.

3. *Sample analyses.* The total cost for sample analysis is estimated at approximately $1.12 million. Each sample analysis is expected to cost from $2,000 to $5,000, and each chemical product may be analyzed up to 7 times for an upper bound testing cost of $35,000 per chemical product. An estimated 14 manufacturers will test an estimated 32 sample sets for approximately $1.12 million.

Costs for sample analysis are lower than the sample analysis costs estimated in the economic analysis for the proposed rule. Two factors account for the reduced cost estimate. The number of chemicals subject to testing is smaller—12 commercially available chemicals in the final rule as opposed to the 14 commercially available chemicals included in the proposed rule. Secondly, additional information on manufacturers/importers gathered in the interim following the publication of the proposed rule has shown that some firms originally identified as manufacturers or importers of some chemicals are not current manufacturers or importers.

B. Anticipated Economic Impact Under Section 4(a)(1)(A)

A review of the costs allocated to each manufacturer and chemical indicates that the probability of significant adverse economic impact for seven chemicals is very low. However, the cost analysis indicates potential for significant adverse economic impact for the five remaining chemicals. These five chemicals were therefore reviewed in greater detail. After further investigation, EPA has determined that the likelihood of adverse economic impact of three of the five chemicals is low. Each of the five chemicals is discussed below. Specific costs allocated to each chemical and the impact level calculated for each chemical are not reported here, in most cases, because the data used in the cost calculations are CBI.

1. *Tetrabromobisphenol-A Diacrylate.* The calculated impact level for Tetrabromobisphenol-A (TBBPA) diacrylate indicates that the probability of adverse economic impact is very high. Further investigation into the market characteristics of this chemical indicates a high likelihood that the chemical will be withdrawn from the market by its manufacturer, ARCO Specialty Chemicals. ARCO did not submit comments to the proposed rule; however, direct contact between EPA and a representative from the manufacturer verified that TBBPA diacrylate is a low volume specialty flame retardant which has been manufactured on a developmental basis only. The annualized allocated test costs for TBBPA diacrylate are confidential, but are believed to be higher than the manufacturer's annual revenue from the product. Given these costs, Horsehead Industries, which recently acquired ARCO Specialty Chemicals, will probably cease manufacture and distribution of the chemical if faced with the testing costs.

2. *2,3,5,6-Tetrachloro-2,5-cyclohexadiene-1,4-dione (Chloranil).* The estimated costs allocated to the chemical chloranil raise the probability of adverse economic impact. Further investigation of the market characteristics of chloranil indicates that firms importing small amounts of chloranil may cease importation (similarly, firms which have in the past imported chloranil may be prevented from re-entering the market) due to the testing costs. One or more firms importing chloranil in significantly higher volumes will be able to provide any necessary supply displaced from the other firms.

Six firms are believed to be current or recent importers of chloranil; however, only one or two of the importing firms are also chloranil manufacturers. The other importers purchase their supply of chloranil directly from the manufacturing firm(s). Due to the small volumes believed to be imported by the non-manufacturing firms, the annualized allocated test costs represent a substantial proportion of the revenue attributable to chloranil. Therefore, it is anticipated that the non-manufacturing importers will exit the market (or avoid re-entering the market) rather than contribute to the testing program. The firm(s) which are both manufacturers and importers will then provide the additional supply of chloranil and pay for a greater portion of the testing costs.

The importing firms which may be displaced from the market are among the smallest firms subject to this rulemaking. However, these firms import relatively small quantities of chloranil, and none are financially dependent upon chloranil. Withdrawing from the market for chloranil (or remaining out of the market) will not adversely affect any of the non-manufacturing importers.

3. *Tetrabromobisphenol-A-Bis-2,3 dibromopropylether, Tetrabromobisphenol-A-Bisethoxylate, and Allylether of Tetrabromobisphenol-A.* The estimated testing costs allocated to each of these three chemicals indicated the possibility of significant adverse impact. Additional investigation into the market characteristics of each chemical indicates that the probability of significant adverse impact is low. Much of the information upon which this conclusion is based is CBI and is therefore not available for public review. In general, this conclusion is based upon the following observations: (1) Each of these three chemicals is a brominated flame retardant. Demand for brominated flame retardants has expanded rapidly, and market expectations for brominated flame retardants are optimistic; (2) EPA believes that demand for each of these chemicals is relatively insensitive to changes in price because of a lack of substitutes which are comparable in terms of price and/or performance; and (3) The structure of the markets for each chemical supports the conclusion that the testing costs will not cause a significant adverse impact.

C. Testing Costs as a Barrier to Market Entry

After this rule takes effect, any firm wishing to initiate manufacture of any of the 32 subject chemicals will incur costs for methods development and sample analysis. These costs will serve as a barrier to entry into the markets for these chemicals. This effect will be most significant for firms wishing to initiate production or importation of only a small volume of one of the subject chemicals. However, the regulation provides an opportunity for obtaining waivers from testing in certain circumstances.

D. Costs of Reporting Under Section 8

1. *Section 8(a):* The costs of reporting under section 8(a) are minimal. Under the section 8(a) rule, submission of four different sets of reports are specified: (1) Submission of production process and reaction conditions for chemicals identified as precursors; (2) submission of certain existing data for the 32 chemicals listed for testing in this rule; (3) production volume, process and reaction conditions, use, exposure, and disposal data for chemicals testing positive for HDDs/HDFs; and (4) process and reaction conditions on chemicals testing negative for HDDs/HDFs may be required by EPA if any other manufacturer of the same chemical discovers HDD/HDF contamination.

Three unique sets of information will be submitted for the four reporting categories outlined above. The first set will be reported by firms manufacturing or importing a chemical which tests positive for HDDs/HDFs. These firms must report to EPA on production volume, use, exposure, disposal, and process conditions under which their products are manufactured. The second set consists of firms manufacturing or importing any of the 32 chemicals subject to testing for which quantitative analyses for HDDs/HDFs has already been conducted. These firms will be required to report test results and test protocols, and the firms will fall into the first set if the results submitted indicate HDD/HDF contamination. The third set is composed of processors of precursor chemicals and manufacturers/importers of chemicals free from HDD/HDF contamination when at least one manufacturer or importer of the same chemical tests positive for HDD/HDF contamination. Processors of precursor chemicals will be required to submit data on process and reaction conditions for their chemical. If manufacturers/importers of chemicals free from HDD/HDF contamination are required to report, that determination will be made in a rulemaking following the receipt and evaluation of the testing data.

Reporting on previously conducted tests should cost reporting firms from $273 to $546 for each chemical previously tested (Ref. 37). Those costs include from 2 to 4 hours of managerial labor to review the rule, 4 to 8 hours of technical labor to collect the test and methodology data, and 2 to 4 hours of clerical labor. Any firms reporting positive identification of HDD/HDF contamination will also be subject to the costs detailed below.

Firms subject to reporting due to positive results indicating contamination must report the following information: chemical production volume, use, process and reaction conditions, disposal, and exposure data. This information should be submitted on the EPA form printed under § 766.64. It is estimated that completion of this form will require from 40 to 80 hours from 1 industrial chemist and 1 process engineer (Ref. 37). In addition, 4 to 8 hours of managerial time will be required for initial review of the rule, legal review of the rule, and final review of the form. Four to 8 hours of clerical time will be required for completion of the form. For firms reporting on multiple chemicals, managerial and clerical time may be a one time cost. The direct costs of filing the form will range from $1,607 to $3,214 per chemical (Ref. 37).

Firms required to report because they manufacture a chemical made from a precursor chemical listed in this rule must provide their production and process and reaction conditions. The direct costs of filing the form will fall in the range of $944 to $2,551. The costs are based on the contribution of from 20 to 60 hours of labor from 1 industrial chemist and 1 process engineer, plus managerial labor to review the information and clerical labor to prepare the submission (Ref. 37).

2. *Section 8(c):* Submission of two sets of adverse reaction conditions are specified in this rule. Any reports of significant adverse reactions to HDDs/HDFs must be submitted by manufacturers of any of the 32 chemicals listed for testing in this rule. Once the testing has been conducted, those firms finding a positive test result indicating contamination by HDDs/HDFs for any of the 32 chemicals will be subject to the second part of the section 8(c) Data Call-In for reports of significant adverse reactions to the chemicals testing positive for HDD/HDF contamination.

Of the 32 chemicals subject to this test rule, an indeterminate number may be identified as contaminated with HDDs/HDFs. Without knowing the number of firms which currently maintain records of significant adverse reaction due to HDD/HDF contamination and the number of contaminated chemicals, the precise costs of the section 8(c) requirement cannot be determined. The

costs for any individual firm required to report will be composed of the following elements: review of the rule, file search for records subject to reporting, review of any records identified for CBI, costs for copying identified records, and the cost for submission to EPA.

Both fixed and variable costs will be incurred by each firm manufacturing or importing a chemical identified as contaminated with HDDs/HDFs. It is estimated that for each firm reporting, 1 to 2 hours of managerial labor will be expended to review this rule, and 3 to 6 hours of technical labor will be expended to search files for reports of significant adverse reactions. For each such report located, the reporting firm will incur clerical costs to reproduce and prepare the document for submission and additional managerial costs to review the report for CBI. The direct costs for each firm subject to this Data Call-In will be from $150 to $300, plus $80 per 10 page report submitted (Ref. 38).

Every firm subject to the initial section 8(c) requirement will incur costs to review the rule and conduct a file search. If any reports are located, preparation and review of the response to the Agency will entail additional costs. Firms manufacturing or importing chemicals which test positive for HDD/HDF contamination will also incur costs for review of the rule, file search, an response to the Agency. Though the firms subject to the second part of the section 8(c) requirement have reviewed the rule previously to respond to the first reporting requirement, it is assumed that rule review and file search will be repeated because of the time lag between initial response and completion of testing. The maximum total fixed cost for the initial response will be from $2,260 to $4,520 plus $80 per report of a significant adverse reaction (Ref. 38). Total cost of the section 8(c) requirement for contaminated chemicals will depend upon the number of contaminated chemicals.

3. *Section 8(d):* Submission of two sets of unpublished health and safety studies are specified in the rule. Any unpublished health and safety studies for HDDs/HDFs must be submitted by manufacturers of any of the listed chemicals. Once testing has been conducted, firms finding positive results of HDD/HDF contamination will be subject to this section 8(d) rule. Of the chemicals subject to this rule, an indeterminate number may be contaminated. Without knowing the number contaminated, the precise costs of the call-in cannot be determined.

Companies subject to this rule must conduct file searches, copy the studies, list studies in progress or known but not in posession of the respondent, and review the studies for CBI. Both fixed and variable costs will be incurred by each firm manufacturing or importing a chemical identified as contaminated. It is estimated that for each reporting firm, 1 to 2 hours of managerial labor will be expended for initial review of this rule, and 3 to 6 hours of technical labor will be expended to search files for unpublished health and safety studies. Compiling and transcribing lists of studies should take no more than 1 additional hour of clerical labor. For each study located, the reporting firm will incur additional clerical costs to reproduce and prepare the document for submission, and additional managerial costs to review the report for CBI. The direct costs for each firm subject to this section 8(d) requirement will be from $170 to $320, plus $80 per 15 page study submitted (Ref. 39). Additional costs may be incurred for submission of on-going or newly initiated studies.

Every firm subject to the initial reporting of unpublished health and safety studies will incur costs to review the rule and conduct a file search. If any reports are located, preparation and review of the response to EPA will entail additional costs. Firms manufacturing or importing chemicals testing positive for HDD/HDF contamination will also incur costs for review of the rule, file search, and response to the Agency. Firms subject to the second part of the section 8(d) reporting will have reviewed the rule previously to respond to the first requirement, but it is assumed that rule review and file search will be repeated because of the time lag between initial response and test completion.

The maximum total fixed cost for the initial response will be from $2,540 to $4,810 plus $80 per study submitted (Ref. 39). Total cost of the section 8(d) requirements for HDD/HDF contaminated chemicals will depend upon the number of chemicals testing positive for contamination.

VI. Availability of Facilities

Section 4(b)(1)(C) of TSCA requires that in the development of a test rule the Administrator consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Pursuant to this requirement, EPA conducted a survey of commercial analytic testing laboratories to determine the availability of facilities, equipment, and personnel necessary to perform the tests outlined in this final rule (Ref. 41).

A list of 57 laboratories was compiled, consisting of 17 laboratories with current contracts under the EPA's Superfund Contract Laboratory Program, and 40 laboratories from the 1984 Directory of the American Council of Independent Laboratories. Twenty-five laboratories (the 17 EPA contract labs and 8 others chosen at random) were contacted by telephone.

The laboratory capacity survey identified a number of commercial analytical testing laboratories with high resolution GC/MS systems and experience using these systems, though not necessarily experience with detecting HDDs/HDFs in commercial chemical products. In written comments to the proposed rule and in a subsequent public meeting, industry representatives stated that testing 14 chemicals in 1 year would strain the capacity of qualified testing laboratories. EPA considered these comments, and in response, is extending the proposed time limit for submission of test results for the 10 brominated chemicals by 1 year.

Information gathered in support of this final rule shows a reduced likelihood of straining the capacity of qualified testing laboratories to perform the requisite analyses. In the proposed rule, 14 chemicals were included in the list of commercial chemicals subject to testing requirements. EPA projected that 54 sets of samples would require testing. For this final rule, only 12 commercial chemicals are subject to testing, and EPA projects that 32 sets of samples will be tested.

In addition to the commercial laboratories identified in the laboratory capacity survey, CMA has submitted a list of qualified laboratories in its comments on the replicability of testing results. Supplemented by non-commercial laboratories (i.e., universities and in-house laboratories of major chemical companies) such as those identified by CMA, and given an extra year to complete the analyses on approximately one-half the number of samples projected in the proposed rule, testing should proceed without any restrictions due to capacity availability.

VII. Section 8 Reporting

A. Reporting Under Section 8(a)

Under section 8(a)(1)(A) of TSCA, EPA may require chemical manufacturers and processors to maintain such records and submit such reports as the Agency may reasonably require. The information to be submitted is that which is known to or is reasonably ascertainable by the person making the report (section 8(a)(2)).

Further, section 8(a)(1)(A) generally exempts small manufacturers and processors from recordkeeping and reporting requirements, except in certain limited circumstances. Of particular relevance to this rule, section 8(a)(3)(A)(ii) authorizes EPA to override the small manufacturer exemption for chemicals subject to a rule proposed or promulgated under section 4 of TSCA. Section 8(a)(2) also notes that to the extent feasible, EPA should not require unnecessary or duplicative reporting.

Under section 8(a) of TSCA, EPA proposed to require manufacturers of chemicals listed for testing to submit results of any testing, performed prior to the effective date of this rule, which shows concentrations of any HDDs/HDFs in any of the chemicals listed for testing. EPA also proposed to require under TSCA section 8(a) that manufacturers of any chemical in which a positive test result is reported, report production volume, process and reaction conditions, exposure, use, and disposal data on the EPA Form 7910–51, printed under § 766.30(e)(5) in the proposed rule. Also under TSCA section 8(a), EPA proposed to require manufacturers (except small manufacturers as defined under § 766.3) of any chemical manufactured using any of the chemicals listed as precursors to report production volume, process and reaction conditions, use, exposure, and disposal data for each such chemical, using the Dioxin/Furan Report Form.

Comment 39: EPA should not require extensive production and process information on precursor chemicals and should set a level of production below which information need not be submitted. The reporting required in the proposal is excessive (Kodak p. 2).

Response to Comment 39: EPA partially agrees with this comment, and has set the level of production suggested by Kodak below which information need not be submitted. EPA disagrees about the need for production and process information; only with this data can EPA determine whether other chemicals should be listed for testing. To lessen reporting requirements for chemicals made from precursors, EPA has eliminated all reporting of production volume, use, exposure, and disposal data, which is not needed for the decision to require testing. EPA's intent is to discover whether any additional chemicals are manufactured under conditions that could produce HDDs/HDFs. For this purpose, only process and reaction condition data are needed.

Since EPA has allowed an exemption from testing for chemicals produced in annual quantities of 100 kilograms or less for research and development purposes, it is reasonable to allow the same exemption for chemicals produced from precursor chemicals. Such chemicals would not become testing candidates. Therefore, a responsible official from any chemical manufacturer may certify that a chemical produced from a listed precursor is produced in quantities of 100 kilograms or less per year, and used only for research and development purposes, in lieu of submitting process and reaction condition information for that chemical.

Comment 40: EPA should specify the conditions which favor HDD/HDF formation and require reporting only in situations where contamination is likely, to reduce the reporting burden. (Kodak p. 2; p. 1 in comment to proposed amendment adding additional precursors; EDF p. 3 in comments to proposed amendment adding additional precursors; CMA p. 8 in comments to proposed amendment adding additional precursors).

Response to Comment 40: These conditions are set out and discussed in the support document (Ref. 43) used by EPA to select chemicals for testing. These conditions have been applied to confidential process and reaction data sent to EPA by several manufacturers seeking to convince EPA that these conditions are not present during the manufacturing process for their chemicals. In reviewing the process data submitted, EPA discovered several borderline decision points, and made decisions based not on a single factor, such as heat, but on a combination of factors, including duration of the process, composition of the reaction vessel, presence of oxygen, etc. If EPA set out specific temperature, pressure, and alkalinity conditions, it could miss a large body of data that would be borderline, and for which non-submission could be justified. Therefore, EPA prefers to make decisions on whether there are additional chemicals which are candidates for testing. EPA has eliminated most of the reporting requirements and kept only the process and reaction condition data needed to determine, on a case-by-case basis, whether a chemical is manufactured under one condition or a combination of conditions that may lead to HDD/HDF contamination.

Comment 41: EPA should consider a small quantity exemption for specialty and research and development purposes for both chemicals to be tested and for precursor chemicals. A reasonable cut-off for this purpose is 100 kilograms per year. (Kodak p. 2).

Response to Comment 41: EPA agrees with the small quantity exemption for research and development portion of this comment, and has added such an exemption in this final rule. EPA believes it is not likely that a chemical produced in small quantities for research and development purposes will cause an unreasonable risk, based on the expectation that persons using such a chemical will be trained to recognize and protect against potential hazards from such chemicals. Therefore, EPA has added an exemption for both test chemicals and chemicals made from precursors which are produced in quantities of 100 kilograms or less per year, and which are used for research and development purposes. Such a determination cannot be made for specialty chemicals not used only for research and development, however, without knowing specifically how such chemicals are used and could be used.

B. Reporting Under Section 8(c) of TSCA

Under section 8(c) of TSCA, EPA proposed to require manufacturers of chemicals listed for testing to submit reports of significant adverse reactions alleged to have been caused by HDDs/HDFs. EPA also proposed to require manufacturers of chemicals listed for testing to submit, 90 days after submission of a test result showing contamination by HDDs/HDFs above the appropriate LOQ, reports of significant adverse reactions alleged to have been caused by the chemical tested. All such submissions were to follow the procedures set out in 40 CFR Part 717.

The comments received on submission of allegations of significant adverse reactions asked for clarification of the requirements. Clarification of these requirements has been made in this final rule.

C. Reporting Under Section 8(d) of TSCA

Under section 8(d) of TSCA, EPA proposed to require any chemical manufacturers to submit health and safety studies on any HDDs/HDFs, and manufacturers of chemicals listed for testing for which contamination above any LOQ is reported to submit, 90 days after submission of the positive test result, all health and safety studies on the tested chemical. All submissions were required to follow the procedures set out in Part 716 of this Chapter.

Comments received on reporting under section 8(d) of TSCA requested clarification of requirements. Such clarification has been made in this final rule.

VIII. Relationship to Section 12(b) of TSCA

Section 12(b)(1) of TSCA provides for notification to the Administrator of any intention to export any chemical for which submission of data is required under section 4 of TSCA or section 5(b) of TSCA. The Administrator is required to notify the government of any country to which export occurs of the nature of the requirement and the availability of data submitted to the Agency for that chemical.

Regulations requiring notification to EPA of export or intended export of any chemical for which data are required under TSCA section 4 are codified at 40 CFR 707.60 through 707.75. They specify who must notify the Agency, when notification takes place, the required contents of the notice, and permission to assert a claim of confidentiality for any of the information. EPA has interpreted section 12(b) of TSCA and the regulations under 40 CFR 707.60 through 707.75 to apply at the time a rule is promulgated under section 4 of TSCA. (See 45 FR 82850, December 16, 1980). However, the regulations and statute do not specify a time when such notification requirements will cease.

Comment 42: EPA's interpretation of its regulations requires export notification at the time a testing requirement is issued under section 4 of TSCA, rather than at the time when data resulting from those requirements are available. Such notification will unfairly stigmatize a chemical, and should be delayed until testing shows levels of HDDs/HDFs above the LOQs. (CMA at pp. 46 and 47).

Response to Comment 42: EPA continues to believe that its previously published interpretation of section 12(b) and its regulations are appropriate. Notification will commence in accordance with applicable regulations. EPA's notice to foreign governments, however, will state that the Agency is only testing for potential contamination and is not imposing regulatory constraints on these chemicals. The intention of the notice will be to avoid making any statements which unfairly stigmatize the chemical. EPA has concluded that it should specify for this rule circumstances under which notification requirements under section 12(b) may be terminated for specific chemicals.

The results of the testing required under this rule will yield definite results—either they will show contamination by HDDs/HDFs or no contamination by HDDs/HDFs at the target LOQs. If contamination of a specific substance produced by a specific process is shown, it is appropriate to continue to require export notification under section 12(b) so that foreign governments can be provided with the testing results. However, if there is no contamination shown at the target LOQs for a specific substance produced by a specific process, there is no further concern for adverse health effects resulting from HDD/HDF contamination of that substance and, thus, no reason for the manufacturer to continue notification to EPA, or for EPA to continue to notify the foreign governments about that manufacturer's exports.

Accordingly, EPA has concluded that it is appropriate to amend its section 12(b) rule to end notification requirements in such situations. The amendment to 40 CFR Part 707 adding a new § 707.72 provides that when test results showing that a specific substance produced by a specific process has no HDDs/HDFs above the target LOQs are submitted to EPA under this test rule, export notification to EPA is no longer required of any person who is exporting that substance produced by that process.

IX. Compliance and Enforcement

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

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11(a) applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for chemicals listed under § 766.20. These inspections may be conducted to verify that testing has begun, schedules are being met, reports accurately reflect the underlying raw data and interpretations and evaluations, and to determine compliance with TSCA Good Laboratory Practices (GLP) standards and the test standards established in the rule.

EPA's authority to inspect a testing facility is also derived from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

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

X. Rulemaking Record

EPA has established a record for this rulemaking (OPTS–83002). This record includes basic information considered by the Agency in developing this final rule and appropriate **Federal Register** notices.

This record includes the following kinds of information:

1. Federal Register notices pertaining to this rule.
2. Study of availability of test facilities and personnel.
3. Economic analyses.
4. Communications before proposal consisting of written public and intra- or interagency memoranda and comments and summaries of telephone conversations.
5. Reports—published and unpublished factual materials.
6. Comments received in response to the proposed rule and the proposed amendment to the rule from the following organizations:

Ameribrom, Incorporated
Cambridge Isotope Laboratories, Inc.
Chemical Manufacturers Association, Inc.
Dow Chemical Company
Eastman Kodak Company
Ethyl Corporation
Environmental Defense Fund
Great Lakes Chemical Company
Imperial Chemicals, Inc.
Platte Chemical Company
Uniroyal Chemical, Inc.
Vulcan Chemicals, Inc.
Worker's Institute for Safety and Health
2,4-D Task Force

CBI, while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room, NE-G004, 401 M St., SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

XI. References

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XII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the effect on the economy is not expected to exceed the advantages to the public of testing 12 chemicals and reporting on those contaminated, plus some additional reporting. The total costs of testing are expected to be $2.37 million. No significant increases in prices are expected to occur as a result of this rule, as reported in the economic impact analysis. No significant adverse effects are expected on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises.

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 et seq., Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) Very few small chemical manufacturers and importers will be required to test chemicals and report, and (2) small manufacturers have been exempted from a major reporting requirement.

For this rule, the definition of small business is the one codified at 40 CFR 704.3. For this certification, the total annual sales figure of $4 million, or $40 million and less than 100,000 pounds annual production was used as the cutoff to denote small chemical manufacturers and importers.

Of the firms likely to be required to test, four qualify as small businesses. These four firms do not represent a substantial number of all small chemical manufacturing firms. For each of these four firms, amortized test and reporting costs are projected to be less than 0.1 percent of annual sales, approximately the same percentage experienced by larger manufacturing and importing companies.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control numbers 2070-0033 for reporting under section 4, 2070-0004 for submission of health and safety studies under section 8(d), 2070-0017 for submission of allegations of significant adverse reactions under section 8(c), and 2070-0054 for submission of information under section 8(a).

List of Subjects in 40 CFR Parts 707 and 766

Chemicals, Environmental protection, Hazardous material, Health and safety, Recordkeeping and reporting requirements, Significant adverse reactions, Testing.

Dated: May 20, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

PART 707—[AMENDED]

1. In Part 707:

a. The authority citation for Part 707 continues to read as follows:

Authority: 15 U.S.C. 2611(b) and 2612.

b. By adding a new § 707.72 to Subpart D to read as follows:

§ 707.72 Termination of reporting requirements.

(a) The reporting requirements of Subpart D of this Part are terminated for certain specific chemical substances and mixtures as set forth in this paragraph.

(1) When data required under Part 766 of this chapter have been submitted to EPA for a specific chemical substance produced by a specific process, and the data show no positive test result as defined in § 766.3 of this chapter, reporting is no longer required by persons who export or intend to export that substance produced by that process.

(2) [Reserved]

(b) [Reserved]

2. By adding Part 766 to read as follows:

PART 766—DIBENZO-PARA-DIOXINS/DIBENZOFURANS

Subpart A—General Provisions

Sec.
766.1 Scope and purpose.
766.2 Applicability and duration of this Part.
766.3 Definitions.
766.5 Compliance.
766.7 Submission of information.
766.10 Test standards.
766.12 Testing guidelines.
766.14 Contents of protocols.
766.16 Developing the analytical test method.
766.18 Method sensitivity.

Subpart B—Specific Chemical Testing/Reporting Requirements

766.20 Who must test.
766.25 Chemical substances for testing.
766.27 Congeners and LOQs for which quantitation is required.
766.28 Expert review of protocols.
766.32 Exclusions and waivers.
766.35 Reporting requirements.
766.38 Reporting on precursor chemical substances.

Authority: 15 U.S.C. 2603 and 2607.

§ 766.1 Scope and purpose.

(a) This Part identifies requirements for testing under section 4 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2603, to ascertain whether certain specified chemical substances may be contaminated with halogenated dibenzodioxins (HDDs)/dibenzofurans (HDFs) as defined in § 766.3, and requirements for reporting under section 8 of TSCA, 15 U.S.C. 2607.

(b) Section 766.35(b) requires manufacturers and processors of chemical substances identified in § 766.25 to submit to EPA: (1) Any existing test data showing analysis of the chemical substances for concentrations of HDDs/HDFs, applicable protocols, and the results of

the analysis for HDDs/HDFs, (2) allegations of significant adverse reactions to HDDs/HDFs, compiled in accordance with Part 717 of this chapter, and (3) health and safety studies on the HDDs/HDFs, in accordance with applicable provisions of Part 716 of this chapter.

(c) Section 766.35(a) requires manufacturers and, under certain circumstances, processors of chemical substances identified in § 766.25 to submit letters of intent to test and protocols for the analysis of the chemical substances for the presence of HDDs/HDFs. Section 766.20 requires these manufacturers and processors to test their chemical substances for the presence of HDDs/HDFs. Any submissions must be in accordance with the EPA Procedures Governing Testing Consent Agreements and Test Rules contained in Part 790 of this chapter and any modifications to such procedures contained in this Part.

(d) Section 766.32 specifies conditions under which persons required to test may request an exclusion or waiver from testing.

(e) Deadlines for submission to EPA of protocols, reports, studies, and test results are specified in Part 790 Subpart C and § 766.35.

(f) Sections 766.10, 766.12, 766.14, 766.16, and 766.18 prescribe analytical methods required; § 766.27 prescribes target levels of quantitation (LOQ) for each congener for which quantitation is required.

(g) If results of existing tests or tests performed under this Part indicate the presence of HDDs/HDFs in the identified chemical substance above the LOQ specified in § 766.27, § 766.35(c) requires the following additional reporting on the specified chemicals: production, process, use, exposure and disposal data under section 8(a) of TSCA; health and safety studies under section 8(d) of TSCA; and reports of allegations of significant adverse reactions under section 8(c) of TSCA. In some cases, additional reporting may be required of manufacturers reporting no contamination of the identified chemical substances under § 766.35(c)(2).

(h) Section 766.38 requires manufacturers of chemical substances produced from chemical substances identified as possible precursors to HDD/HDF formation, to report on chemical substances produced from such precursors.

§ 766.2 Applicability and duration of this part.

(a) *Chemical substances subject to testing.* (1) This Part is applicable to each person who, at any time during the duration of this Part, manufactures (and/or imports), or processes, a chemical substance identified under § 766.25.

(2) The duration of this Part for any testing requirement for any chemical substance is the period commencing with the effective date of this Part to the end of the reimbursement period, as defined in § 766.3, for each chemical substance. All reporting requirements for any chemical substance listed under § 766.25 shall be in effect for the same period as the testing requirement.

(b) *Precursor chemical substances.* (1) This Part is applicable to each person who manufactures (and/or imports) a chemical substance from any precursor chemical substance identified in § 766.38.

(2) The requirement for precursor reporting under § 766.38 shall be in effect until three years after the effective date of this Part.

(3) Small manufacturers are exempt from reporting process and reaction condition data on chemical substances made from precursor chemical substances listed under § 766.38.

§ 766.3 Definitions.

The definitions in section 3 of TSCA and the definitions of §§ 704.3, 716.3, 717.3, and 790.3 of this chapter also apply to this Part.

"Congener" means any one particular member of a class of chemical substances. A specific congener is denoted by unique chemical structure, for example 2,3,7,8-tetrachlorodibenzofuran.

"Dibenzofuran" means any of a family of compounds which has as a nucleus a triple-ring structure consisting of two benzene rings connected through a pair of bridges between the benzene rings. The bridges are a carbon-carbon bridge and a carbon-oxygen-carbon bridge at both substitution positions.

"Dibenzo-p-dioxin" or "dioxin" means any of a family of compounds which has as a nucleus a triple-ring structure consisting of two benzene rings connected through a pair of oxygen atoms.

"Guidelines" means the Midwest Research Institute (MRI) publication *Guidelines for the Determination of Polyhalogenated Dioxins and Dibenzofurans in Commercial Products*, EPA contract No. 68-02-3938; MRI Project No. 8201-A(41), 1985.

"HDD" or "2,3,7,8-HDD" means any of the dibenzo-p-dioxins totally chlorinated or totally brominated at the following positions on the molecular structure: 2,3,7,8; 1,2,3,7,8; 1,2,3,4,7,8; 1,2,3,6,7,8; 1,2,3,7,8,9; and 1,2,3,4,7,8,9.

"HDF" or "2,3,7,8-HDF" means any of the dibenzofurans totally chlorinated or totally brominated at the following positions on the molecular structure: 2,3,7,8; 1,2,3,7,8; 2,3,4,7,8; 1,2,3,4,7,8; 1,2,3,6,7,8; 1,2,3,7,8,9; 2,3,4,6,7,8; 1,2,3,4,6,7,8; and 1,2,3,4,7,8,9.

"Homolog" means a group of isomers that have the same degree of halogenation. For example, the homologous class of tetrachlorodibenzo-p-dioxins consists of all dibenzo-p-dioxins containing four chlorine atoms. When the homologous classes discussed in this Part are referred to, the following abbreviations for the prefix denoting the number of halogens are used:

tetra-, T (4 atoms)
penta-, Pe (5 atoms)
hexa-, Hx (6 atoms)
hepta-, Hp (7 atoms)

"HRGC" means high resolution gas chromatography.

"HRMS" means high resolution mass spectrometry.

"Level of quantitation" or "LOQ" means the lowest concentration at which HDDs/HDFs can be reproducibly measured in a specific chemical substance within specified confidence limits, as described in this Part.

"Polybrominated dibenzofurans" refers to any member of a class of dibenzofurans with two to eight bromine substituents.

"Polybrominated dibenzo-p-dioxin" or "PBDD" means to any member of a class of dibenzo-p-dioxins with two to eight bromine substituents.

"Polychlorinated dibenzofuran" means any member of a class of dibenzofurans with two to eight chlorine substituents.

"Polychlorinated dibenzo-p-dioxin" or "PCDD" means any member of a class of dibenzo-p-dioxins with two to eight chlorine substituents.

"Polyhalogenated dibenzofuran" or "PHDF" means any member of a class of dibenzofurans containing two to eight chlorine, bromine, or a combination of chlorine and bromine substituents.

"Polyhalogenated dibenzo-p-dioxin" or "PHDD" means any member of a class of dibenzo-p-dioxins containing two to eight chlorine substituents or two to eight bromine substituents.

"Positive test result" means: (1) Any resolvable gas chromatographic peak for any 2,3,7,8-HDD or HDF which exceeds the LOQ listed under § 766.27 for that congener, or (2) exceeds LOQs approved by EPA under § 766.28.

"Precursor" means a chemical substance which is not contaminated due to the process conditions under which it is manufactured, but because of its molecular structure, and under

favorable process conditions, it may cause or aid the formation of HDDs/HDFs in other chemicals in which it is used as a feedstock or intermediate.

"QA" means quality assurance.

"QC" means quality control.

"Reimbursement period" means the period that begins when the data from the last test to be completed under this Part for a specific chemical substance listed in § 766.25 is submitted to EPA, and ends after an amount of time equal to that which had been required to develop that data or 5 years, whichever is later.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

§ 766.5 Compliance.

Any person who fails or refuses to comply with any aspect of this Part is in violation of section 15 of TSCA. Section 15(1) makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) makes it unlawful for any person to fail or refuse to submit information required under this Part. Section 16 provides that a violation of section 15 renders a person liable to the United States for a civil penalty and possible criminal prosecution. Under section 17 of TSCA, the district courts of the United States have jurisdiction to restrain any violation of section 15.

§ 766.7 Submission of information.

All information (including letters of intent, protocols, data, forms, studies, and allegations) submitted to EPA under this Part must bear the applicable Code of Federal Regulations (CFR) section number (e.g., § 766.20) and must be addressed to: Document Control Office (TS–790), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

§ 766.10 Test standards.

Testing required under Subpart B of this Part must be performed using the protocols submitted to and reviewed by the EPA expert panel established under § 766.28. All new data, documentation, records, protocols, specimens, and reports generated as a result of testing under Subpart B of this Part must be fully developed and retained in accordance with Part 792 of this chapter. These items must be made available during an inspection or submitted to EPA upon request by EPA or its authorized representative. Laboratories conducting testing for submission to EPA in response to a test rule promulgated under section 4 of TSCA must adhere to the TSCA Good Laboratory Practices (GLPs) published in Part 792 of this chapter. Sponsors must notify the laboratory that the testing is being conducted pursuant to TSCA section 4. Sponsors are also responsible for ensuring that laboratories conducting the testing abide by the TSCA GLP standards. At the time test data are submitted, manufacturers must submit a certification to EPA that the laboratory performing the testing adhered to the TSCA GLPs.

§ 766.12 Testing guidelines.

Analytical test methods must be developed using methods equivalent to those described or reviewed in *Guidelines for the Determination of Polyhalogenated Dibenzo-p-dioxins and Dibenzofurans in Commercial Products.* Copies are available from the TSCA Assistance Office, (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (800–424–9065). Copies are also located in the public docket for this Part (docket no. OPTS–83002) and are available for inspection in the OPTS Reading Rm., NE–G004, 401 M St., SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

§ 766.14 Contents of protocols.

Protocols should include all parts of the *Quality Assurance Plan for Measurement of Brominated or Chlorinated Dibenzofurans and Dibenzodioxins,* as stated in the Guidelines. For each chemical substance and each process, the manufacturer must submit a statement of how many grades of the chemical substance it produces, a justification for selection of the specific grade of chemical substance for testing, specific plans for collection of samples from the process stream, naming the point of collection, the method of collecting the sample, and an estimate of how well the samples will represent the material to be characterized; a description of how control samples (blanks) and HDD/HDF-reinforced control samples, or isotopically labeled compounds (standards) and duplicate samples will be handled; a description of the chemical extraction and clean up procedures to be used; how extraction efficiency and measurement efficiency will be established; and a description of instrument hardware and operating conditions, including type and source of columns, carrier gas and flow rate, operating temperature range, and ion source temperature.

§ 766.16 Developing the analytical test method.

Because of the matrix differences of the chemicals listed for testing, no one method for sample selection, preparation, extraction and clean up is prescribed. For analysis, High Resolution Gas Chromatography (HRGC) with High Resolution Mass Spectrometry (HRMS) is the method of choice, but other methods may be used if they can be demonstrated to reach the target LOQs as well as HRGC/HRMS.

(a) *Sample selection.* The chemical product to be tested should be sampled so that the specimens collected for analysis are representative of the whole. Additional guidance for sample selection is provided under § 766.12.

(b) *Sample preparation.* The sample must be mechanically homogenized and subsampled as necessary. Subsamples must be spiked or reinforced with surrogate compounds or with standard stock solutions, and the surrogates or standards must be thoroughly incorporated by mechanical agitation. Additional guidance is provided under § 766.12.

(c) *Sample extraction and cleanup.* The spiked samples must be treated to separate the HDDs/HDFs from the sample matrix. Methods are reviewed in the Guidelines under § 766.12, but the final method or methods are left to the discretion of the analyst, provided the instrumental response of the surrogates meets the criteria listed in the *Quality Assurance Plan for Measurement of Brominated or Chlorinated Dibenzofurans and Dibenzodioxins,* appendixes B and C of the Guidelines. Cleanup techniques are described in the Guidelines. These are chosen at the discretion of the analyst to meet the requirements of the chemical matrix.

(d) *Analysis.* The method of choice is High Resolution Gas Chromatographic/High Resolution Mass Spectrometric Determination, (HRGC/HRMS) but alternate methods may be used if the manufacturer can demonstrate that the method will reach the target LOQs as well as HRGC/HRMS. Specific operating requirements are found in the Guidelines.

§ 766.18 Method sensitivity.

The target level of quantitation required under § 766.27 for each HDD/HDF congener is the level which must be attempted for each resolved HRGC peak for that congener. For at least one product sample, at least two analyses of the same isotopically labeled HDD/HDF internal calibration standards spiked to a final product concentration equal to the LOQ for that congener must be

reproducibly extracted, cleaned up, and quantified to within ±20 percent of each other. For each spiked product sample, the signal to noise ratio for the calibration standard peaks after complete extraction and cleanup must be 10:1 or greater. The recovery of the internal calibration standards in the extracted and cleaned up product samples must be within 50 to 150 percent of the amount spiked, and the results must be corrected for recovery.

Subpart B—Specific Chemical Testing/ Reporting Requirements

§ 776.20 Who must test.

(a) Any person who manufactures, imports, or processes a chemical substance listed in § 766.25 must test that chemical substance and must submit appropriate information to EPA according to the schedules described in § 766.35. Chemical substances manufactured, imported or processed between January 1, 1984 and the date of promulgation of this Part are subject to testing upon the effective date of this Part. All other chemical substances are subject to testing immediately upon manufacture, import or processing. EPA expects that only manufacturers and importers will perform testing, and that the cost of testing will be passed on to processors through the pricing mechanism, thereby enabling them to share in the cost of testing. However, processors will be called upon to sponsor testing should manufacturers and importers fail to do so. A processor may apply for an exemption from testing upon certification to EPA that a manufacturer or importer is testing the chemical substance which that person processes.

(b) If no manufacturer or importer described in § 766.20 submits a letter of intent to perform testing within the period described under § 766.35(a), or an exemption application under § 790.45(a), or a request for an exclusion or waiver under § 766.32, EPA will issue a notice in the **Federal Register** to notify all processors of that chemical substance. The notice will state that EPA has not received any of the documents described in the previous sentence, and that current processors will have 30 days to submit either a letter of intent to perform the test or submit an exemption application.

(c) If no manufacturer, importer or processor submits a letter of intent to perform testing of a specific chemical substance produced by a specific process, EPA will notify all manufacturers, importers, and processors, either by notice in the **Federal Register** or by letter, that all exemption applications will be denied and that within 30 days all manufacturers, importers, and processors will be in violation of this Part until a proposed study plan is submitted for required testing.

(d) Manufacturers, importers, and processors who are subject to this Part must comply with the test rule development and exemption procedures in Part 790 of this chapter, except as modified in this Part.

§ 766.25 Chemical substances for testing.

(a) *Listing of chemical substances.* Chemical substances required to be tested for HDDs/HDFs under this rule are listed in this section. The listing is by Chemical Abstracts Service (CAS) Number and common name.

Note.—For purposes of guidance only, EPA lists the chemical substances subject to testing under this Part in two classes—those known to be manufactured or imported between January 1, 1984, and promulgation of this Part, and those not known to be manufactured or imported at the time of promulgation of this Part.

(1) *Chemicals substances known to be manufactured between January 1, 1984 and date of promulgation of this Part.*

CAS No.	Chemical name
79-94-7	Tetrabromobisphenol-A.
118-75-2	2,3,5,6-Tetrachloro-2,5-cyclohexadiene-1,4-dione.
118-79-6	2,4,6-Tribromophenol.
120-83-2	2,4-Dichlorophenol.
1163-19-5	Decabromodiphenyloxide.
4162-45-2	Tetrabromobisphenol-A-bisethoxylate.
21850-44-2	Tetrabromobisphenol-A-bis-2,3-dibromopropyl ether.
25327-89-3	Allyl ether of tetrabromobisphenol-A.
32534-81-9	Pentabromodiphenyloxide.
32536-52-0	Octabromodiphenyloxide.
37853-59-1	1,2-Bis(tribromophenoxy)-ethane.
55205-38-4	Tetrabromobisphenol-A diacrylate.

(2) *Chemicals not known to be manufactured between January 1, 1984 and the date of promulgation of this Part.*

CAS No.	Chemical name
79-95-8	Tetrachlorobisphenol-A.
87-10-5	3,4',5-Tribromosalicylanilide.
87-65-0	2,6-Dichlorophenol.
95-77-2	3,4-Dichlorophenol.
95-95-4	2,4,5-Trichlorophenol.
99-28-5	2,6-Dibromo-4-nitrophenol.
120-36-5	2[2,4-(Dichlorophenoxy)]-propionic acid.
320-72-9	3,5-Dichlorosalicyclic acid.
488-47-1	Tetrabromocatechol.
576-24-9	2,3-Dichlorophenol.
583-78-8	2,5-Dichlorophenol.
608-71-9	Pentabromophenol.
615-58-7	2,4-Dibromophenol.
933-75-5	2,3,6-Trichlorophenol.
1940-42-7	4-Bromo-2,5-dichlorophenol.
2577-72-2	3,5-Dibromosalicylanilide.
3772-94-9	Pentachlorophenyl laurate.
37853-61-5	Bismethylether of tetrabromobisphenol-A.
	Alkylamine tetrachlorophenate.
	Tetrabromobisphenol-B.

(b) *Grade to be tested.* If the same process is used to manufacture all grades of the same chemical substance, only one grade need be tested. The grade to be tested must be the grade subject to the most intense heat and alkalinity for the longest duration of time, manufactured under each different process. If the heat, alkalinity and duration of reaction do not differ for various grades, the test substance must be the grade of chemical substance with the highest volume of sales.

§ 766.27 Congeners and LOQs for which quantitation is required.

Quantitation at the target LOQ shown for each of the following HDDs/HDFs which may be present in the chemical substances is required for the chemical substances listed under § 766.25. Analysis must take place for either chlorinated or brominated dibenzodioxins or dibenzofurans, whichever is predominantly expected to occur in the chemical substance to be tested. Only chlorinated and brominated congeners need be quantified; for chemical substances containing predominantly chlorine atoms, only congeners totally chlorinated at the numbered positions need be quantified; for chemical substances containing predominantly bromine atoms, only congeners totally brominated at the numbered positions need be quantified.

Chlorinated dioxins	Brominated dioxins	LOQ
2,3,7,8-TCDD	2,3,7,8-TBDD	0.1 ppb.
1,2,3,7,8-PeCDD	1,2,3,7,8-PeBDD	0.5 ppb.
1,2,3,4,7,8-HxCDD	1,2,3,4,7,8-HxBDD	2.5 ppb.
1,2,3,6,7,8-HxCDD	1,2,3,6,7,8-HxBDD	2.5 ppb.
1,2,3,7,8,9-HxCDD	1,2,3,7,8,9-HxBDD	2.5 ppb.
1,2,3,4,6,7,8-HpCDD	1,2,3,4,6,7,8-HpBDD	100 ppb.
2,3,7,8-TCDF	2,3,7,8-TBDF	1 ppb.
1,2,3,7,8-PeCDF	1,2,3,7,8-PeBDF	5 ppb.
2,3,4,7,8-PeCDF	2,3,4,7,8-PeBDF	5 ppb.
1,2,3,4,7,8-HxCDF	1,2,3,4,7,8-HxBDF	25 ppb.
1,2,3,6,7,8-HxCDF	1,2,3,6,7,8-HxBDF	25 ppb.
1,2,3,7,8,9-HxCDF	1,2,3,7,8,9-HxBDF	25 ppb.
2,3,4,6,7,8-HxCDF	2,3,4,6,7,8-HxBDF	25 ppb.
1,2,3,4,6,7,8-HpCDF	1,2,3,4,6,7,8-HpBDF	1 ppm.
1,2,3,4,7,8,9-HpCDF	1,2,3,4,7,8,9-HpBDF	1 ppm.

§ 766.28 Expert review of protocols.

EPA will gather a panel of experts in analysis of chemical matrices for HDDs/HDFs to review the protocols for testing submitted to EPA. The panel members will be employees of EPA and/or of other U.S. Government agencies who have had experience in analysis of chemical matrices and/or chemical wastes for HDDs/HDFs. The panel will recommend to the Director, EPA Office of Toxic Substances, whether the protocol submitted is likely to allow analysis down to the target LOQs, or if not, whether the protocol represents a good faith effort on the part of the tester to achieve the lowest possible LOQs. The final determination to accept or

reject the protocol will be made by the Director, Office of Toxic Substances. EPA will review the submitted protocols as rapidly as possible and will complete the review within 90 days after receipt. EPA may require submission of revised protocols. Comments and recommendations will be transmitted to the submitter, and if revisions are required, a final protocol must be submitted to EPA within 90 days after EPA transmits such recommendations.

§ 766.32 Exclusions and waivers.

(a) *Reasons for exclusions and waivers.* Any person subject to the testing requirements of this Part may request an exclusion or waiver from testing for any one of the following reasons:

(1) *Exclusions may be granted if.* (i) Testing of the appropriate grade of the chemical substance has already been carried out, either analytical testing at the lowest LOQ possible, with appropriate QA/QC, or a well-designed bioassay with appropriate QA/QC or;

(ii) Process and reaction conditions of the chemical substance such that no HDDs/HDFs could be produced under those conditions;

(2) *Waivers may be granted if.* (i) A responsible company official certifies that the chemical substance is produced only in quantities of 100 kilograms or less per year, only for research and development purposes; or

(ii) In the judgement of EPA, the cost of testing would drive the chemical substance off the market, or prevent resumption of manufacture or import of the chemical substance, if it is not currently manufactured, and the chemical substance will be produced so that no unreasonable risk will occur due to its manufacture, import, processing, distribution, use, or disposal. (In this case, the manufacturer must submit to EPA all data supporting the determination.)

(iii) Waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture or use. The grade of decabromodiphenyl oxide produced by Dow Chemical Company (Dow) for the National Toxicology Program (NTP) bioassay on that chemical is excluded from the testing requirement under this Part. Provided, however, that this exclusion will not apply if Dow fails to supply to EPA within 60 days of the effective date of this section evidence showing which grade was used for the NTP bioassay.

(b) *Timing.* Exclusion or waiver requests and detailed supporting data must be submitted to EPA within 60 days from the effective date of this Part for persons manufacturing, importing or processing a chemical substance as of the date of promulgation, or 60 days prior to the date of resumption of manufacture or import for a chemical substance produced by a specific process if the chemical substance is not manufactured, imported or processed as of the date of promulgation.

(c) *Publication.* Within 10 days of receipt of any exclusion or waiver request, EPA will issue in the **Federal Register** a notice of such receipt. EPA will also issue a notice of its decision on each exclusion or waiver request within 60 days of receipt.

(d) *Decision.* The EPA Director of the Office of Toxic Substances will make the decision to grant or deny waivers or exclusions.

§ 766.35 Reporting requirements.

(a) *Letters of intent, exemption applications, and protocols*—(1) *Letters of Intent.* (i) Persons who have manufactured or imported chemical substances listed under § 766.25 between January 1, 1984, and the effective date of this Part are required to submit under § 790.45 of this chapter a letter of intent to test or an exemption application. These letters must be submitted no later than September 3, 1987.

(ii) Persons who commence manufacture, import or processing of a chemical substance listed under § 766.25 that has not been manufactured, imported or processed between January 1, 1984 and the effective date of this Part must submit under § 790.45 of this chapter, within 60 days after the commencement of manufacture, import, or processing of the chemical substance, a letter of intent to test or an exemption application.

(iii) Persons who commence manufacture, import or processing of a chemical substance listed under § 766.25 between the effective date of this Part and the end of the reimbursement period for that particular chemical substance produced by a specific process must submit under § 790.45 of this chapter, within 60 days after the commencement of manufacture, import or processing of the chemical substance, a letter of intent to test or an exemption application.

(2) *Protocols.* (i) Each person who is manufacturing or processing a chemical substance listed in § 766.25 as of the effective date of this Part who submits a notice of intent to test under § 766.35(a)(1) must submit a protocol for the test as follows:

(A) The protocols for each chlorinated chemical substance produced by each process to be tested must be submitted to EPA no later than 12 months after the effective date of this Part.

(B) The protocol for each brominated chemical substance produced by each process to be tested must be submitted to EPA no later than 24 months after the effective date of this Part.

(ii) For chemical substances produced by a specific process not manufactured or processed as of the effective date of this Part, a person who begins manufacture and submits a notice of intent to test must submit protocols for the test as follows:

(A) Protocols for testing must be submitted 12 months after manufacture begins for chlorinated chemical substances.

(B) Protocols for testing must be submitted 24 months after manufacture begins for brominated chemical substances.

(iii) For persons who have been granted exemptions, waivers or exclusions from testing, protocols must be submitted 12 months after expiration of the exemption, waiver or exclusion for chlorinated chemical substances, and 24 months after expiration of the exemption, waiver or exclusion for brominated chemical substances.

(b) *Information that must be submitted to EPA.* (1) Persons who manufacture or import a chemical substance listed under § 766.25 must report no later than October 5, 1987 or 90 days after the person first manufactures or imports the chemical substance, whichever is later, the results of all existing test data which show that chemical substance has been tested for the presence of HDDs/HDFs.

(2) Any manufacturer or importer of a chemical substance listed in § 766.25 in possession of unpublished health and safety studies on HDDs/HDFs is required to submit copies of such studies to EPA no later than October 5, 1987 or 90 days after the person first manufactures or imports the chemical substance, whichever is later. The following provisions of Part 716 of this chapter apply to submission of these studies: §§ 716.3, 716.10(a) (1) and (4); 716.20(a) (1), (2), (3), (4), (7), (8) and (10); 716.25; 716.30; 716.35(a) (1), (2), and (4) [if applicable]; 716.35 (b) and (c); 716.40 (a) and (b); 716.50; 716.55; and 716.60(a)(2).

(3) No later than October 5, 1987 or 90 days after the person first manufactures or imports the substance listed in § 766.25, any manufacturer or importer of a chemical substance listed in § 766.25 must submit records required to be held under Part 717 of this chapter on any HDDs/HDFs.

(4) Test results. (i) Test results must be reported to EPA not later than 270 days after EPA's transmission of comments or 180 days after a final

protocol is submitted to EPA, whichever is shorter.

(ii) For purposes of reporting test results to EPA, and for further reporting triggered by a positive test result under § 766.35(c), a positive test result is defined at § 766.3.

(iii) Reporting of test results must follow procedures set out in Part 790 of this chapter, except as modified in this Part.

(c) *Information required to be submitted to EPA after submission of a positive test result.* (1) Any person who submits a positive test result for a specific chemical substance listed under § 766.25 must submit to EPA no later than 90 days after the date of submission of the positive test result the following:

(i) A completed form (EPA 7910–51) for that chemical substance. The form appears at paragraph (d)(5) of this section and copies are available from the TSCA Assistance Office, (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC, 80460. One form must be submitted for each chemical substance for which a positive test result has been submitted.

(ii) Health and safety studies for the chemical substance for which a positive test result has been reported. The following provisions of Part 716 of this chapter apply to submission of these studies: §§ 716.3; 716.10 (a) (1), (2), (3) and (4); 716.20; 716.25; 716.30; 716.35(a) (1), (2), and (4), [if applicable]; 716.35 (b) and (c); 716.40 (a) and (b); 716.50; 716.55; 716.60(a)(2).

(iii) Copies of records on the chemical substances required to be held under Part 717 of this chapter.

(2) If a positive test result on a chemical substance is received from one person but not from others, EPA may issue a notice in the **Federal Register** listing that chemical substance and requiring any person manufacturing, importing or processing that chemical substance who has not submitted a positive test result to submit the information required in Part II of EPA Form 7910–51 (appearing in § 766.35(d)). Such a notice will be published only if EPA needs additional process data to make a determination of unreasonable risk.

(d) Dioxin/Furan Reporting Form:

BILLING CODE 6560-50-M

United States Environmental Protection Agency
Washington, DC 20460

EPA

Dioxins/Furans Report

Form Approved.
OMB No. 2070-0017
Approval expires 8/89

When completed, send this form to:

Document Control Officer
Office of Toxic Substances, TS-793
US Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

For Agency Use Only

Document Control Number | Docket Number

Part I — General Information

Section A — Submitter Identification

Confi-dential

Mark (X) the "Confidential" box next to any subsection you claim as confidential.

1a. Person Submitting Notice

Name of authorized official | Title

Company

Mailing address *(number and street)*

City, State, and ZIP Code

Section B — Chemical Identity Information *(Use a separate form for each chemical reported.)*

Mark (X) the "Confidential" box next to any subsection you claim as confidential.

1. Chemical name and CAS Registry Number

Part II — Process and Release Information

Section A — Flow Diagram

Mark (X) the "Confidential" box next to any subsection you claim as confidential.

Complete this section for each unit process. Provide a general process block flow diagram that identifies major unit operations and treatment processes and indicate the types and points of release of byproducts and residuals. *(See example I attached.)*

(1) Include intermediates, coproducts and byproducts produced by the process.

(2) Proide a block for each major unit operation *(e.g., reactor, washer, filtration, air emission control, aeration lagoon, etc.)* in the production process and in the residuals management process.

(3) Identify process input such as raw materials, reagents, and solvents by chemical or common name and CAS number, and indicate the point of introduction with arrows.

(4) For each unit operation in which the temperature is not ambient, specify temperature or temperature range in each block of the flow diagram.

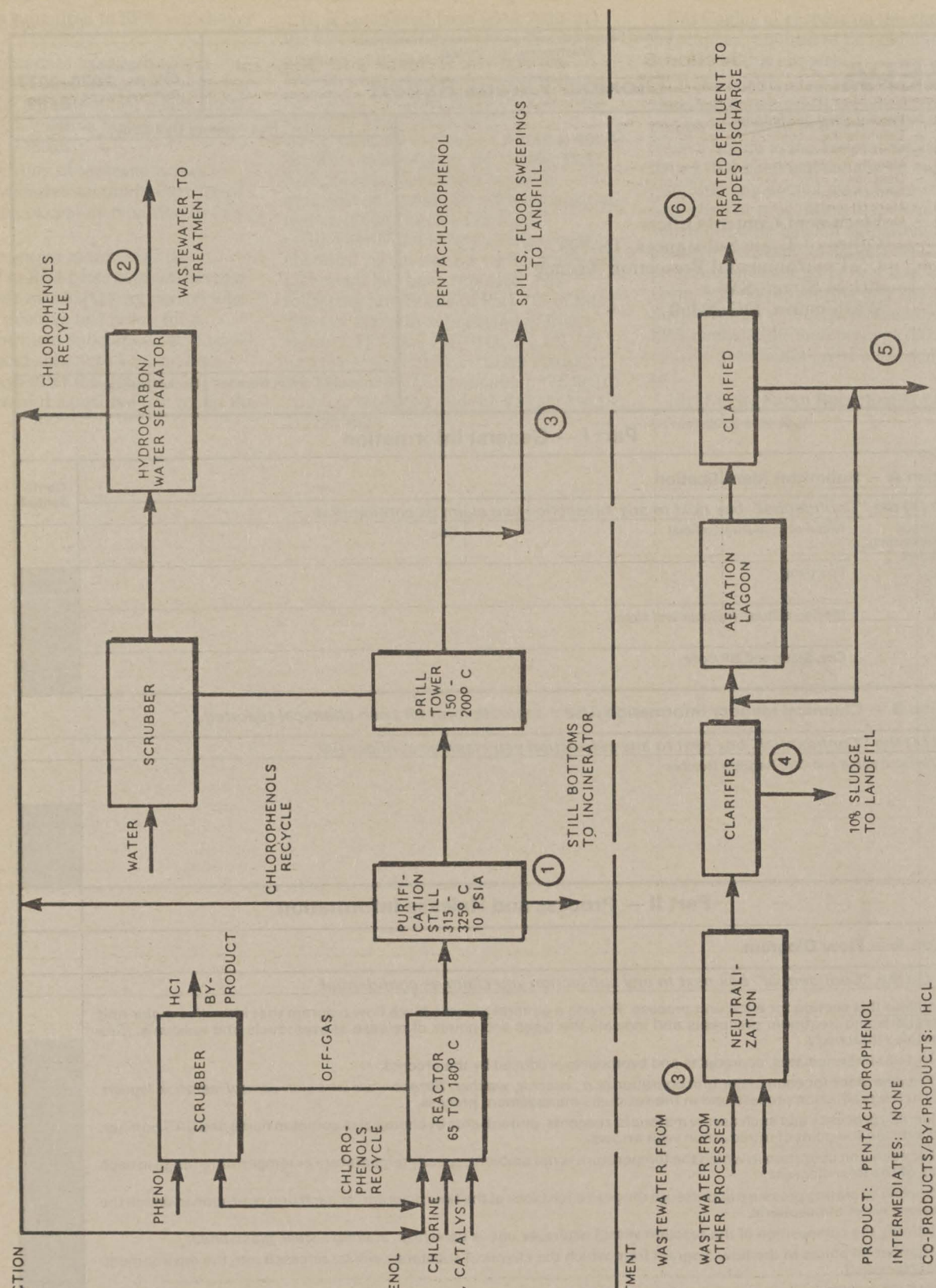
(5) Specify operating pressure or pressure range in each block of the flow diagram for each unit operation in which the pressure is not atmospheric.

(6) Identify the composition of the reaction vessel wherever one is used *(e.g., stainless steel, glass-lined)*.

(7) Number all points in the flow diagram from which the chemical substance will be released into the environment. *(See example I)*

☐ Mark (x) this box if you attach a continuation sheet.

EXAMPLE I - PROCESS BLOCK FLOW DIAGRAM



Section B — Environmental Release and Disposal

You must make separate confidentiality claims for the release number and the amount of the substance released and other release and disposal information. Mark (x) the "Confidential" box next to each item you claim as confidential.

(1) — Enter the number of each release point identified in the process dexcription, part II, Section A.
(2) — Estimate the amount of the chemical substance released directly to the environment or into control technology *(in kg/day or kg/batch)*.
(3) — Mark (x) this column if entries in columns (1) and/or (2) are confidential
(4) — Identify the media *(air, land, or water)* to which the substance will be released from the release point.
(5) — Describe control technology, if any, that will be used to limit the release of the substance to the environment. For releases disposed of on land, characterize the disposal method.
(6) — Mark (x) this column if entries in columns (4) and/or (5) are confidential
(7) — Identify the destination(s) of releases to water.

Release Number *(1)*	Amount of substance released *(2)*	Confidential *(3)*	Media of release *(4)*	Control technology *(5)*	Confidential *(6)*

(7) Mark (x) the destination(s) of releases to water ☐ POTW *(publicly owned treatment works)* ☐ Navigable waterway ☐ Other *(specify)* ☐ Mark (x) this box if you attach a continuation sheet

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Part III — Production, Import, and Use Information

Mark (x) the "Confidential" box next to any item you claim as confidential.

1. **Production volume** — Report the production volume during the past 12 months of production. Also report the **maximum** production volume for any consecutive 12-month period during the past 3 years of production.

Past 12-month production *(kg/year)*	Maximum 12-month production *(kg/year)*	Confi-dential

2. **Use Information** — You must make separate confidentiality claims for the description of the category of use, the percent of production volume devoted to each category, the formulation of the substance, and other use information. Mark (x) the "Confidential" box next to any item you claim as confidential.

(1) — Describe each category of use of the chemical substance by function and application.
(2) — Mark (x) this column if entry in column (1) is confidential.
(3) — Estimate the percent of total production for the past 3 years devoted to each category of use.
(4) — Mark (x) this column if entry in column (3) is confidential.
(5) — Estimate the percent of the substance as formulated in mixtures, suspensions, emulsions, solutions, or gels as manufactured for commercial purposes at sites under your control associated with each category of use.
(6) — Mark (x) this column if entry in column (5) is confidential.
(7) — Mark (x) whether the use is site-limited, industrial, commercial, or consumer. Mark more than one column if appropriate.
(8) — Mark (x) this column if entries in column (7) are confidential.

Read the **Instructions Manual** for examples.

Category of use *(1)*	Confi-dential *(2)*	Production *(percent)* *(3)*	Confi-dential *(4)*	Formulation *(percent)* *(5)*	Confi-dential *(6)*	*Mark (x) appropriate column(s) (7)*				Confi-dential *(8)*
						Site-limited	Indus-trial	Com-mercial	Con-sumer	

☐ Mark (x) this box if you attach a continuation sheet.

3. **Hazard Information** — Include in the notice a copy or reasonable facsimile of any hazard warning statement, label, material safety data sheet, or other information which will be provided to any person regarding protective equipment or practices for the safe handling, transport, use, or disposal of the new chemical substance. List in part IV any hazard information you include.

☐ Mark (x) this box if you attach hazard information.

4. Occupational Exposure — You must make separate confidentiality claims for the description of worker activity, physical form of the substances, number of workers exposed, and duration of activity. Mark (x) the "Confidential" box next to any item you claim as confidential.

(1) — Describe the activities in which workers may be exposed to the chemical substance. Include activities in which workers wear protective equipment.
(2) — Mark (x) this column if entry in column (1) is confidential.
(3) — Indicate the physical form(s) of the chemical substance at the time of exposure.
(4) — Mark (x) this column if entry in column (3) is confidential.
(5) — Estimate the maximum number of workers involved in each activity.
(6) — Mark (x) this column if entry in column (5) is confidential.
(7) and (8) — Estimate the maximum duration of the activity for any worker in hours per day and days per year.
(9) — Mark (x) this column if entries in column (7) and/or (8) are confidential.

Worker Activity (1)	Confidential (2)	Physical Forms (3)	Confidential (4)	Maximum number (5)	Confidential (6)	Maximum duration		Confidential (9)
						Hrs/day (7)	Days/yr (8)	

☐ Mark (x) this box if you attach a continuation sheet.

EPA Form 7710-51 (9-86)

Part IV — List of Attachments

Attach continuation sheets for sections of the form and optional information after this page. Clearly identify the attachment and the section of the form to which it relates, if appropriate. Number consecutively the pages of the attachments. In column (2) below, enter the inclusive page numbers of each attachment.

Mark (x) the "Confidential" box next to any attachment name you claim as confidential. Read the **Instructions Manual** for guidance on how to claim any information in an attachment as confidential.

Attachment name *(1)*	Attachment page numbers *(2)*	Confidential *(3)*

☐ Mark (x) this box if you attach a continuation sheet. Enter the attachment name and number.

Certification

I certify that to the best of my knowledge and belief:

1. The company named in part I, section A, subsection 1a of this form manufactures, imports, or proceses, other than in small quantities for research purposes, the substance identified in part I, section B.
2. All information provided in this notice is complete and truthful as of the date of submission.

Signature of authorized official	Date	Confidential

Signature of agent *(if applicable)*	Date	Confidential

EPA Form 7710-51 (9-86)

General Instructions
EPA Form 7710-51, Dioxins/Furans Report

You must provide all information requested in this form to the extent that it is known to or reasonably ascertainable by you.

Part I — General Information

You must provide the chemical identity of the chemical substance reported on, even if you claim the identity as confidential.

Part II — Process and Release Information

You may need additional copies of part II, sections A and B if there are several manufacture operations that you will describe in the form. You should reproduce these sections as needed.

Part III — Production, Import, and Use Information

You must provide production volume, percent of production used for each use category, and whether use is industrial, commercial or consumer. Also included is a copy of any hazard warning and a report of occupational exposure. Copies may be made of any part of the form if additional space is needed.

Part IV — List of Attachments

You should attach additional sheets if you do not have enough space on the form to answer a question fully. In part IV, list all attachments you include with the form.

Optional Information

You may include with the form any information that you want EPA to consider in evaluating the substance.

Confidentiality Claims

You may claim any information in this form as confidential. To assert a claim on the form, mark (x) the "Confidential" box next to the information that you claim as confidential. To assert a claim in an attachment, circle or bracket the information you claim as confidential.

A. General Instructions

Complete the form using a typewriter or by printing legibly in black ink. All information must be in English. Provide all information requested on the form to the extent that you know or can reasonably ascertain it. You may attach continuation sheets to any subsection or item on the form. Mark (x) the appropriate box on the form if you attach continuation sheets.

The use of the term "manufacture" in this form includes both manufacture and import. Manufacturers and importers must fully comply with the information requirements set forth in the Polyhalogenated Dibenzo-p-dioxins/Dibenzofurans Testing and Reporting Requirements Rule. However, importers are not required to submit any data under section 8(a) of TSCA which relates solely to exposure to humans or the environment outside the United States.

Any manufacturer or importer using this form may photocopy the form, sections of the form, or these instructions as frequently as needed.

B. Certification

The official named in Part I, section A of the form, as the person submitting the notice, must sign the certification on page 6 of the form. This official is responsible for the truth and accuracy of each statement in the certification.

C. Asserting Confidentiality Claims

A manufacturer or importer may assert a claim of confidentiality for any information submitted to EPA on this form. To assert confidentiality claims for specific information on the form (e.g., submitter identity, process data, or use information), mark (x) in the "Confidential" box on the form located to the right of the information. Marking these boxes will provide a quick reference for EPA to determine what information is confidential, thus aiding proper treatment of confidential business information.

Part I — General Information

Section A — Submitter Identification

Person submitting notice — Enter information on the official who signed the general certification on page 6.

Section B — Chemical Identity Information

Chemical Name and CAS Registry Number — List the common name and Chemical Abstracts Registry number, if available, for the chemical on which you are reporting.

II. Process and Release Information

Section A — Flow Diagram

Flow diagram — Submit a block flow diagram for each major unit operation and treatment process involved in manufacturing the chemical on which you are reporting. Include the following information:

(1) identify the product process, and chemical intermediates, coproducts and byproducts produced by the process;

(2) provide a block for each major unit operation (e.g., reactor, washer, filtration, air emission control, aeration lagoon, etc.) in the production process and in the residuals management process;

(3) identify all process input such as raw materials, reagents, solvents, etc. by chemical or common name and CAS number, and indicate the point of introduction with arrows;

(4) for each unit operation in which the temperature is not ambient, specify temperature or temperature range in each block of the flow diagram;

(5) specify operating pressure or pressure range in each block of the flow diagram for each unit operation in which pressure is not atmospheric;

(6) identify the composition of the reaction vessel wherever one is used;

(7) number all points in the flow diagram from which the chemical substance will be released into the environment. See the example provided.

Section B — Environmental Release and Disposal

Column (1) — For each release point indicated in the flow diagram (part II, section A), enter the corresponding number.

Column (2) — Estimate the amount of the chemical (in kg/day for continuous operations or kg/batch for batch operations) that will be released from the release point before entering control technology. Base your estimate on your maximum 12-month production volume.

Column (4) — Enter the medium (air, water, land) into which the release stream discharges (whether or not control technology is used).

Column (5) — For releases to the air and water, describe the type of technology used to control the release of the chemical. Examples of control technologies include carbon filter, scrubber, and biological treatment (primary, secondary, etc.). Give as complete a description as possible. Enter "none" if no control technology is used and the substance is released directly to the environment. For disposal on land, describe the landfill site construction (including liners) and handling procedures. Describe landfill containers.

Column (7) — Mark (x) the appropriate box and/or specify other destinations of water releases.

Columns (3) and (6) — Note that you must make separate confidentiality claims for the release number and amount of chemical substance released and other release and disposal information.

Part III — Production, Import, and Use Information

A. Production Information

Production volume — Report the production volume for the past 12 months of production. Also report the maximum production volume for any consecutive 12-month period during the past 3 years of manufacture. Provide this information in kilograms. Include in your report the amounts produced by persons under contract to you. If part of the amount manufactured is for export, include this amount in your reports.

B. Use Information

Column (1) — Identify each possible category of use of the chemical substance by describing its function and application. "Function" is related to the inherent physical and chemical properties of the substance (e.g., degreaser, catalyst, plasticizer, ultraviolet absorber). "Application" refers to the use of the substance in particular processes or products (e.g., a degreaser may be used for cleaning of fabricated metal parts). Following are some examples of how you should describe categories of use:

- a disperse dye carrier for finishing polyester fibers
- a cross-linking agent for epoxy-like coatings for metal surfaces
- a flame retardant for surface application on cotton apparel, textile home furnishings, and exterior canvas products
- a surfactant in automobile spray wax
- a colorant for paper and other cellulosics

Column (3) — Report the percent of the total production volume during the past 12 months manufactured for each category of use.

Column (5) — Estimate the weight percent of the chemical substance contained in any formulated mixture, suspension, emulsion, solution, or gel associated with each category of use as manufactured for commercial purposes at sites under your control. Where the substance is distributed from your site neat, enter N/A for not applicable.

For example:

Category of Use	Formulated Product as Manufactured	Percent of Chemical Substance
Cross-linking agent for epoxy-type coatings for metal surfaces	none; distributed neat	N/A
Flame retardant for cotton apparel	none; distributed neat	N/A
Surfactant in automobile spray wax	spray auto wax (suspension)	4
Colorant for paper and other cellulosics	colorant (solution)	55

Column (7) — Mark (x) to indicate if the category of use is site-limited. Also mark (x) to indicate whether the use is for industrial, commercial, and/or consumer use as defined below. Mark more than one box, if appropriate. For example, a surfactant in an automobile wax may have a consumer use in liquid wax, a commercial use in auto washes, and an industrial use by automobile manufacturers.

Site-limited: The substance is used only on the contiguous property unit where it is manufactured and not intentionally distributed outside that site except for waste disposal. This includes all factories, storage space, and warehouses at the site. An example would be an intermediate which is further reacted on-site to produce a chemical product.

Industrial: The chemical substance or products containing the substance are used only at the site of other manufacturers or processors, e.g., textile dyeing, paint formulation, use of a resin to manufacture an article.

Commercial: The chemical substance or products containing the substance are used by a commercial enterprise providing a consumer service, e.g., use by commercial dry cleaning establishments, use by painting contractors, or use by roofers in commercial building construction.

Consumer: The chemical substance or products containing the substance are used by private individuals in or around a residence, or during recreation, or for any other personal use or enjoyment, e.g., automotive polish, dyed wearing apparel, household cleaners, etc.

Columns (2), (4), (6), (8) — Note that you must make separate confidentiality claims for the description of the category of use, the percent of production devoted to each category, and other use information. The information in this section is used to evaluate potential exposure of the chemical. If you wish to provide any additional information which would assist in this analysis, it may be submitted as optional information.

C. Hazard Information

Include with the form a copy or reasonable facsimile of any hazard warning statement, label, material safety data sheet, or other information which is provided to any person regarding protective equipment or practices for the safe transport, use or disposal of the chemical. Identify any copies of hazard information or warnings that you attach in Part IV, List of Attachments.

D. Occupational Exposure Information

Column (1) — Describe each specific activity in the operation during which workers may be exposed to the chemical. Such activities may include charging reactor vessels, sampling for quality control, transferring materials from one work area to another, drumming, bulk loading, changing filters, and cleaning equipment. Activities must be described even if workers wear protective equipment or clothing. (Recommended protective equipment should be included as part of Hazard Information).

Column (3) — Indicate the physical form of the substance at the time of exposure, e.g., solid (crystals, granules, powder, dust), liquid (solution, paste, slurry, emulsion, mist, spray), gas (vapor, fume), even if workers wear protective equipment.

Column (5) — Report the maximum number of workers involved in each specific activity, based on the reported maximum 12-month production volume.

Column (7) — Enter the maximum duration that any one worker will engage in the activity in hours/day, e.g., 8 hours/day.

Column (8) — Enter the maximum duration that any one worker will engage in the activity in days/year, based on the reported maximum production volume, e.g., 200 days/year.

Columns (2), (4), (6), (9) — Note that you must make separate confidentiality claims for the description of worker activity, physical form of the chemical, number of workers exposed, and duration of exposure.

Part IV — List of Attachments

Attach any continuation sheets for sections of the form and any optional information, after the last page of the form. Clearly identify the attachment and the section to which it relates. Number consecutively the pages of the attachments. Enter the total number of pages in the form on the last line of the List of Attachments. Mark (x) the "Confidential" box next to any attachment you claim as confidential. See the section of these instructions titled Confidentiality for guidance on claiming any information confidential.

EPA Form 7710-51 (9-86)

BILLING CODE 6560-50-C

(e) Information collection requirements under this section approved by OMB are as follows:

Paragraph under § 766.35	Currently assigned OMB control No.
(b)(1)	2070-0054
(b)(2)	2070-0004
(b)(3)	2070-0017
(b)(4)(iii)	2070-0054
(c)(1)(i)	2070-0054
(c)(1)(ii)	2070-0004
(c)(1)(iii)	2070-0017

§ 766.38 Reporting on precursor chemical substances.

(a) *Identification of precursor chemical substances.* Precursor chemical substances are produced under conditions that will not yield HDDs and HDFs, but their molecular structure is conducive to HDD/HDF formation under favorable reaction conditions when they are used to produce other chemicals or products. The following precursor chemical substances are identified by Chemical Abstract Service (CAS) number and name.

CAS No.	Chemical name
85-22-3	Pentabromoethylbenzene.
87-61-6	1,2,3-Trichlorobenzene.
87-84-3	1,2,3,4,5-Pentabromo-6-chloro-cyclohexane.
89-61-2	1,4-Dichloro-2-nitrobenzene.
89-64-5	4-Chloro-2-nitrophenol.
89-69-0	2,4,5-Trichloronitrobenzene.
92-04-6	2-Chloro-4-phenylphenol.
94-74-6	4-Chloro-o-toloxy acetic acid.
94-81-5	4-(2-Methyl-4-chlorophenoxy) butyric acid.
95-50-1	o-Dichlorobenzene.
95-56-7	o-Bromophenol.
95-57-8	o-Chlorophenol.
95-88-5	4-Chlororesorcinol.
95-94-3	1,2,4,5-Tetrachlorobenzene.
97-50-7	5-Chloro-2,4-dimethoxyaniline.
99-30-9	2,6-Dichloro-4-nitroaniline.
99-54-7	1,2-Dichloro-4-nitrobenzene.
106-46-7	p-Dichlorobenzene.
108-70-3	1,3,5-Trichlorobenzene.
108-86-1	Bromobenzene.
108-90-7	Chlorobenzene.
117-18-0	1,2,4,5-Tetrachloro-3-nitrobenzene.
120-82-1	1,2,4-Trichlorobenzene.
348-51-6	o-Chorofluorobenzene.
350-30-1	3-Chloro-4-fluoronitrobenzene.
615-67-8	Chlorohydroquinone.
626-39-1	1,3,5-Tribromobenzene.
827-94-1	2,6-Dibromo-4-nitroaniline.

(b) *Persons required to report.* All persons who manufacture or import a chemical product produced using any of the chemical substances listed in paragraph (a) of this section as feedstocks or intermediates must report no later than September 29, 1987. Small manufacturers and those manufacturers and importers who produce the precursor chemical substances in quantities of 100 kilograms or less per year only for research and development purposes are not required to report under this section

(c) *Data to be reported.* Manufacturers and importers of chemical products made from precursor chemical substances identified in paragraph (a) of this section must report process and reaction condition data on Part II of form EPA 7910–51 (appearing at § 766.35(d) for each such chemical product. A separate form EPA 7910–51 must be submitted for each chemical product reported, and the precursor chemical substance used must be identified. All forms must be submitted to EPA no later than September 29,1987.

(Approved by the Office of Management and Budget under control number 2070–0054.).

[FR Doc. 87–12586 Filed 6–4–87; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
June 5, 1987

Part III

Department of Justice

Immigration and Naturalization Service

Immigration Reform and Control Act; Notice to Employers

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS Number: 1030-87]

Immigration Reform and Control Act; Notice to Employers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide the public with the materials that the Immigration and Naturalization Service (INS) has developed for employers to comply with the employer sanctions provisions of the Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603). Enforcement of the employer sanctions provisions of the Immigration Reform and Control Act (IRCA) is statutorily mandated to begin on June 1, 1987. Contained in this notice are the "Employment Eligibility Verification Form I-9k," which is to be used by employers to verify the employment eligibility of employees hired after November 6, 1986, and the M-274 "Handbook for Employers" which provides employers with step-by-step instructions on how to complete the Form I-9 and other information regarding compliance with the new immigration law.

FOR FURTHER INFORMATION CONTACT: Walter D. Cadman, Deputy Assistant Commissioner, Investigations Division, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-2997.

SUPPLEMENTARY INFORMATION: INS has worked with many labor and employment organizations, the Congress and others to design and produce the Form I-9 and the M-274 Handbook for Employers. The Form I-9 received final approval from the Office of Management and Budget under control number 1115-0136. The Form I-9 and the Handbook will be widely distributed in the coming weeks and thereafter. Both are available at INS and Government Printing offices across the country. During the month of June and in early July, the Handbook (Which contains copies of the Form I-9 and instructions for completion of the Form I-9) will be mailed to 6,680,894 employers who have withheld taxes for their employees. Copies of the Form I-9 and the Handbook have been made available to many trade, labor, and business associations and organizations who will also be distributing these materials to the public. The Form I-9 may be purchased in bulk from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, Tel. (202) 783-3238 or any GPO bookstore. Both the Form I-9 and the Handbook for Employers may be reproduced or reprinted.

INS has developed a phase-in enforcement policy that it believes conforms with the congressional intent of the legislation and will encourage employers to voluntarily comply with the new employer sanctions law. In light of this phase-in approach, INS will not issue any written citations or take any other enforcement action, beyond informational and educational activities, during the month of June. Exceptions to this policy will only be made in the case of blatant violators. During the one-year citation period established under IRCA (June 1, 1987–May 31, 1988), citations will only be issued after "informational contacts" have been made and it is established that employers have received information concerning their new responsibilities and are found out of compliance. This additional step, prior to the issuance of citations, will provide every employer in the country a reasonable opportunity to comply with IRCA. Exceptions to this phase-in enforcement policy will be made only in cases where employers exhibit a wanton disregard for the law.

Final rules implementing IRCA are located in the Code of Federal Regulations in Title 8, Part 274a and were published in the **Federal Register** on May 1, 1987, 52 FR 16216. The Form I-9 contained in this notice is the finalized version and should be used for verifications performed after the date of this publication. As stated in the "Supplementary Information" of the aforementioned final regulations on employer sanctions, INS will accept verifications previously performed on the version of the Form I-9 published for comment with the proposed rule (52 FR 8762, March 19, 1987) or the version of the Form I-9 published in Brochure for Employers (52 FR 11567, April 9, 1987).

Dated: May 28, 1987.

Mark W. Everson,

Executive Associate Commissioner, Immigration and Naturalization Service.

BILLING CODE 4410-10-M

U.S. Department of Justice
Immigration and Naturalization Service
425 I Street, NW
Washington, DC 20536

Official Business
Penalty for Private Use $300

M-274 (5-87)

Handbook for Employers

Instructions for Completing Form I-9

(Employment Eligibility Verification Form)

To American Employers:

When the Congress passed and the President signed into law the Immigration Reform and Control Act of 1986, the result was the first major revision of America's immigration laws in decades. The new law seeks to preserve jobs for those who are legally entitled to them: American citizens and aliens who are authorized to work in our country.

The Immigration and Naturalization Service is responsible for implementing this new law. Public cooperation is crucial to the success of this national effort.

Put briefly, the law says that you should hire only American citizens and aliens who are authorized to work in the United States. You will need to verify employment eligibility of anyone hired after November 6, 1986, and complete and retain a one-page form (I-9) contained in this handbook.

We have worked to make the process as simple as possible. This handbook provides a step-by-step explanation of what you must do. We hope you will find it helpful.

All Americans stand to benefit from the successful implementation of the Immigration Reform and Control Act. We seek your cooperation.

Alan C. Nelson
Commissioner
U.S. Immigration and Naturalization Service

Contents

This Handbook is divided into nine parts:

- **Part One**—why employers must verify employment eligibility. *See page 1.*
- **Part Two**—when you must complete Form I-9. *See page 2.*
- **Part Three**—step-by-step process of filling out a Form I-9. *See page 2.*
- **Part Four**—unlawful discrimination practices. *See page 5.*
- **Part Five**—information on prohibited practices and penalties. *See page 5.*
- **Part Six**—timetable for implementing the new immigration law. *See page 6.*
- **Part Seven**—information for recruiters and referrers for a fee. *See page 7.*
- **Part Eight**—questions and answers about the Form I-9. *See page 7.*
- **Part Nine**—documents that may be used to establish employment eligibility. *See page 10.*

This Handbook includes two copies of the Form I-9. At the back, you will also find a list of INS offices for you to contact if you need more information.

Part One

Why Employers Must Verify Employment Eligibility of New Employees

The Immigration Reform and Control Act of 1986 is the most comprehensive reform of our immigration laws since 1952. In recent years, our nation has been increasingly affected by illegal immigration. This law, passed by Congress through a bipartisan effort, preserves our tradition of legal immigration while closing the back door to illegal entry. By combining prohibitions against employing illegal entrants (or those aliens, such as tourists, who legally enter the United States but are not authorized to work while they are here) with increased border enforcement, the law represents a step forward in the effort to secure our nation's borders.

Employment is often the magnet that attracts persons to come to or stay in the United States illegally. The purpose of the new law is to remove the magnet by requiring employers to hire only citizens and aliens who are authorized to work here.

This new law was strongly supported by the American public. Employers will want to join the effort to protect our heritage of legal immigration and to preserve jobs for those who are legally entitled to them. This cooperation will make jobs available to American citizens and to aliens who are authorized to work in our country. It also can be a means to help people get off welfare and into jobs. Further, it is a good business practice for you to verify the identity of your workers. The law deserves your support.

The Form I-9 has been developed for verifying that persons are eligible to work in the United States. The following instructions will help you assess your responsibilities for completing the Form and understanding the law.

The law requires you as an employer to do five things:

1. Have your employees fill out their part of the Form I-9 when they start to work;

2. Check documents establishing employees' identity and eligibility to work;

3. Properly complete the Form I-9;

4. Retain the Form for at least three years (if you employ the person for more than three years, you must retain the Form until one year after the person leaves your employment); and

5. Present the Form for inspection to an INS or Department of Labor (DOL) officer upon request. You will be given at least three days advance notice.

2

Part Two

When You Must Complete Form I-9

IF YOU EMPLOY PERSONS TO PERFORM LABOR OR SERVICES IN RETURN FOR WAGES OR OTHER PAY, **YOU MUST COMPLETE FORM I-9 FOR:**

Persons hired after May 31, 1987. For these employees, you must complete a Form I-9 within three business days of the date of the hire. (If you employ the person for less than three days, you must complete the Form I-9 before the end of the employee's first working day.)

Persons hired between November 7, 1986 and May 31, 1987. For these employees, you must complete Form I-9 before September 1, 1987.

NOTE: If you employ people for domestic work in your private home on a regular (such as weekly) basis, these requirements also apply to you.

YOU **DO NOT** NEED TO COMPLETE FORM I-9 FOR:

—Persons hired before November 7, 1986.

—Persons hired after November 6, 1986, who left your employment before June 1, 1987.

—Persons you employ for domestic work in a private home on an intermittent or sporadic basis.

—Persons who provide labor to you who are employed by a contractor providing contract services (e.g., employee leasing).

—Persons who are independent contractors.

Persons who are self-employed do not need to complete Form I-9.

Part Three

How to Complete Form I-9

Form I-9 contains two sections. The **employee** completes the first section (Steps 1, 2, and 3). If a preparer or translator assists the individual, he or she completes Step 4. The second section (Steps 5 and 6) should be completed by the **employer**.

When completing the Form I-9, the employee will need to provide a document or documents that establish identity and employment eligibility. Some documents establish *both* identity and employment eligibility. These documents appear in *List A* on the bottom half of the Form. Other documents establish identity alone (*List B*) or employment eligibility alone (*List C*). If the person does not provide a document from List A, he or she must produce one from List B *and* one from List C. A complete list of acceptable documents appears in Part Nine.

The employer should review the document or documents provided by the person. Documents should appear to be genuine and to relate to the individual.

If employees cannot complete Section 1 by themselves or need the Form translated, someone may assist them. The preparer or translator should read the Form to the employee, help with Step 1 and Step 2 as needed, have the employee sign or mark the Form, and follow Step 4.

Until September 1, 1987, if an employee indicates that he or she intends to or has applied for legalization, Special Agricultural Worker (SAW), or Cuban/Haitian entrant status, the employee is covered by a "special rule" and the employer should follow the instructions on page 4.

If a minor (under age 16) cannot produce a List A document or one of the identity documents listed in Part Nine (List B), he or she is exempt from producing one if: (1) a parent or legal guardian completes Section 1 and writes in the space for the minor's signature the words, "minor under age 16;" (2) the parent or legal guardian completes the "Preparer/Translator Certification;" and (3) the employer writes in Section 2 the words, "minor under age 16" under List B in the space after the words "Document Identification #." If this procedure is followed, the minor must still produce a List C document showing employment eligibility.

SECTION 1: TO BE COMPLETED BY THE EMPLOYEE

STEP 1
Fill in the personal information.

STEP 2
Check the box for work eligibility. Give other information where needed.

STEP 3
Read, sign, and date.

STEP 4
(Preparer/Translator only)
Read, fill in information, and sign.

EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

1 **EMPLOYEE INFORMATION AND VERIFICATION:** (To be completed and signed by employee.)

Name: (Print or Type) Last	First	Middle	Birth Name
Smith	Mary	Ellen	Adams
Address: Street Name and Number	**City**	**State**	**ZIP Code**
4602 Birch Ln	Danville,	TN	37832
Date of Birth (Month/Day/Year)		**Social Security Number**	
6/26/53		408-08-4503	

I attest, under penalty of perjury, that I am (check a box):

- [X] 1. A citizen or national of the United States.
- [ ] 2. An alien lawfully admitted for permanent residence (Alien Number A _____).
- [ ] 3. An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A _____, or Admission Number _____, expiration of employment authorization, if any _____).

I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature	Date (Month/Day/Year)
Mary Ellen Smith	6/15/87

PREPARER/TRANSLATOR CERTIFICATION (To be completed if prepared by person other than the employee). I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature	Name (Print or Type)		
Address (Street Name and Number)	City	State	Zip Code

SECTION 2: TO BE COMPLETED BY THE EMPLOYER

STEP 5
Examine the document and check the box that corresponds to the document. Fill in document number and expiration date.

STEP 6
Read, fill in information, and sign.

2 **EMPLOYER REVIEW AND VERIFICATION:** (To be completed and signed by employer.)

Instructions:
Examine one document from List A and check the appropriate box, ***OR*** examine one document from List B ***and*** one from List C and check the appropriate boxes.
Provide the ***Document Identification Number*** and ***Expiration Date*** for the document checked.

List A Documents that Establish Identity and Employment Eligibility		List B Documents that Establish Identity	and	List C Documents that Establish Employment Eligibility
[X] 1. United States Passport		[ ] 1. A State-issued driver's license or a State-issued I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes. (Specify State) _____		[ ] 1. Original Social Security Number Card (other than a card stating it is not valid for employment)
[ ] 2. Certificate of United States Citizenship		[ ] 2. U.S. Military Card		[ ] 2. A birth certificate issued by State, county, or municipal authority bearing a seal or other certification
[ ] 3. Certificate of Naturalization		[ ] 3. Other (Specify document and issuing authority) _____		[ ] 3. Unexpired INS Employment Authorization Specify form _____ # _____
[ ] 4. Unexpired foreign passport with attached Employment Authorization				
[ ] 5. Alien Registration Card with photograph				
Document Identification # Y016534		***Document Identification*** #		***Document Identification*** #
Expiration Date (if any) Oct 21, 1991		***Expiration Date (if any)***		***Expiration Date (if any)***

CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine and to relate to the individual named, and that the individual, to the best of my knowledge, is eligible to work in the United States.

Signature	Name (Print or Type)	Title
J. W. Walsh	JOSEPH W. WALSH	PRESIDENT
Employer Name	**Address**	**Date**
JOSEPH WALSH, INC.	807 N. MAIN ST., DANVILLE, TN	6/25/87

Form I-9 (05/07/87)
OMB No. 1115-0136

U.S. Department of Justice
Immigration and Naturalization Service

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HOW TO FILL OUT FORM I-9 IF THE SPECIAL RULE APPLIES

The new immigration law also provides that certain qualified aliens who have resided illegally in the United States can legalize their status. In order to legalize their status, aliens must apply under the legalization, Special Agricultural Worker (SAW), or Cuban/Haitian entrant programs.

Employers may hire applicants or prospective applicants for legalization, SAW, or Cuban/Haitian entrant status. *Until September 1, 1987*, these applicants are covered by a "special rule" that authorizes them to work without providing employment eligibility documents. "Special rule" employees will need to fill out the I-9 as shown below and provide one of the specified documents that establish identity (see List B in Part Nine). The employer should review the identity document. It should appear to be genuine and to relate to the individual.

After September 1, 1987, the "special rule" expires, and these applicants will need to show a work authorization document to be hired or to continue to work. Employers must update the Form I-9 by recording the work authorization document information on the Form.

STEP 1
Fill in the personal information.

STEP 2
Check box #3. Write "special rule" in the space for alien number and "September 1, 1987" for the expiration date.

STEP 3
Read, sign, and date.

STEP 4
(Preparer/Translator only)
Read, fill in information, and sign.

STEP 5
Under List B, check the box that corresponds to the identity document and fill in document number and expiration date. Under List C, write "special rule" in the space for document number, and "September 1, 1987" for the expiration date.

STEP 6
Read, fill in information, and sign.

EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

1 EMPLOYEE INFORMATION AND VERIFICATION: (To be completed and signed by employee.)

Name: (Print or Type) Last	First	Middle	Birth Name
JONES	DAVID	ALAN	
Address: Street Name and Number	**City**	**State**	**ZIP Code**
407 ELM ST.	HARRISON	RHODE ISLAND	02912
Date of Birth (Month/Day/Year)	**Social Security Number**		
NOVEMBER 19, 1955			

I attest, under penalty of perjury, that I am (check a box):

☐ 1. A citizen or national of the United States.
☐ 2. An alien lawfully admitted for permanent residence (Alien Number A _____)
☒ 3. An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A SPECIAL RULE or Admission Number _____, expiration of employment authorization, if any SEPT 1, 1987).

I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature	Date (Month/Day/Year)
David A. Jones	7/14/87

PREPARER/TRANSLATOR CERTIFICATION (To be completed if prepared by person other than the employee). I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature	Name (Print or Type)		
Address (Street Name and Number)	City	State	Zip Code

2 EMPLOYER REVIEW AND VERIFICATION: (To be completed and signed by employer.)

Instructions:
Examine one document from List A and check the appropriate box, *OR* examine one document from List B *and* one from List C and check the appropriate boxes. Provide the ***Document Identification Number*** and ***Expiration Date*** for the document checked.

List A Documents that Establish Identity and Employment Eligibility	List B Documents that Establish Identity	and	List C Documents that Establish Employment Eligibility
☐ 1. United States Passport	☒ 1. A State-issued driver's license or a State-issued I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes. (Specify State) Rhode Island		☐ 1. Original Social Security Number Card (other than a card stating it is not valid for employment)
☐ 2. Certificate of United States Citizenship	☐ 2. U.S. Military Card		☐ 2. A birth certificate issued by State, county, or municipal authority bearing a seal or other certification
☐ 3. Certificate of Naturalization	☐ 3. Other (Specify document and issuing authority)		☐ 3. Unexpired INS Employment Authorization. Specify form # _____
☐ 4. Unexpired foreign passport with attached Employment Authorization			
☐ 5. Alien Registration Card with photograph			
Document Identification # _____	***Document Identification*** # 323-750-1031		***Document Identification*** # Special Rule
Expiration Date (if any) _____	***Expiration Date (if any)*** February 26, 1989		***Expiration Date (if any)*** September 1, 1987

CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine and to relate to the individual named, and that the individual, to the best of my knowledge, is eligible to work in the United States.

Signature	Name (Print or Type)	Title
Barbara Evans	Barbara Evans	Personnel Officer
Employer Name	**Address**	**Date**
Hock Corporation	8204 Oak St, Harrison, RI 02912	3/14/87

Form I-9 (05/07/87)
OMB No. 1115-0136

U.S. Department of Justice
Immigration and Naturalization Service

EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

1 EMPLOYEE INFORMATION AND VERIFICATION: (To be completed and signed by employee.)

Name: (Print or Type) Last	First	Middle	Birth Name
Address: Street Name and Number	City	State	ZIP Code
Date of Birth (Month/Day/Year)		Social Security Number	

I attest, under penalty of perjury, that I am (check a box):

☐ 1. A citizen or national of the United States.
☐ 2. An alien lawfully admitted for permanent residence (Alien Number A _____).
☐ 3. An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A _____ , or Admission Number _____ , expiration of employment authorization, if any _____).

I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature	Date (Month/Day/Year)

PREPARER/TRANSLATOR CERTIFICATION (To be completed if prepared by person other than the employee). I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature	Name (Print or Type)		
Address (Street Name and Number)	City	State	Zip Code

2 EMPLOYER REVIEW AND VERIFICATION: (To be completed and signed by employer.)

Instructions:
Examine one document from List A and check the appropriate box, ***OR*** examine one document from List B ***and*** one from List C and check the appropriate boxes. Provide the ***Document Identification Number*** and ***Expiration Date*** for the document checked.

List A Documents that Establish Identity and Employment Eligibility		List B Documents that Establish Identity	**and**	List C Documents that Establish Employment Eligibility
☐ 1. United States Passport		☐ 1. A State-issued driver's license or a State-issued I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes. (Specify State)_____)		☐ 1. Original Social Security Number Card (other than a card stating it is not valid for employment)
☐ 2. Certificate of United States Citizenship		☐ 2. U.S. Military Card		☐ 2. A birth certificate issued by State, county, or municipal authority bearing a seal or other certification
☐ 3. Certificate of Naturalization		☐ 3. Other (Specify document and issuing authority) _____		☐ 3. Unexpired INS Employment Authorization Specify form # _____
☐ 4. Unexpired foreign passport with attached Employment Authorization				
☐ 5. Alien Registration Card with photograph				
Document Identification # _____		***Document Identification*** # _____		***Document Identification*** # _____
Expiration Date (if any) _____		***Expiration Date (if any)*** _____		***Expiration Date (if any)*** _____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine and to relate to the individual named, and that the individual, to the best of my knowledge, is eligible to work in the United States.

Signature	Name (Print or Type)	Title
Employer Name	Address	Date

Form I-9 (05/07/87)
OMB No. 1115-0136

U.S. Department of Justice
Immigration and Naturalization Service

Employment Eligibility Verification

NOTICE: Authority for collecting the information on this form is in Title 8, United States Code, Section 1324A, which requires employers to verify employment eligibility of individuals on a form approved by the Attorney General. This form will be used to verify the individual's eligibility for employment in the United States. Failure to present this form for inspection to officers of the Immigration and Naturalization Service or Department of Labor within the time period specified by regulation, or improper completion or retention of this form, may be a violation of the above law and may result in a civil money penalty.

Section 1. Instructions to Employee/Preparer for completing this form

Instructions for the employee.

All employees, upon being hired, must complete Section 1 of this form. Any person hired after November 6, 1986 must complete this form. (For the purpose of completion of this form the term "hired" applies to those employed, recruited or referred for a fee.)

All employees must print or type their complete name, address, date of birth, and Social Security Number. The block which correctly indicates the employee's immigration status must be checked. If the second block is checked, the employee's Alien Registration Number must be provided. If the third block is checked, the employee's Alien Registration Number ***or*** Admission Number must be provided, as well as the date of expiration of that status, if it expires.

All employees whose present names differ from birth names, because of marriage or other reasons, must print or type their birth names in the appropriate space of Section 1. Also, employees whose names change after employment verification should report these changes to their employer.

All employees must sign and date the form.

Instructions for the preparer of the form, if not the employee.

If a person assists the employee with completing this form, the preparer must certify the form by signing it and printing or typing his or her complete name and address.

Section 2. Instructions to Employer for completing this form

(For the purpose of completion of this form, the term "employer" applies to employers and those who recruit or refer for a fee.)

Employers must complete this section by examining evidence of identity and employment eligibility, and:

- checking the appropriate box in List A ***or*** boxes in both Lists B and C;
- recording the document identification number and expiration date (if any);
- recording the type of form if not specifically identified in the list;
- signing the certification section.

NOTE: Employers are responsible for reverifying employment eligibility of employees whose employment eligibility documents carry an expiration date.

Copies of documentation presented by an individual for the purpose of establishing identity and employment eligibility may be copied and retained for the purpose of complying with the requirements of this form and no other purpose. Any copies of documentation made for this purpose should be maintained with this form.

Name changes of employees which occur after preparation of this form should be recorded on the form by lining through the old name, printing the new name and the reason (such as marriage), and dating and initialing the changes. Employers should not attempt to delete or erase the old name in any fashion.

RETENTION OF RECORDS.

The completed form must be retained by the employer for:

- three years after the date of hiring; or
- one year after the date the employment is terminated, whichever is later.

Employers may photocopy or reprint this form as necessary.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0136
Form I-9 (05/07/87)

Part Four

Unlawful Discrimination

The new immigration law also prohibits discrimination. Under this law, if you have four or more employees, you may not discriminate against any individual (other than an unauthorized alien) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or, in the case of a citizen or intending citizen, because of his or her citizenship status.

Title VII of the Civil Rights Act of 1964 and the remedies against discrimination it provides also remain in effect. Title VII prohibits discrimination against any individual on the basis of national origin in hiring, discharge, recruitment, assignment, compensation, and other terms and conditions of employment with respect to employers subject to its coverage. Claims of national origin discrimination against employers with fifteen or more employees should be filed with the Equal Employment Opportunity Commission.

Under the new immigration law, charges of national origin discrimination against employers with four through fourteen employees and charges of citizenship discrimination against employers with four or more employees should be filed with the Office of Special Counsel in the Department of Justice. Discrimination charges may be filed either by persons who believe they were discriminated against in employment on the basis of national origin or citizenship status (or by a person on their behalf) or by INS officers who have reason to believe that discrimination has occurred. Discrimination charges must be filed within 180 days of the discriminatory act. The Office of the Special Counsel will notify the employer by certified mail within ten days upon receipt of a charge of discrimination. After investigating the charge, the Special Counsel may file a complaint with an administrative law judge. If the Special Counsel does not file a complaint within 120 days of receiving the charge, the person making the charge (other than an INS officer) may initiate filing a complaint with an administrative law judge. The administrative law judge will conduct a hearing and issue a decision.

Employers found to have engaged in discriminatory practices under the new immigration law will be ordered to stop the prohibited practice. They may also be ordered to hire, with or without back pay, individuals directly injured by the discrimination; pay a fine of up to $1,000 for each individual discriminated against (up to $2,000 for each such individual in cases of employers previously fined); and keep certain records regarding the hiring of applicants and employees. If a court decides that the losing party's claim has no reasonable basis in fact or law, the court may award attorneys' fees to prevailing parties other than the United States.

For more information concerning the antidiscrimination section of the new immigration law, write the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, P.O. Box 65490, Washington, D.C. 20035-5490 or call (202) 653-8121.

For more information on Title VII and policies and procedures of the Equal Employment Opportunity Commission, call 1-800-USA-EEOC.

Part Five

Penalties for Prohibited Practices

1. Civil Penalties

If an investigation reveals that an employer has violated the new immigration law with respect to employees hired after November 6, 1986, INS may take action. During the first year of implementation (June 1, 1987–May 31, 1988) INS will continue to assist employers in complying with the law. In addition, INS will only issue a citation for first violations. Further violations during this period may result in the penalties described below. When INS intends to impose those penalties, the Service first issues a Notice of Intent to Fine. Employers who receive a Notice may request a hearing before an administrative law judge. If a hearing is not requested within 30 days, the penalty will be imposed. After May 31, 1988, INS will no longer issue warning citations, and first violations may result in penalties.

- *Hiring or continuing to employ unauthorized employees.* Employers determined to have knowingly hired unauthorized employees (or to be continuing to employ persons knowing that they are or have become unauthorized) may be fined as follows:

  —*First Violation.* Not less than $250 and not more than $2,000 for each unauthorized employee.

  —*Second Violation.* Not less than $2,000 and not more than $5,000 for each unauthorized employee.

  —*Subsequent Violations.* Not less than $3,000 and not more than $10,000 for each unauthorized employee.

- *Failing to comply with record-keeping requirements.* Employers who fail to properly complete, retain, and present for inspection the Form I-9 as required by law may face civil fines of not less than $100 and not more than $1000 for each employee for whom the Form was not completed, retained, or presented. In determining penalties, consideration shall be given to the size of the business, good faith efforts to comply, the seriousness of the violation, and whether the violation involved unauthorized employees.

- *Requiring indemnification.* Employers found to have required a bond or indemnity from an individual against liability under the new law may be fined $1000 and ordered to make restitution, either to the person who was required to pay the indemnity, or, if that person cannot be located, to the United States Treasury.

- *Recruiting unauthorized seasonal agricultural workers outside the United States.* Employers who knowingly recruit unauthorized workers outside the United States to perform seasonal agricultural labor may face the same penalties as for hiring unauthorized workers, unless the workers recruited have been granted Special Agricultural Worker (SAW) status.

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2. Criminal Penalties.

- *Engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized employees.* Employers convicted for having engaged in a pattern or practice of knowingly hiring unauthorized aliens after November 6, 1986, may face fines of up to $3000 per employee and/or six months imprisonment. The same penalties apply to engaging in a pattern or practice of recruiting unauthorized seasonal agricultural workers outside the United States. Criminal sanctions will be reserved for serious or repeated violations.
- *Engaging in fraud or false statements, or otherwise misusing visas, immigration permits, and identity documents.* Persons who use fraudulent identification or employment eligibility documents or documents that were lawfully issued to another, or who make a false statement or attestation, for purposes of satisfying the employment eligibility requirements may be imprisoned for up to five years or fined or both.

Part Six

Timetable for Employer Verification Requirements

December 1, 1986 through May 31, 1987

Public Education Period. This is an initial period established by law for the publication of regulations and dissemination of forms and information. During this period, citations are not issued and fines are not levied.

June 1, 1987 through May 31, 1988

Citation Period. This is a one-year period for public education, voluntary compliance and initial enforcement. INS will work with employer associations, labor unions, and others to provide assistance, develop voluntary cooperation, and encourage efforts to hire legal employees. Penalties are not imposed for first-offense violations during this time. Instead, a warning citation is issued which explains the nature of the violation. For subsequent or repeated violations, civil or in some cases criminal penalties can be imposed.

June 1, 1987 through September 1, 1987

Special Rule Period. Employers may hire or continue to employ employees who attest on the Form I-9 that they have applied or intend to apply for legalization, Special Agricultural Worker, or Cuban/Haitian status even if the workers have not yet received work authorization documents from the INS.

June 1, 1988

Effective Date for Full Enforcement. As of this date, citations will no longer be issued for first violations. Employers who violate the law may face civil or criminal penalties.

June 1, 1987 through November 30, 1988

Deferral Period for Employers of Seasonal Agricultural Workers. Penalties will not apply to employers of seasonal agricultural workers during this period. This deferral does not apply to the prohibition against recruitment of unauthorized employees who are outside the United States. As of December 1, 1988, INS will begin full enforcement of the law with respect to these agricultural employers.

Part Seven

Instructions for Recruiters and Referrers for a Fee

The provisions of the new law that apply to employers also apply to those who **recruit** persons and refer them to potential employers in return for a fee and those who **refer** or provide documents or information about persons to employers in return for a fee. The provisions do not apply to persons who recruit for their own company or business. In addition, union hiring halls that refer union members or non-union individuals who pay membership dues are not considered to be recruiters or referrers for a fee.

Recruiters and referrers for a fee are **not** required to verify the status of persons referred between November 6, 1986, and May 31, 1987. **Starting June 1, 1987, they should complete Form I-9 when a person they refer to an employer is hired by that employer.** The Form should be completed within three business days of the hire.

Recruiters and referrers for a fee may also refer individuals covered by the "special rule" and should follow the procedures for completing the Form I-9 on page 4.

Recruiters and referrers may designate agents to complete the verification procedures on their behalf, such as national associations, or employers. If the employer who hires the referred individual is designated as the agent, the employer needs only to provide the recruiter or referrer with a photocopy of the Form I-9. Recruiters or referrers who designate someone to complete the verification procedures on their behalf are still responsible for compliance with the law and may be found liable for violations of the law.

Recruiters and referrers must **retain** the Form I-9 for three years after the date the referred individual was hired by the employer. They must also present Forms for inspection to an INS or DOL officer after three days advance notice.

The penalties described in Part Five apply to recruiting and referring unauthorized employees for a fee which occurs on or after June 1, 1987.

Part Eight

Some Questions You May Have About the Form I-9

Q. Do United States citizens need to prove they are eligible to work?

A. Yes. While United States citizens are automatically eligible for employment, they too must provide the required documents and complete the Form I-9.

Q. Do I need to complete an I-9 for everyone who applies for a job with my company?

A. No. You need to complete I-9's only for people you actually hire. For purposes of the new law, a person is "hired" when he or she begins to work for you.

Q. If someone accepts a job with my company but will not start work for a month, can I complete the I-9 when the employee accepts the job?

A. Yes. While the law requires you to complete the I-9 when the person actually begins working, you may complete the Form when he or she accepts the job.

Q. Do I need to fill out an I-9 for independent contractors or their employees?

A. No. For example, if you contract with another company to provide temporary secretarial services, you do not have to complete I-9's for that company's employees. The other company is responsible for completing the I-9's for its own employees. However, you must not knowingly use contract labor to circumvent the law against hiring unauthorized workers.

Q. Do I need to complete an I-9 for people I hired after November 6, 1986, if they left the job before June 1, 1987?

A. No.

Q. Does the new law apply to my current employees if I hired them before it was passed?

A. No. You are not required to verify status or complete I-9's for current employees hired before November 7, 1986. However, if you choose to complete I-9's for these employees, you should do so for all your current employees hired before November 7, 1986.

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Q. What if a current employee was hired before November 7, 1986, but has recently taken an approved leave of absence?

A. You do not need to complete an I-9 for that employee if he or she was temporarily absent from work for approved paid or unpaid leave, strike, or temporary layoff, or was transferred to another location of your business. However, if you rehire an employee who quit or was terminated, you should complete the employment verification process as you would for others hired after November 6, 1986. You must also verify employment eligibility and complete an I-9 if an employee leaves or is removed from the United States because of an order by a judge or INS.

Those conditions also apply to employees hired after November 6, 1986. Once you have completed an I-9 for those employees, you will not need to fill out a new Form if they have a temporary absence for approved leave, strike, layoff, or transfer.

Q. Will I be subject to employer sanctions penalties if a current employee I hired before November 7, 1986, is an illegal alien?

A. No. You will not be subject to employer sanctions penalties for merely retaining in your workforce an illegal alien hired before November 7, 1986. The fact that an illegal alien was on your payroll before November 7, 1986, does *not* give him or her any right to remain in the United States. Unless the alien is legalized or otherwise obtains permission from INS to remain in the United States, he or she is subject to apprehension and removal.

Q. What should I do if illegal alien employees ask me to help them in legalizing their status?

A. You can assist past and present employees who may qualify by providing documentation of employment history. Employment documentation furnished by employers and presented by legalization applicants will be used only to determine the applicant's eligibility for legal status. The government will not use the documents against the employer except in cases of fraud by the employer.

If aliens do not know how to apply for legal status, they may be able to get help from various organizations, such as churches, community groups, or business associations, which have been designated by INS to advise aliens and help them prepare applications.

You can also advise them that the Internal Revenue Service (IRS) may be able to provide them with documentation to verify residence. To obtain this documentation, employees should contact IRS in person or by correspondence to the service center where they filed their tax return(s). A letter to IRS should include name, address of filing, social security number (both spouses' numbers if a joint return was filed), tax year or years required and copies of any correspondence received from IRS relating to the requested years. IRS will then issue them a Form 6166 (Certification of Filing a Tax Return) if the tax information is verifiable.

Q. May I specify which documents I will accept for verification?

A. No. You must accept any document or combination of documents listed on the I-9 or in Part Nine of this Handbook that appear to be genuine.

Q. What should I do if the person I hire is unable to provide the required documents within three days?

A. If an employee is unable to provide the required document or documents within three days he or she must at least produce a receipt showing that he or she has applied for the document. The employee must produce the document itself within 21 days of the hire.

Q. What is my responsibility concerning the authenticity of documents?

A. You should examine the documents and if they appear to be genuine on their face and to relate to the person, you should accept them. If on their face the documents do not appear to be genuine or to relate to the person, you should not accept them. In addition, if the work authorization documents carry restrictions, you should abide by them.

You should also be aware that any social security number starting with a "9" is an invalid number. Employees who are using such numbers should be instructed to get a proper social security number using Form SS-5, available from the Social Security Administration.

Q. What identity documents are acceptable for minors?

A. If the minor does not have any of the identity documents listed in Part Nine, he or she does not have to produce an identity document if a parent or legal guardian completes the appropriate sections of the Form for the minor.

Q. When do I fill out the I-9 if I hire someone for less than three days?

A. You do need to complete an I-9 before the end of the employee's first working day. However, if the person is providing intermittent domestic service in your home, you do not need to complete an I-9.

Q. What if the person I hire after November 6, 1986, is an illegal alien who has applied or intends to apply for legalization?

A. There is a "special rule" for these applicants. Up until September 1, 1987, you should fill out the I-9 as illustrated on page 4.

After September 1, 1987 even these aliens must provide work authorization documents and you should update the I-9 to reflect the authorization.

Q. What if I rehire someone who previously filled out an I-9?

A. You do not need to complete a new I-9 if you rehire the person within three years of the initial hire, and the information on the Form indicates that the person is still authorized to work.

Q. Do I need to complete a new I-9 when one of my employees is promoted within my company or transfers from one of my company's offices to another at a different location?

A. No. You do not not need to complete a new I-9 if the employee is promoted or transferred within your company.

Q. What do I do when an employee's work authorization expires?

A. You will need to update the I-9 if you want to continue employing the person. At that time, the employee must present a document that either shows an extension of employment eligibility or that is a new grant of work authorization. If the employee cannot produce such a document, that person is no longer eligible to work. Continuing to employ that person is a violation of the law, even if the employee was previously authorized to work.

Q. As an employer, do I have to fill out all the I-9's myself?

A. No, you may designate someone to fill out the Form for you such as a personnel officer, foreman, agent, or anyone else acting in your interest. However, you are still responsible for compliance with the new law.

Q. Can I contract with someone to complete I-9's for my business?

A. Yes. You can contract with another person or business to verify employees' work eligibility and complete the I-9's for you. If you do so, of course, you are still responsible for the contractor's actions and could be liable for any violations of the new law.

Q. As an employer, can I negotiate my responsibility to complete the I-9's in a collective bargaining agreement with a union?

A. Yes. However, you are still responsible for compliance with the new law.

Q. When I review the identity and work authorization documents, should I make photocopies of them?

A. The law does not require you to photocopy documents. However, if you wish to make photocopies, you must retain them with the I-9. Photocopies must not be used for any other purpose.

Q. What are the requirements for retaining the I-9?

A. You must retain the Form for at least three years. If you employ the person for more than three years, you must retain the Form for one year after the person leaves your employment.

Q. Will I get any advance notice if an INS or DOL officer wishes to inspect my I-9's?

A. Yes. The officer will give you at least three days advance notice before the inspection. He or she will not need to show you a subpoena or warrant at that time. Failure to provide the I-9's for inspection could result in civil money penalties.

Q. What happens if I do everything the new law requires and INS discovers that one of my employees is not actually authorized to work?

A. Unless the government can show that you had actual knowledge of the illegal status of the employee, you will have an affirmative defense against the imposition of employer sanctions penalties if you have done the following things:

—Had employees fill out their part of the I-9 when they started to work;

—Checked the required documents (they should appear to be genuine and to relate to the individual);

—Properly completed the I-9;

—Retained the Form for the specified time; and

—Presented the Form upon request to an INS or Department of Labor officer. You will receive at least three days advance notice.

Q. How can I avoid discrimination while complying with the new immigration law?

A. Employers can avoid discrimination by applying the verification procedures of the Act to *all* newly hired employees and by hiring without respect to the national origin or citizenship status of those authorized to work in the United States. Seeking identity and employment eligibility documents only from individuals of a particular national origin or from those who appear or sound foreign violates the new immigration law and may also be a violation of Title VII of the Civil Rights Act of 1964. Employers should not discharge present employees, refuse to hire new employees, or otherwise discriminate on the basis of foreign appearance, language, or name. It is also a violation of Title VII to discriminate against employees or applicants for employment on the basis of national origin.

Q. I have heard that state employment agencies can certify that people they refer are eligible to work. Is that true?

A. Yes. State employment agencies may elect to provide individuals they refer to employers with a certification of employment eligibility. If one of these agencies refers potential employees to you and an employee presents you with one of these certifications, you do not have to check documents or complete an I-9 if you hire that person. However, you must retain the certification as you would an I-9 and present it for inspection if requested. Employers who hire people referred by state employment agencies should become familiar with what an authorized state employment agency certification looks like.

10

Q. Where can I get the Form I-9?

A. There are two copies of the Form I-9 in this Handbook. If you need more, you can photocopy or print the Forms. You may obtain a limited number of copies from INS. Or you may order them in bulk from the Superintendent of Documents at the following address:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
Tel. (202) 783-3238

Q. What if one of my employees tells me that his or her Social Security Number is invalid?

A. You should tell the employee to get a proper Social Security Number by completing a Form SS-5. This Form is available from the Social Security Administration. You do not need to amend your employment tax returns. However, when the employee gives you the new number, you should file Form W-2C with the Social Security Administration for the years in which you reported income and withholding under the incorrect number.

Q. What advice should I give to my employees applying to legalize their status concerning their Federal Tax obligations?

A. You can advise employees that when they apply to INS for permanent resident status, they will be given an IRS publication explaining requirements for filing Form W-4 or W-4A to insure correct withholding of tax on wages, procedures for correcting prior year tax records (if an invalid social security number was used) and other guidelines relating to tax benefits.

Q. What advice should I give to newly-hired employees who ask about their Federal income tax obligations?

A. First, you can tell them it is important to have a valid social security number and to properly complete a W-4 or W-4A so that the employer can withhold the proper amount for income tax. Second, you can encourage employees to apply for social security numbers for their dependent children who will be five years old or older by the end of the year. Beginning in 1987, such numbers are required to be provided for dependents claimed on tax returns.

Part Nine

Acceptable Documents for Verifying Employment Eligibility

The following documents have been designated for determining employment eligibility by the Immigration Reform and Control Act of 1986 and the implementing regulations. As stated in Part Two, the employee will need to provide a document or documents that establish identity and employment eligibility. A complete list of acceptable documents is given on the next page. Samples of many of the acceptable documents appear on the following pages.

Some documents establish **both** identity and employment eligibility. These are listed on the Form I-9 under *List A*, "Documents that Establish Identity and Employment Eligibility."

If a person does not provide a document from *List A* he or she must provide one document that establishes identity **and** one document that establishes employment eligibility.

In order to establish **identity**, the person must provide a state-issued driver's license, a state-issued identification card, or one of the other documents in *List B*.

In order to establish **employment eligibility**, the person must provide a Social Security card, a United States birth certificate, or one of the immigration documents in *List C*.

If an employee is unable to provide the required document or documents within three days, he or she must at least produce (within three days) a receipt showing that he or she has applied for the document. The employee must produce the document itself within 21 days of the hire.

LIST A
Documents That Establish Identity and Employment Eligibility

- United States Passport
- Certificate of United States Citizenship. (INS Form N-560 or N-561)
- Certificate of Naturalization. (INS Form N-550 or N-570)
- Unexpired foreign passport which:
  - —Contains an unexpired stamp which reads "Processed for I-551. Temporary Evidence of Lawful Admission for permanent residence. Valid until _____. Employment authorized;" or
  - —Has attached thereto a Form I-94 bearing the same name as the passport and contains an employment authorization stamp, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.
- Alien Registration Receipt Card (INS Form I-151) or Resident Alien Card (INS Form I-551), provided that it contains a photograph of the bearer.
- Temporary Resident Card. (INS Form I-688)
- Employment Authorization Card. (INS Form I-688A)

LIST B
Documents That Establish Identity

For individuals 16 years of age or older:

- State-issued driver's license or state-issued identification card containing a photograph. If the driver's license or identification card does not contain a photograph, identifying information should be included, such as name, date of birth, sex, height, color of eyes, and address.
- School identification card with a photograph
- Voter's registration card
- United States Military card or draft record
- Identification card issued by federal, state or local government agencies
- Military dependent's identification card
- Native American tribal documents
- United States Coast Guard Merchant Mariner Card
- Driver's license issued by a Canadian government authority

For individuals under age 16 who are unable to produce one of the documents listed above:

- School record or report card
- Clinic doctor or hospital record
- Daycare or nursery school record

LIST C
Documents That Establish Employment Eligibility

- Social Security number card, other than one which has printed on its face "not valid for employment purposes."
  - Note: This must be a card issued by the Social Security Administration; a facsimile (such as a metal or plastic reproduction that people can buy) is not acceptable.
- An original or certified copy of a birth certificate issued by a state, county, or municipal authority bearing an official seal
- Unexpired INS employment authorization
- Unexpired re-entry permit. (INS Form I-327)
- Unexpired Refugee Travel Document. (INS Form I-571)
- Certification of Birth issued by the Department of State. (Form FS-545)
- Certification of Birth Abroad issued by the Department of State. (Form DS-1350)
- United States Citizen Identification Card. (INS Form I-197)
- Native American tribal document
- Identification Card for use of Resident Citizen in the United States. (INS Form I-179)

Note.—Illustrations of the documents on Lists A, B, and C appear in the Handbook but are not reproduced in the **Federal Register.**

How to Obtain More Information

If you have questions after reviewing this Handbook, you may obtain information from one of the following local INS offices. Direct your letter to the attention of the *Employer Relations Officer*.

ALABAMA
75 Spring Street S.W.
Atlanta, GA 30303

ALASKA
701 "C" Street, Room D-251
Lock Box 16
Anchorage, AK 99513

ARIZONA
230 North First Avenue
Phoenix, AZ 85025

ARKANSAS
701 Loyola Avenue, Room T-8005
New Orleans, LA 70113

CALIFORNIA
300 North Los Angeles Street
Los Angeles, CA 90012

880 Front Street
San Diego, CA 92188

630 Sansome Street
San Francisco, CA 94111

COLORADO
1787 Federal Building
1961 Stout Street
Denver, CO 80202

CONNECTICUT
JFK Federal Building
Government Center
Boston, MA 02203

DELAWARE
601 Market Street
Room 1321, U.S. Courthouse
Philadelphia, PA 19106

DISTRICT OF COLUMBIA
4420 North Fairfax Drive
Arlington, VA 22203

FLORIDA
7880 Biscayne Boulevard
Miami, FL 33138

GEORGIA
75 Spring Street S.W.
Atlanta, GA 30303

GUAM
595 Ala Moana Boulevard
Honolulu, HI 96813

HAWAII
595 Ala Moana Boulevard
Honolulu, HI 96813

IDAHO
Federal Building, Room 512
310 South Park, Drawer 10036
Helena, MT 59626-0036

ILLINOIS
219 South Dearborn Street
Chicago, IL 60604

INDIANA
219 South Dearborn Street
Chicago, IL 60604

IOWA
Federal Building, Room 1008
106 South 15th Street
Omaha, NE 68102

KANSAS
9747 North Conant Avenue
Kansas City, MO 64153

KENTUCKY
701 Loyola Avenue, Room T-8005
New Orleans, LA 70113

LOUISIANA
701 Loyola Avenue, Room T-8005
New Orleans, LA 70113

MAINE
P.O. Box 578, Downtown Station
Portland, ME 04112

MARYLAND
101 West Lombard Street
Baltimore, MD 21201

MASSACHUSETTS
JFK Federal Building
Government Center
Boston, MA 02203

MICHIGAN
333 Mount Elliott Street
Detroit, MI 48207

MINNESOTA
927 Main Post Office Building
St. Paul, MN 55101

MISSISSIPPI
701 Loyola Avenue, Room T-8005
New Orleans, LA 70113

MISSOURI
9747 North Conant Avenue
Kansas City, MO 64153

MONTANA
Federal Building, Room 512
310 South Park, Drawer 10036
Helena, MT 59626-0036

NEBRASKA
Federal Building, Room 1008
106 South 15th Street
Omaha, NE 68102

NEVADA
230 North First Avenue
Phoenix, AZ 85025

NEW HAMPSHIRE
JFK Federal Building
Government Center
Boston, MA 02203

NEW JERSEY
970 Broad Street
Newark, NJ 07102

NEW MEXICO
343 U.S. Courthouse
P.O. Box 9398
El Paso, TX 79984

NEW YORK
68 Court Street
Buffalo, NY 14202

26 Federal Plaza
New York, NY 10278

NORTH CAROLINA
75 Spring Street S.W.
Atlanta, GA 30303

NORTH DAKOTA
927 Main Post Office Building
St. Paul, MN 55101

OHIO
1240 East 9th Street, Room 1917
Cleveland, OH 44199

OKLAHOMA
Federal Building, Room 6A 21
1100 Commerce Street
Dallas, TX 75242

OREGON
511 N.W. Broadway
Portland, OR 97209

PENNSYLVANIA
601 Market Street
Room 1321, U.S. Courthouse
Philadelphia, PA 19106

PUERTO RICO
GPO Box 5068
San Juan, Puerto Rico 00936

RHODE ISLAND
JFK Federal Building
Government Center
Boston, MA 02203

SOUTH CAROLINA
75 Spring Room S.W.
Atlanta, GA 30303

SOUTH DAKOTA
927 Main Post Office Building
St. Paul, MN 55101

TENNESSEE
701 Loyola Avenue, Room T-8005
New Orleans, LA 70113

TEXAS
Federal Building, Room 6A 21
1100 Commerce Street
Dallas, TX 75242

P.O. Box 9398
El Paso, TX 79984

2102 Teege Road
Harlingen, TX 78550

2627 Caroline Street
Houston, TX 77004

727 East Durango, Suite A301
San Antonio, TX 78206

UTAH
1787 Federal Building
1961 Stout Street
Denver, CO 80202

VERMONT
P.O. Box 578, Downtown Station
Portland, ME 04112

VIRGINIA
4420 North Fairfax Drive
Arlington, VA 22203

VIRGIN ISLANDS
GPO Box 5068
San Juan, Puerto Rico 00936

WASHINGTON
815 Airport Way South
Seattle, WA 98134

WEST VIRGINIA
601 Market Street
Room 1321, U.S. Courthouse
Philadelphia, PA 19106

WISCONSIN
219 South Dearborn Street
Chicago, IL 60604

WYOMING
1787 Federal Building
1961 Stout Street
Denver, CO 80202

BORDER PATROL HEADQUARTERS

1590 H Street
P.O. Drawer V
Blaine, WA 98230

P.O. Box 2020
Del Rio, TX 78841-2020

P.O. Box 32639
Detroit, MI 48232

1111 North Imperial Avenue
P.O. Box 60
El Centro, CA 92243

P.O. Box 9578
El Paso, TX 79986

P.O. Box 1657
Grand Forks, ND 58206-1657

P.O. Box 112
Havre, MT 59501

P.O. Box 706
Houlton, ME 04730

207 West Del Mar Boulevard
Laredo, TX 78041

P.O. Box 1
Marfa, TX 79843

2301 South Main Street
McAllen, TX 78501

161 N.E. 183rd Street
P.O. Box 3663 Norland Branch
Miami, FL 33169

P.O. Box 6218
New Orleans, LA 70174

P.O. Box 880
Pleasanton, CA 94566

3752 Beyer Boulevard
San Ysidro, CA 92073-9022

P.O. Box 18930
Spokane, WA 99208

Grand Avenue
P.O. Box 705
Swanton, VT 05488

1970 West Ajo Way
Tucson, AZ 85713

231 Grand Island Boulevard
Tonawanda, NY 14150

P.O. Box 2708
Yuma, AZ 85364

For Employer Information
Call this toll-free number:

1-800-777-7700

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Friday
June 5, 1987

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121
Carry-On Baggage Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24996; Ref. Docket No. 24220; Amdt. 121-194]

Carry-On Baggage Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule requires Part 121 air carriers to develop and use approved carry-on baggage programs. The rule also requires air carriers to verify that each article of baggage is properly stowed before the last cabin door is closed prior to pushback or taxi. This rule will enhance safety by controlling the amounts and size of carry-on baggage and ensuring that all such baggage is safety stowed.

DATES: Effective date: July 6, 1987. Certificate holders may comply any time after the effective date but before the final compliance date. Passengers must comply with the procedures that are part of the certificate holder's program as soon as it is approved and in place.

Final compliance date: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Catey, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Act of 1958 requires the Federal Aviation Administration (FAA) to regulate air carriers, as needed, to ensure the safety of air transportation. As air travel became more popular, carry-on baggage began to pose a safety problem. Many people, used to other modes of transportation where they had to carry all their luggage with them, brought their baggage into the passenger compartment of airplanes where it could not be safely stowed. Excessive carry-on baggage can endanger passengers and crewmembers in a number of ways: carry-on bags that block aisles or the spaces between seats can slow evacuation of the airplane in an emergency; improperly stowed carry-on bags can block access to emergency equipment and to under-the-seat lifevests; carry-on bags that fall from overhead racks or bins can injure passengers and flight crewmembers and hinder evacuation.

To control the problem of too much carry-on baggage, the FAA adopted § 121.589 of the Federal Aviation Regulations (FAR) in 1967 [32 FR 13268; September 20, 1967]. The rule stated that passengers could take to their seats only baggage that could be stowed under a seat. The strict under-the-seat rule was needed at that time because most airplanes in use had only open, overhead racks with no means to restrain items placed on them.

Since 1967, cabin interiors have changed considerably; many now have enclosed overhead bins and substantial closets for hanging bags. As interior configurations changed, the FAA revised § 121.589 to allow passengers to use the storage space the air carriers were adding. Each time it revised the rule, however, the FAA made it clear that its fundamental requirement remained the same: All carry-on baggage must be safely stowed.

The current rule requires air carriers to limit baggage taken aboard to that which can be safely stowed. However, the FAA has found strong evidence that this rule is not specific enought to ensure compliance. Too much carry-on baggage is being taken aboard some flights and the excess is being stowed improperly, creating unsafe conditions. During its National Air Transportation Inspection (NATI) Program in the spring of 1984, the FAA found numerous cases of passengers boarding with bags too large to be stowed and of flights where the quantity of bags exceeded the available storage space. Information collected by the Association of Flight Attendants (AFA) through surveys of its members supports the NATI Program findings that excess carry-on baggage is a serious problem on many flights. Passengers commenting on this rulemaking also testify to the widespread nature of this problem. More people are carrying on more bags and in some cases much larger bags than in the past. Some passengers have evidently come to expect that they will be able to carry on almost anything.

A number of factors have contributed to this situation. Passengers cite slow and unreliable baggage handling by the air carriers as the main reason they carry on baggage. In public comments in this rulemaking, passengers frequently state that they would check their bags and, in fact, would prefer checking bags to carrying them through airports, if they could be sure their bags would not be lost and they could retrieve the bags quickly at the end of the trip.

In response to pressure from passengers who want to be able to carry bags on board, air carriers have allowed more carry-on baggage and often reconfigured airplanes cabins to provide more storage space. Carry-on baggage also saves the air carriers money: they need fewer baggage handlers; they have fewer claims for lost luggage; and, they can turn their airplanes around faster if they do not have to unload and load large quantities of baggage. Some carriers have made carry-on baggage a selling point, thereby pressuring their competition to do the same.

On August 31, 1984, AFA petitioned the FAA for a change in § 121.589. AFA asked the FAA to set limits on the size and number of carry-on bags. After publishing a summary of the petition (49 FR 37109, September 21, 1984), the FAA received over 300 comments, most in favor of the petition. On July 11, 1985, the FAA held a public seminar on the carry-on baggage issue at which it circulated a "working paper" outlining a possible carry-on baggage rule for discussion. After the seminar, a number of airlines sent their frequent flyers a letter from the Air Transport Association (ATA) telling them that the FAA was considering regulatory action on carry-on baggage. The letter did not contain specifics of the AFA proposal or the FAA working paper and left many of the frequent flyers with the impression that the FAA was planning to ban carry-on baggage or limit it to a single bag. Several thousand people wrote to the FAA in response to that letter. Although a number of these people opposed a rule change, a large percentage of those opposed said all they wanted to be able to carry on were one or two pieces (e.g., a briefcase and a hanging bag). This would have been permitted under the AFA proposed. A large number of commenters disagreed with the position being taken by the "frequent flyer" letter and, instead, wrote in support of more strict control of carry-on baggage. Although these letters were not written in direct response to the AFA petition, the FAA reviewed them and considered the writers' concerns when developing its Notice of Proposed Rulemaking (NPRM), Notice No. 86-6 [51 FR 19134; May 27, 1986). Because of the public interest in this issue, the FAA held a public meeting on July 16, 1986, to solicit further information from the public and to ensure the broadest possible public participation and knowledge.

In the NPRM, the FAA proposed that each air carrier be required to develop procedures for handling and controlling carry-on baggage and incorporate them in an overall carry-on baggage program that the FAA would approve individually. In addition, the FAA proposed that the last passenger cabin door could not be closed until an

employee of the air carrier, other than a required crewmember, verified that all carry-on baggage was properly stowed.

The air carriers' programs would be required to include at least one baggage control point located outside the airplane (but not located at the passenger security screening point). The NPRM stated that the following are some of the areas of concern air carriers should consider in developing their carry-on baggage programs.

(1) Types of airplanes operated by the carrier.

(2) Volume and weight capability of onboard storage.

(3) Consistency with the existing FAR.

(4) Procedures for handling of excess carry-on baggage.

(5) Methods of ensuring proper stowage of all carry-on baggage.

(6) Anticipated load factor.

(7) Methods of stowing carry-on baggage in the passenger compartment.

(8) Airplane weight and balance assessment of carry-on baggage.

(9) Areas of operations including terminal facilities (including charter operations).

(10) Facilities for handling excess carry-on baggage.

(11) Training of crewmembers and station personnel.

The FAA anticipated that the programs would vary considerably depending on these factors. Some programs might include limits on size, weight, or number of bags; others might be geared to load factors. Devising their own programs would give the air carriers the flexibility to develop innovative approaches. The requirement that such a program exist also provides a powerful incentive that airlines comply with its terms.

Discussion of Comments

The FAA received over 200 comments on the NPRM from air carriers, flight attendant and pilot unions, foreign governments, consumer groups, special interest groups, and the traveling public. About 75 percent of these comments favor controlling carry-on baggage; about 25 percent oppose the proposed rule. Their specific objections are discussed below.

Of the comments from the general traveling public, almost 90 percent approve of the proposal. Besides mentioning the safety hazards of too much carry-on baggage, those in favor of the rule cite the inconvenience of waiting while passengers load and unload their luggage. Those opposed generally cite the problems of retrieving and of losing checked luggage.

The National Transportation Safety Board says that it "supports the intent of this NPRM and believes this rulemaking effort can lead to improvement in passenger protection."

A number of commenters say that the FAA should establish a single standard that would apply to all air carriers or all airplanes of the same type because this would make compliance easier, both for the airlines and for passengers. The Regional Airline Association (RAA) and many business flyers state that allowing each carrier to have different standards will make it difficult for passengers who have to change airlines during their trips. The International Foundation of Airline Passengers Associations states that "the airline passenger whose journey includes a change of planes from domestic carrier to international operator expects consistency of approach as far as safety aspects are concerned."

While the FAA recognizes that a single standard has a certain appeal, a uniform standard for all air carriers and airplanes would necessarily have to be designed for the lowest common denominator (i.e., the smallest available stowage space, fleet-wide) and would therefore drastically and needlesssly limit carry-on baggage. Many airplanes covered by this rule do not have enclosed overhead bins or closet space for hanging bags. Even the most commonly cited standard for under-the-seat bags—16 inches by 20 inches by 9 inches—is too large for some airplanes. In addition to these variations among airplane types, many air carriers have reconfigured the interiors of their airplanes, some to add storage space, others to remove it and add seats. Given this variety of available storage space, the FAA has decided that a flexible program, designed to accommodate the variations, is preferable. The FAA would be receptive to carriers joining together, consistent with the antitrust laws, to develop standardized programs. In fact, the RAA might perform that function for its members.

Flexible programs will not necessarily make it harder for passengers to know what to expect. At present, carry-on baggage practices and procedures vary from airline to airline; passengers who shift from one type of airplane to another or from one carrier to another must deal with the differing amounts of available onboard storage space. In addition, the FAA expects that each air carrier will develop means to educate its customers and travel agents about the substance of its new programs and the sanctions in the regulations that apply to passengers. Each air carrier should also have a mechanism for informing travellers and travel agents about the specific carry-on requirements of each flight.

The FAA specifically requested comments regarding which person should be responsible for verifying that all carry-on baggage is properly stowed. Air carriers, AFA, other unions, and foreign governments object to the provision in the proposed rule that would have required someone other than a required crewmember to verify that all carry-on baggage was properly stowed. The air carriers cite the cost of hiring and training additional personnnel as well as the cost of delays they feel would be inevitable in such a situation. AFA states that the verification "is logically the job of the flight attendants and it is something they are uniquely qualified to do."

This requirement was originally included primarily to relieve flight attendants of a duty that the FAA perceived was taking too much time and hindering them from completing their other safety duties. However, after considering AFA's position that preboarding control will make the job much less time-consuming, the FAA has changed the proposal to require air carriers to designate at least one required crewmember to verify that all carry-on baggage is stowed before the last cabin door is closed. In addition, this change will alleviate the air carriers' concerns about increased costs. The FAA is requiring that the person or persons designated be required crewmembers because they are trained and familiar with the airplane and must be on board.

ATA objects to the requirement that all baggage be stowed before the cabin doors are closed. ATA states that flight attendants can use the time after the doors have been closed "for verifying and repositioning of improperly stowed baggage." ATA goes on to say, "It is unreasonable to presume that all passengers will stow all baggage for pretaxi verification when they know takeoff is still perhaps twenty or more minutes away."

The FAA does not agree with this position. The rule will require that at least one crewmember must verify that all baggage is properly stowed before the doors are closed. Before the doors close, if an item cannot be stowed, the item can be removed and stowed as checked baggage. If the verification is done after the doors are closed and the airplane has pushed back for taxiing, the airplane would either have to return to the terminal so items that could not be stowed could be checked, or take off, in violation of the rules, with items improperly stowed. While the

preboarding check should limit the stowage problems, it may not entirely eliminate them. If an item has to be checked, this can only be done before the doors are closed. Once the doors are closed, the pressure is on the crewmembers to get the flight underway, and there is no access to the cargo compartment.

The majority of commenters in favor of this rulemaking cite the safety hazard caused by excessive amounts of carry-on baggage. A number mention being hit and sometimes seriously hurt by heavy bags falling out of overstuffed overhead bins. Others cite the danger posed when aisles and the spaces between seats are effectively blocked by oversized bags; evacuation would be difficult in these circumstances.

Many commenters raise the question of heavy items in overhead bins. Others question the safety of the overhead bins themselves as opposed to their contents. Each bin is certificated for a maximum weight. If that weight is not exceeded and if the bin is properly packed and latched, the bins are safe and should not open. Many of the accidents involving luggage falling out of overhead bins have occurred because too much has been packed into the bins; when the bins are opened, the contents spill out immediately. If the bins were not too full, this would not occur. Carry-on baggage programs must include procedures to ensure that no bin or authorized stowage space is overloaded with either too much weight or too great a volume of baggage.

A number of commenters, including RAA, question how the FAA will ensure that the principal operations inspectors (POI's) use the same standards when approving programs for different carriers and in different parts of the country. RAA states that the FAA should at least set standards for types of airplanes that do not have significant variations.

The FAA will provide guidance to POI's, which will be available to carriers, that will spell out which elements should be included in the programs and what degree of variation is acceptable. The items listed in this preamble will be part of this guidance. FAA headquarters will monitor the approvals to ensure that they are consistent with this guidance. In addition, because the programs will be included in an air carrier's operations specifications, a means for appealing a POI's decision to headquarters is provided in § 121.79.

A number of commenters, including ATA, state that the only problem with the current rule is that the FAA is not enforcing it adequately. The FAA conducts surveillance of the air carriers, but because the number of FAA inspectors is limited and the range of their responsibilites is broad, the FAA cannot conduct surveillance on every flight. The FAA and the public expect air carriers to comply with all the rules all the time; air carrier compliance should not be proportionate to the FAA's ability to monitor and enforce a particular rule. Normally this expectation is met. In the area of carry-on baggage, however, it is clear that customer pressure and other factors have caused some air carriers to become lax in their compliance practices. At the public hearing on this rule, representatives of air carriers acknowledged that, as a result of these practices, flight attendants were sometime forced to stow excess baggage in lavatories, galleys, and other unauthorized areas. The representatives dismissed this stowage as no problem although it is a violation of the current rules.

Poor compliance with this rule must be changed because improperly stowed carry-on bags can pose a safety hazard. This rule will require the air carriers to develop procedures for handling carry-on baggage in a way that ensures that every bag taken on board can be properly stowed. With the flexibility to devise their own programs, the air carriers will have the chance to find ways to provide passengers with the services they want while meeting the safety requirement for proper stowage of all bags. Having developed the procedures themselves, the air carriers should find compliance easier. Carriers should expect the FAA to demand strict compliance with the procedures in their carry-on baggage programs. Indeed, continued compliance with the provisions of a carrier's carry-on baggage program is a condition for maintaining the approval of that program.

The International Association of Duty Free Shops, the City of Los Angeles, and the State of Hawaii object to the proposed rule on the grounds that it will discourage people from purchasing duty free items at airport duty free shops because they will be prevented from carrying them on board.

Nothing in this rule will prevent such purchases; this rule will only prevent passengers from taking on board more baggage than can be safely stowed, as should the present rule. Air carriers operating on routes that include duty free shops will be able to adapt their carry-on programs to accommodate their passengers if sufficient stowage space is available, or they may reconfigure the airplanes used on those routes to provide such space.

One commenter objects to applying this rule to cargo-only operators who carry additional crewmembers, other employees, etc. This rule should not cause problems for these carriers. They still must see that baggage is safely stowed, as they must under the current rule. It is unlikely, however, that their program for the management of carry-on baggage will need to be complicated or extensive.

A number of jewelers and musicians object to the proposed rule because they believe the rule would seriously hamper their business. The jewelers state that they must carry on their sample cases; unless they do, their insurance will not cover losses. Musicians state that they must carry on instruments; if checked, the instruments could be seriously damaged.

This rule allows the air carriers to make provisions to accommodate travelers with special baggage problems, provided the baggage can be safely stowed. We would expect that carriers would establish procedures to allow passengers to notify the airlines prior to traveling to see if special baggage needs can be accommodated.

A variation on this problem is the passenger who wants to carry on large, fragile objects that cannot be stowed in accordance with the rules set out in § 121.285. The FAA realizes that airlines many times do not want to check these fragile items. However, the solution is not to carry the items on board and stow them unsafely. The passenger compartment of an airplane is not meant primarily as a cargo stowage area. The best solution, of course, is for passengers to ensure that such fragile objects are securely packed to withstand normal handling. If an item cannot be safely checked or stowed, it should be shipped by some other means.

Some commenters state that the proposed rule would increase boarding time. The FAA disagrees. At present, boarding is often slowed while passengers wait for the people ahead of them to stow baggage and while the last people to board struggle to find space for their carry-ons. Under this rule, people should know beforehand what they will be able to take on board and will have time to check extra baggage. Boarding itself should be smoother and quicker.

AFA requests additional language in the rule stating: (1) that each approved program include specific criteria, set by the air carrier, for the size and amount of carry-on baggage allowed each passenger; and (2) that the air carrier

provide baggage screeners with a means to determine if the baggage meets the criteria.

This language is not necessary because the approved program would be meaningless unless they include criteria about what can be safely stowed and the number of bags that will be permitted and provide baggage scanners with adequate procedures for handling baggage not permitted to be carried on board.

AFA and the Air Line Pilots Association (ALPA) recommend that the FAA extend the proposed rule to include taxiing in the phrase, "no certificate holder may allow an airplane to takeoff or land . . ." unless all baggage is stowed. This problem has been dealt with in the rule by the requirement that all baggage be towed before the last cabin door is closed. However, once this verification is complete, the passenger should be free to remove stowed items from storage spaces in order to retrieve personal belongings as long as all items are again properly stowed prior to takeoff.

ATA objects to including the carry-on baggage program in the air carriers's operations specifications. ATA states that operations specifications are a pilot and dispatcher working document while the carry-on baggage program is basically a passenger service program.

The FAA disagress. Operations specifications cover many aspects of an aircarrier's operations. One purpose of operations specifications is to document, in a form that is enforceable and is easily accessible to safety inspectors, agreements between the carrier and the FAA on what operations are approved. Approved carry-on baggage programs are an appropriate addition. If the text of a program is very long, it may be included in the air carriers' manual and incorporated by reference in the operations specifications.

ALPA questions whether the weight allotments that the FAA recommends air carriers use for their weight and balance calculations are high enough.

Such questions are outside the scope of this proceeding and cannot be specifically dealth with in this rulemaking. However, it should be noted that weight and balance assessments are one factor in the carry-on baggage program. If, under its program, an air carrier permits passengers on any of its flights to carry such significant amount of baggage on board that the FAA's carry-on baggage weight allowance guidelines are substantially exceeded, the air carrier is responsible for adjusting its weight allowance calculation for each flight affected to ensure that accuracy of aircraft weight and balance and performance calculations.

The FAA's concern is safety; some of the factors that have contributed to the current problem, such as baggage handling procedures, are beyond the FAA's safety mandate. In general, the FAA believes that fewer bags are better than more bags, and smaller bags are better than larger. Nonetheless, safety is determined by the ability to stow every item properly, not by size or number alone. While passengers must comply with this rule, the ultimate responsibility for safety lies with the air carrier. In this rulemaking the FAA is adoptng a flexible regulation to give air carriers a chance to develop programs that suit their needs and ensure safety. The agency believes that this rule strikes a fair balance between these safety concerns and the convenience expected by the traveling public. The FAA will monitor these program to ensure that the carriers are using the procedures they have developed and that the procedures are effective. If it finds that the air carriers are not complying, the agency will have the option of withdrawing approval of the programs or prescribing more specific standards.

After considering the comments, the FAA is adopting the rule as proposed, except that § 121.589(b) will require that at least one required crewmember verify that baggage is properly stowed before the last cabin door is closed. The rule has a compliance date of 180 days after the effective date to give air carriers time to develop, submit, and obtain approval for their programs. All programs must be approved by the compliance date. Airlines without approved programs may not permit carry-on baggage aboard their flights. Passengers will have to comply with the programs as soon as they are approved and put into effect. Since the FAA anticipates that approving the programs may require considerable FAA review, the air carriers should submit their programs as soon as posssible but no later than December 2, 1987 so that the review process may be completed before the compliance date.

Economic Summary

The FAA will require Part 121 certificate holders that carry passengers to develop and use an approved carry-on baggage program after 180 days after the effective date.

The amendments to § 121.589 specify that no certificate holder may allow the boarding of carry-on baggage on aircraft unless each passenger's baggage has been scanned to control the size and amount carried on board in accordance with an approved carry-on baggage program in its operations specifications. The rule also requires air carriers to verify that each article of baggage is properly stowed before the last cabin door is closed prior to pushback or taxi.

These amendments are in part a response to the August 31, 1984, petition submitted by the FAR to amend § 121.589 of the FAR to limit the amount and size of carry-on baggage on aircraft. The AFA petition and a recent FAA study of carry-on baggage aboard Part 121 air carriers indicate that the size of articles and overall volume of carry-on baggage frequently exceed the stowage capacity in the passenger compartments. The excess baggage cannot be safely stowed, giving rise to a potential safety hazard. The rule also takes into account the large number of public complaints addressing the unsafe stowage of large and heavy items and the clutter created by excess carry-on baggage.

The FAA anticipates that the affected air carriers will elect to develop FAA-approved carry-on baggage programs prior to the compliance date specified in this amendment. This evaluation estimates that the total cost of compliance to the 146 Part 121 certificate holders affected by the carry-on baggage program requirements of this rule is $540,000 in 1986 dollars.

The primary benefit of this rule will be the prevention of fatalities an injuries resulting from improperly stowed items obstructing rapid passenger egress in otherwise survivable impacts and from improperly stowed items dislodging and striking passengers and crew when abrupt aircraft deceleration or attitudinal changes occur.

Quantification of these benefits is not possible because the safety records of the FAA and the NTSB do not detail the extent to which improperly stowed items have contributed to fatalities and injuries in air carrier accidents.

Economists generally agree that the economic value of a human life is no less than $1 million. Hence, if even one fatality is prevented as a result of this amendment during the 10-year period following implementation of the rule, the $540,000 cost of compliance will be substantially exceeded by the benefits.

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, this amendment will not have a significant economic impact on a substantial number of small entities.

FAA's thresholds for significant economic impact vary according to the equipment type operated and the kind of service provided. The annualized cost

threshold for scheduled carriers is $92,700 or $51,800, depending on whether the fleet operated includes aircraft having more than or a fewer than 60 seats, respectively. The threshold for nonscheduled air carriers is only $3,600.

The cost of compliance with these amendments for a small nonscheduled air carrier is estimated to be $1.104. This is substantially lower than the $3,600 threshold established for small nonscheduled air carriers and far below the threshold of $51,800 for scheduled carriers operating airplanes with 60 or fewer seats. Therefore, small carriers will not incur a significant economic impact as a result of the amendment to § 121.589.

Trade Impact Assessment

This rule affects only U.S. air carriers operating under the rules of Part 121 of the FAR. The regulation will have little or no impact on trade opportunities for U.S. firms doing business overseas and does not apply to foreign firms doing business in the United States.

Conclusion

Compliance with this rule will involve only a one-time cost on the part of air carriers to develop an FAA-approved carry-on baggage program. Because this amendment will not result in an annual effect on the economy of $100 million or more or a major increase in costs for consumers; industry; or Federal, State, or local government agencies, it has been determined that this is not a major amendment under Executive Order 12291. In addition, the amendment will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Since the amendment concerns a matter on which there is a substantial public interest, the FAA has determined that this action is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, as noted above, the FAA certifies that under the criteria of the Regulatory Flexibility Act, this amendment will not have a significant economic impact on a substantial number of small entities.

A regulatory evaluation of the amendment including a Regulatory Flexibility determination and Trade Impact Assessment, has been placed in the regulatory docket. A copy may be obtained by contact the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airports, Cargo, Handicapped, Transportation, Common carriers.

The Rule

Accordingly, the Federal Aviation Administration amends Part 121 of the Federal Aviation Regulations [14 CFR Part 121] as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 App. U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. Section 121.589 is revised to read as follows:

§ 121.589 Carry-on baggage.

(a) No certificate holder may allow the boarding of carry-on baggage on an airplane unless each passenger's baggage has been scanned to control the size and amount carried on board in accordance with an approved carry-on baggage program in its operations specifications. In addition, no passenger may board an airplane if his/her carry-on baggage exceeds the baggage allowance prescribed in the carry-on baggage program in the certificate holder's operations specifications.

(b) No certificate holder may allow all passenger entry doors of an airplane to be closed in preparation for taxi or pushback unless at least one required crewmember has verified that each article of baggage is stowed in accordance with this section and § 121.285(c) of this part.

(c) No certificate holder may allow an airplane to take off or land unless each article of baggage is stowed:

(1) In a suitable closet or baggage or cargo stowage compartment placarded for its maximum weight and providing proper restraint for all baggage or cargo stowed within, and in a manner that does not hinder the possible use of any emergency equipment; or

(2) As provided in § 121.285(c) of this part; or

(3) Under a passenger seat.

(d) Baggage, other than articles of loose clothing, may not be placed in an overhead rack unless that rack is equipped with approved restraining devices or doors.

(e) Each passenger must comply with instructions given by crewmembers regarding compliance with paragraphs (a), (b), (c), (d), and (g) of this section.

(f) Each passenger seat under which baggage is allowed to be stowed shall be fitted with a means to prevent articles of baggage stowed under it from sliding forward. In addition, each aisle seat shall be fitted with a means to prevent articles of baggage stowed under it from sliding sideward into the aisle under crash impacts severe enough to induce the ultimate inertia forces specified in the emergency landing condition regulations under which the airplane was type certificated.

(g) In addition to the methods of stowage in paragraph (c) of this section, flexible travel canes carried by blind individuals may be stowed—

(1) Under any series of connected passenger seats in the same row, if the cane does not protrude into an aisle and if the cane is flat on the floor; or

(2) Between a nonemergency exit window seat and the fuselage, if the cane is flat on the floor; or

(3) Beneath any two nonemergency exit window seats, if the cane is flat on the floor; or

(4) In accordance with any other method approved by the Administrator.

Issued in Washington, DC on May 29, 1987.

Donald D. Engen,

Administrator.

[FR Doc. 87–12775 Filed 6–4–87; 8:45 am]

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Federal Register

Friday
June 5, 1987

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Running Buffalo Clover and Jesup's Milk Vetch; Determination of Endangered Status; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Trifolium Stoloniferum (Running Buffalo Clover)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Trifolium stoloniferum* (running buffalo clover) to be an endangered species. This clover ranged from eastern Kansas to West Virginia until perhaps the mid-1800's and was apparently abundant in certain locations. Presently, only a single extant population of *T. stoloniferum* is known. This occurs on private land in Fayette County, West Virginia, and consists of only four individuals. This species is clearly endangered by its rarity alone; threats include trampling or other inadvertent destruction by humans or other animals, crushing by off-road vehicles, and competition with weedy species. This determination implements the protection provided by the Endangered Species Act of 1973, as amended, for *Trifolium stoloniferum*.

DATES: The effective date of this rule is July 6, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Jacobs at the above address (301/269–6324).

SUPPLEMENTARY INFORMATION:

Background

The running buffalo clover (*Trifolium stoloniferum*) is a member of the Fabaceae (pea family), native to the eastern United States. This short-lived perennial forms long runners from its base. The flowerheads are terminal and large, up to an inch in diameter. Flowers are white, tinged with purple. Flowering normally occurs from mid-April to June and fruits (seed heads) are present into July.

Trifolium stoloniferum was originally named by Henry Muhlenberg in 1813; however, the name was invalid, since it was published without a decription. The name was validated by Amos Eaton in his "Manual of Botany for the Northern and Middle States," published in 1818. *Trifolium stoloniferum* is morphologically similar to the native buffalo clover *T. reflexum*, but as the name implies, the former species has a stoloniferous habit, while the latter does not. *T. stoloniferum* has also been considered very similar to the stoloniferous introduced species *Trifolium repens;* however, the former has a chromosome number of n=16, while the number for *T. repens* is n=32 (N. Taylor, University of Kentucky, pers. comm.). A detailed character analysis by Brooks (1983) reveals further morphological differences among these three species.

Documented specimens of *Trifolium stoloniferum* are available from the States of Illinois, Indiana, Kansas, Kentucky, Missouri, Ohio, and West Virginia, indicating the original range of this plant (Brooks 1983). A record from Arkansas is believed to be based on an introduction (R. Brooks pers. comm.). A recent review of historical accounts indicates that before the arrival of white settlers, this species was abundant in several areas of the Ohio Valley and adjacent regions, and may have been a local dominant within the "bluegrass region" of Kentucky (Campbell 1985). Running buffalo clover was apparently adapted to rich soils in "relatively stable ecotones, with continual, moderately intense disturbance," between open forest and pastures or prairies (Campbell 1985). Campbell speculates that the vegetation of these areas was likely maintained by "buffalo" (*Bison bison bison).* After the extirpation of the buffalo from the East, the abundance of *T. stoloniferum* apparently decreased. Brooks (1983) indicates that by the late 19th century, populations of running buffalo clover were, "limited and widely scattered. . . . Shortly thereafter . . . the number of collections dwindled rapidly, with a mere five sites documented after 1900." Brooks field-checked all the documented locations as well as other likely habitat for *T. stoloniferum* in Missouri, and Kansas, without finding any extant populations (R. Brooks pers. comm.). Extensive field work in Kentucky has also revealed no extant populations of *T. stoloniferum* (J. Campbell pers. comm.). The plant is also believed to be extirpated in Illinois, Indiana, Missouri, and Ohio (pers. comm. with State Heritage Programs). Based on this information and his conversations with field botanists, Brooks (1983) concluded that *T. stoloniferum* was possibly extinct.

In 1983 and 1984, two small populations of running buffalo clover were discovered in West Virginia (Bartgis 1985). One of these, a relocation of the most recent historical record (Webster County 1940), occurred at the margin of a mowed field and in 1984 contained only four plants. During field inspections in 1985 and 1986, these plants could not be relocated. Therefore this population is likely extirpated. The remaining population, located along an off-road-vehicle trail adjacent to the New River in Fayette County, contained 18 plants in the fall of 1985. Repeated disturbances in the spring and summer of 1986 (most likely by motor vehicles) decreased the population to its present level of four plants. This population occurs within the area of an existing hydropower project licensed by the Federal Energy Regulatory Commission. At present, *T. stoloniferum* is not directly impacted by any operational aspect of the hydropower facility. The landowner has blocked the road and is committed to continued protection of the clover. Live shoots from the Fayette County population were sent to the University of Kentucky (UK) and West Virginia University (WVU) greenhouses. The plants at UK have been vegetatively propagated, and those over-wintering outside have produced viable seeds (N. Taylor pers. comm.). Some of these progagules will soon be ready for reintroduction to sites within the clover's original range. At WVU, clover tissues have been cultured to produce more plants. *T. stoloniferum* apparently responds well to this technique (B. Baker, West Virginia University, pers. comm.), which may be important to the species' recovery.

Trifolium stoloniferum was first recognized by the Service in the Federal Register notice of review published on November 28, 1983 (48 FR 53641). That notice, which covered plants being considered for classification as endangered or threatened, included *Trifolium stoloniferum* in category 2*. Category 2 comprises those taxa for which proposed listing is possibly appropriate but for which conclusive data on biological vulnerability are not currently available to support a proposed rule. The asterisk (*) indicates taxa that are possibly extinct. The Service was informed of the extant populations of this species in December 1984. On March 10, 1986, the Service proposed endangered status for this species (51 FR 8217).

Summary of Comments and Recommendations

In the March 10, 1986, proposed rule (51 FR 8217) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the

development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited public comment was published in the *Charleston Gazette* on April 12, 1986. Nine comments were received and are discussed below.

Letters supporting the listing were received from the West Virginia Department of Natural Resources, Ohio Department of Natural Resources, Dr. Ralph Brooks of the Kansas Biological Survey, Indiana Department of Natural Resources, Federal Energy Regulatory Commission, and The Nature Conservancy. The proposal received further letters of support from two researchers at the University of Kentucky. One of these letters, from Dr. Julian Campbell, supplied some comments and additional information on threats, which have been incorporated into this final rule.

Finally, a letter was received from the law firm representing the landowner corporation, commenting on this listing as it relates to FERC relicensing. On June 13, a meeting was held in Newton Corner, Massachusetts, to discuss concerns raised in this letter. These will not be discussed in detail here, since they relate primarily to the relicensing, rather than to this listing. All of the corporation's concerns relative to the listing were addressed at the meeting; it now fully supports the listing and has been extremely cooperative in protecting the clover population on its land.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the running buffalo clover should be classified as endangered. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Trifolium stoloniferum* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* It is difficult to determine the original extent and abundance of running buffalo clover, since elimination of the natural ground cover within its range began during the 1790's, before *T. stoloniferum* was even described, and long before the area was adequately botanized. By 1850, native vegetation of the Kentucky bluegrass region had been largely replaced by pasture plants, including bluegrass (*Poa pratensis*) and introduced white clover (*Trifolium repens*) (Campbell 1985). Therefore, we must rely on early, nontechnical accounts, such as those summarized by Campbell (1985) to infer the original extent of running buffalo clover. Quotations from early observers in the Kentucky bluegrass region indicate at least localized abundance: "rich soil . . . adorned with great patches of fine white clover" (Ranck 1901, *re* 1775), "covered with clover in full bloom" (Walker 1924, *re* 1775), "a turf of white clover" (Henderson 1775) "an abundance of wild rye, clover and buffalo grass covering vast tracts of country" (Filson 1784) (all quoted in Campbell 1985). Campbell argues that many of these and other early accounts referred to *Trifolium stoloniferum*, the only clover known to have been native to the region. White clover (*Trifolium repens*) was introduced and began to spread shortly after settlement, and apparently running buffalo clover began to decline at about the same time. By the late 1800's, when the majority of collections were made, the species was known only from localized, widely scattered localities. Today, *T. stoloniferum* is believed to be extirpated throughout its range, with the exception of the one population in West Virginia.

The precise reasons for this striking decline are unclear. It is likely that running buffalo clover was to some extent dependent on the buffalo for soil enrichment, periodic intense disturbance and seed dispersal (Campbell 1985, Larson 1940, Reynolds *et al.* 1982). In this regard it is interesting that the Webster County, West Virginia population was in the immediate vicinity of the last recorded site for buffalo in the State, and all other West Virginia records are in the immediate vicinity of known buffalo trails (Bartgis 1985). Other factors contributing to the species' demise could include clearing of its habitat for pasture and agriculture, competition with introduced species, and other habitat changes resulting from the industrial revolution (Brooks 1983), and possibly, diseases introduced with non-native clovers (see below).

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Running buffalo clover is not known to be used for any commercial or recreational purpose. Because of its rarity, it is subject to collection by botanists and/or curiosity seekers. Given the fact that only four individuals of this species are known to exist in the wild, any collection would be over-collection. The species could also be eliminated in the wild by a single act of vandalism.

C. *Disease or predation.* Dr. Julian Campbell (pers. comm.) has observed that *T. stoloniferum* is highly palatable to herbivores, apparently having evolved no chemical defenses, unlike white clover, which has cyanide in its leaves. Campbell has noted heavy slug damage to some of his plants and cited an incident of rabbit depredation on another plant. Some greenhouse plants at UK have recently succumbed to a viral or virus-like disease, possibly transmitted from white clover (*Trifolium repens*). Susceptibility to this or other recently introduced diseases may have contributed to the species' decline (N. Taylor pers. comm.), and must be studied with regard to the species' recovery.

D. *Inadequacy of existing regulatory mechanisms.* The extant population of *T. stoloniferum* presently receives no protection under any Federal, State or local law or regulation, other than the protection afforded by its proposed endangered status under the Endangered Species Act.

E. *Other natural or manmade factors affecting its continued existence.* As stated above, the Fayette County population of running buffalo clover is located immediately adjacent to an off-road-vehicle path that provides the only public access to a 10-mile stretch of the New River. Due to its location, the population is extremely vulnerable to being run over, trampled, covered by trash or killed by petroleum or other pollutants. Closing the road has alleviated the potential for these impacts to some extent, but the recent population declines underscore the precarious nature of the present situation.

The Service has carefully assessed the best scientifi and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the running buffalo clover as endangered. The Act defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range." This definition is most appropriate for *Trifolium stoloniferum* at this time. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent

prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Trifolium stoloniferum*, because its very restricted distribution makes it vulnerable to extinction from taking. Public access to published habitat descriptions and precise maps would almost certainly result in collection or vandalism, which would be fatal for this species in the wild. Therefore, it would not be prudent to determine critical habitat for *Trifolium stoloniferum*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat if any is designated. Regulations implementing this interagency cooperation provision of the Act, published on June 3, 1986 (51 FR 19926), are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. The Federal Energy Regulatory Commission (FERC) has licensing authority for the project area on which the Fayette County population of *T. stoloniferum* occurs. The existing project does not directly impact *T. stoloniferum*; however, any future project developments possible impacting this species would require section 7 consultation to ensure protection for this species and its habitat.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it from an area under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With regard to *T. stoloniferum*, it is anticipated that few permits will ever be sought or issued since the species is not common in cultivation or in the wild, and is not presently known to occur on Federal land. Any populations re-established on Federal lands would be carefully monitored by authorized personnel. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Bartsis, R. 1985. Rediscovery of *Trifolium stoloniferum* Muhl. *ex* A. Eaton. Rhodora 87: 425–429.

Brooks, R.E. 1983. *Trifolium stoloniferum*, Running Buffalo Clover: Description, Distribution and Current Status. Rhodora 85: 343–354.

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Larson, F. 1940. The Role of the Bison in Maintaining the Shortgrass Plains. Ecology 21: 113–121.

Reynolds, H.W., R.D. Glaholt and A.W.L. Hawley. 1982. Bison. pp. 972–1007 *In:* J.A. Chapman and G.A. Feldhamer [eds.]. Wild Mammals of North America. Baltimore: The Johns Hopkins University Press, 1147 pp.

Author

The primary author of this final rules is Judy Jacobs, Endangered Species Staff, U.S. Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401 (301/269–6324 or FTS 922–4197).

List of Subjects in 50 CFR Part 17

Endangered and Threatened Wildlife, Fish, Marine Mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. Amend 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
•	•	•	•	•	•	•
Trifolium stoloniferum	Running buffalo clover	U.S.A. (IL, IN, KS, KY, MO, OH, WV)	E	270	NA	NA
•	•	•	•	•	•	•

Dated: May 27, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-12877 Filed 6-4-87; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Astragalus robbinsii var. jesupi (Jesup's milk-vetch) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Astragalus robbinsii* var. *jesupi* (Jesup's milk-vetch) to be an endangered species, and thereby provides the species needed protection under the authority contained in the Endangered Species Act of 1973, as amended. This species is known from one site in Vermont and two sites in New Hampshire. The total known range of the species is along approximately 16 miles (25 kilometers) of the Connecticut River, where the plants are associated with calcareous bedrock outcrops. Hydropower development and increased recreational activity along the river could threaten the species' continued existence. Critical habitat is not being designated.

DATES: The effective date of this rule is July 6, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Richard W. Dyer at the above address (617/965-5100 or FTS 829-9316).

SUPPLEMENTARY INFORMATION:

Background

Jesup's milk-vetch is a plant of the pea family (Fabaceae) that is only known to occur at three sites on the banks of the Connecticut River in New Hampshire and Vermont. The total range of the species is restricted to approximately 16 miles (25 kilometers) along the river, where it occurs on calcareous schist outcrops. The perennial herbs grow from rhizomes in the silt-filled crevices of outcrops or at the high water mark, where they are shaded by associated trees and shrubs. The one to several stems are 8-24 inches (2-6 decimeters) tall and are either smooth or sparsely covered by short appressed hairs. The leaves are pinnately compound. The 9-17 leaflets are ⅓-¾ inches (1-2 centimeters) long, oblong to elliptic in shape, and may also have a few short hairs. The violet to bluish-purple flowers appear in late May or early June. The fruit is a flattened tapered pod; the form of the pod is important in differentiating among the three New England varieties of *Astragalus robbinsii* (Barneby 1964). Of these three known varieties, *A. robbinsii* var. *robbinsii* is now extinct, *A. robbinsii* var. *minor* is very rare in New England, and the third, *A. robbinsii* var. *jesupi*, is the subject of this rule.

Astragalus robbinsii (Oakes) Gray var. *jesupi* Eggleston and Sheldon has persisted at two of its three known locations since the late 1800's. The plant was first collected in 1877 at Sumner Falls in Plainfield, New Hampshire, by Professor Henry G. Jesup of Dartmouth College. This population now consists of only six plants. The Hartland, Vermont location was discovered on May 19, 1881, by Jesup and Perkins. Many early collections were made at the Hartland site, and fewer than 75 plants now occur there.

The most vigorous colony, of approximately 1,000 plants, was found in 1956 and occurs approximately sixteen miles downstream in Claremont, New Hampshire. This unique stretch of river not only provides the essential habitat requirements for the milk-vetch but is also the habitat for a variety of other rare plants and animals. Two other candidates for Federal listing, the dwarf wedge mussel (*Alasmidonta heterodon*) and the cobblestone tiger beetle (*Cicindela marginipennis*), are known to exist in the same area. Fifteen plant species considered by the New Hampshire Natural Heritage Inventory as being rare, threatened, or endangered in the State also occur along this stretch of river. Due to the diverse assemblage of plants and animals of State and Federal significance, the New Hampshire Natural Heritage Inventory, in a letter dated November 15, 1984, to the Federal Energy Regulatory Commission, has identified a portion of this habitat as "the most significant natural area in the State of New Hampshire in need of conservation."

Astragalus robbinsii var. *jesupi* was first recommended for Federal listing as an endangered species by the Smithsonian Institution in its December 15, 1974, report to Congress, *Report on Endangered and Threatened Plant Species of the United States* (House Document No. 94-51). On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) of the Endangered Species Act of 1973 (Act) (petition acceptance is now covered by section 4(b)(3) of the Act, as amended). Jesup's milk-vetch was one of approximately 1,700 plant species proposed for Federal listing on June 16, 1976 (41 FR 24523). On December 10, 1979 (44 FR 70796), the Service published notice of the withdrawal of that portion of the 1976 proposal that had not been made final, because of the provisions mandated in the Endangered Species Act Amendments of 1978 (Pub. L. 95-632). The withdrawal notice was required because of a deadline for making rules final and was not related to the conservation status of the proposed taxa.

The Service published a comprehensive **Federal Register** notice on December 15, 1980 (45 FR 82480), that was intended to reflect the Service's judgment of the probable status of all plant taxa that had been included in previous notices or proposals. Jesup's milk-vetch was recognized as a category 2 candidate in that notice. Category 2 candidates are taxa for which existing information indicates the possible appropriateness of proposing to list as endangered or threatened, but for which sufficient information is not presently available to biologically support a proposed rule. A subsequent notice of review, published on September 27, 1985 (50 FR 39526), recognized the species as a category 1 candidate, one for which the Service has substantial information to support the appropriateness of proposing to list it as endangered or threatened.

The Endangered Species Act Amendment of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for

a finding on those species, including *Astragalus robbinsii* var. *jesupi*, was October 13, 1983. On October 13, 1983, October 12, 1984, and again on October 11, 1985, the petition finding was made that listing *Astragalus robbinsii* var. *jesupi* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such findings require a recycling of the petition, pursuant to Section 4(b)(3)(c)(i) of the Act. The proposed rule of December 19, 1985 (50 FR 51718), constituted the Service's most recent finding that listing of this species was warranted, in accord with section 4(b)(3)(c)(ii) of the Act.

Summary of Comments and Recommendations

In the December 19, 1985, proposed rule (50 FR 51718) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, conservation and scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comments was published in a local paper in the vicinity of the known populations. Six comments were received that either supported the proposed rule or stated the listing would not create any conflict. The comments are discussed below.

The Vermont Agency of Environmental Conservation supported the rule, stating Jesup's milk-vetch had been proposed for listing under the Vermont Endangered Species Law (10 V.S.A. Chapter 123) but had not yet been officially designated. The Agency expressed concern for the single Vermont population and a willingness to work with the Service on the protection and recovery of the species. No comments were received from the New Hampshire Fish and Game Department or the New Hampshire Water Resources Board.

The Federal Energy Regulatory Commission (FERC) commented that there were no licensed hydroelectric projects nor any preliminary permits or license applications before the Commission that would affect the species. FERC stated that the preliminary permit for the Hart Island Project, discussed in the proposed rule, had been surrendered by the permittee and that the permit was now terminated.

The Nature Conservancy Natural Heritage Programs in New Hampshire and Vermont both favored the proposed rule and stated that they were actively working to protect the sites in their respective states. The Eastern Regional Office of The Nature Conservancy also commented in favor of the proposed rule. The Vermont Institute of Natural Science indicated that it has no information to offer on the species. All information provided in comments is incorporated into this rule, and the Service greatly appreciates the assistance of all parties involved.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus robbinsii* var. *jesupi* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Astragalus robbinsii* (Oakes) Gray var. *jesupi* Eggleston and Sheldon are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most significant threat to Jesup's milk-vetch is the direct inundation or alternation of its habitat by future hydropower projects. The Federal Energy Regulatory Commission (FERC) issued a preliminary permit to a private developer for a 20-megawatt dam that would have destroyed two of the three populations and might have adversely impacted the third. A preliminary permit does not authorize the construction of a project but rather grants the permittee exclusive rights to conduct studies on the feasibility of the project at the specified site.

The Service officially notified FERC on November 4, 1984, that the proposed Hart Island project would have "substantial environmental impacts that will be difficult or impossible to mitigate . . ." The Service also stated it would "oppose issuances of a license . . . " and would likely "recommend intervention during the licensing process . . . " The Service's comments were provided under the authority of the Fish and Wildlife Coordination Act, and were primarily based on concerns regarding the project's adverse impacts on the Connecticut River Salmon Restoration Program, the loss of important fish and wildlife habitats, and the effects on rare, threatened and endangered species. FERC stated in its comments to the proposed rule that the Hart Island developer had dropped the project and the permit was terminated on July 1, 1985. However, comments from the New Hampshire Natural Heritage program indicated that another developer, Connecticut River Hydro Partners, has recently filed a permit application with FERC for a proposed hydro project at Chase Island. Chase Island is just upstream from the largest known population of Jesup's milk-vetch. This new application demonstrates the continuing threat to Jesup's milk-vetch by future hydropower projects.

The riverbank ecosystem provides the essential requirements for the species' growth and reproduction. Spring flows annually scour the calcareous outcrops and deposit nutrient-rich sediments in the rock crevices and depressions, creating niches for the plants' existence. Shade provided by the mature hardwood trees at the top of the riverbank is also an important factor in the plant's survival. The cutting of trees at the top of the bank or the development of any water-resources project that would significantly alter the river's flow regime in the area where *Astragalus robbinsii* var. *jesupi* exists would be a serious threat to the species' continued existence.

Sumner Falls is a scenic area and is heavily utilized for recreational purposes, including canoeing, fishing, sightseeing, picnicking, etc. The increasing demand for recreational opportunities will attract more people to the area, and inadvertent trampling of the few remaining plants is a major concern.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Many historical scientific collections of this plant were recorded from the Sumner Falls and Hartland populations. Only a few plants remain at Sumner Falls, an easily accessible site; fewer than 75 plants remain at Hartland. Additional taking or collecting for any purpose could be extremely detrimental.

C. *Disease or predation.* Not applicable to this species.

D. *The inadequacy of existing regulatory mechanisms.* Both New Hampshire and Vermont recognize *Astragalus robbinsii* var. *jesupi* as an endangered species in unofficial State reports prepared as part of a cooperative project between the New England Botanical Club and the Service (Crow 1982, Countryman 1978, Storks and Crow 1978). Neither State, however, offers the species any official protection at this time. The State of Vermont provides a limited degree of protection for the area in which the species occurs

under a comprehensive law called Act 250 (10 V.S.A. 6001–91). Under Act 250 a permit for a proposed development would be denied if the project would cause an adverse impact on ". . . a rare and irreplaceable natural area . . ." or ". . . destroy or significantly imperil necessary wildlife habitat . . ." The species has also been proposed for official listing under a recently passed Vermont State endangered species law. Final action is still pending, however.

E. *Other natural or manmade factors affecting its continued existence.* Two of the three remaining populations are small and easily accessible, and occur in areas where there is heavy recreational use. The small number of plants and limited reproductive potential combined with the vulnerability of the sites are causes for concern, as human related or natural chance events could have a serious impact on these populations. The species' biology and population dynamics are not well understood, and it is difficult to assess the significance of a chance event like reproductive failure due to severe weather, change in microclimatic conditions, etc.

In addition, the protection of the specific areas where the plants occur may not provide sufficient protection if development projects or other actions in the upstream portions of the watershed significantly affect the local flow regime. An understanding of the species' biology and relationship to river flow therefore is an important consideration in the species' protection and recovery strategy.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Astragalus robbinsii* var. *jesupi* as endangered. Due to the small number of populations and the threats to its riverine habitat, the plant is in need of protection if it is to survive.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism or collection that could be exacerbated by the publication of a detailed critical habitat description and map. These potential threats are of particular significance since the sites involved are easily accessible, the habitats are fragile, and increased public access would be difficult to control under existing authorities. As mentioned under Factor B, two of the sites contain small populations, and any collection could be extremely detrimental.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal and State agencies, private conservation organizations, and individuals. Because of the diverse assemblage of rare plants and invertebrates of State and Federal significance associated with the habitat in which the milk-vetch occurs, The Nature Conservancy is actively working to protect the sites of known populations. Other conservation measures, including required protection efforts by Federal agencies and prohibitions against taking, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened, and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see revision at 51 FR 19926; June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible agency must enter into formal consultation with the Service. The only known current Federal action that may affect *Astragalus robbinsii* var. *jesupi* involves FERC and its authority for issuing permits and operating licenses to private developers for hydropower projects. The Department of the Interior responded to FERC's Public Notice of September 17, 1984, concerning an application for a preliminary permit for the Hart Island hydropower project, notifying FERC of the existence of three Federal candidate species in the project area. The November 14, 1984, letter signed by the Regional Environmental Officer (Office of the Secretary of Interior) also notified FERC that substantial information was on hand to support the biological appropriateness of listing the milk vetch as endangered. The application for the preliminary permit at Hart Island has been terminated; however, another permit application has been filed with FERC for a proposed project at Chase Island, just upstream from the largest population of *Astragalus robbinsi* var. *jesupi*.

The State of New Hampshire has initiated a program to promote the recreation opportunities and enhance the tourist economy of the Connecticut River Valley. In addition to attracting visitors to the river, one of the program's objectives is to protect the significant natural resources of the area. Protecting endangered and threatened species and their habitats will need to be a major consideration in the program due to the potentially severe adverse impacts that can occur if expanded recreational opportunities are not carefully planned. The Service will work closely with the State of New Hampshire and private conservation organizations to ensure that the protection of the milk-vetch is carefully considered in the development of alternative recreational plans.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Astragalus robbinsii* var. *jesupi* all prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions in part make it illegal for any person subject to the jurisdiction of the United States to import or export this species, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it from land under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. There is no known commercial trade in *Astragalus robbinsii* var. *jesupi*, and it is not known to occur on Federal lands. The Service therefore anticipates few, if any, requests for such permits. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Barneby, R.C. 1964. Atlas of the North American Astragalus. Memoirs of the New York Botanical Garden 13:1–594, 597–1288.

Countryman, W.D. 1978. Rare and Endangered Vascular Plant Species in Vermont. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts.

Crow, G.E. 1982. New England's Rare, Threatened and Endangered Plants. U.S. Government Printing Office, Washington, DC

Storks, I.M. and G.E. Crow, 1978. Rare and Endangered Vascular Plant Species in New Hampshire. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts.

Author

The author of this final rule is Richard W. Dyer, Endangered Species Staff, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965–5100 or FTS 829–9316).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
*	*	*	*	*		
Astragalus robbinsii var. *jesupi*	Jesup's milk-vetch	U.S.A. (NH, VT)	E	271	NA	NA
*	*	*	*	*		

Dated: May 27, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Park.

[FR Doc. 87–12878 Filed 6–4–87; 8:45 am]

BILLING CODE 4310–55–M

federal register

Friday
June 5, 1987

Part VI

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Nursing Student Loan Program; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Nursing Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend existing regulations governing the Nursing Student Loan (NL) program to implement amendments made to the Public Health Service Act by Pub. L. 99–92, the Nurse Education Amendments of 1985, and to require schools to verify, to the best of their ability, the information provided by the student on the loan application.

DATE: Comments on this proposed rule are invited. To be considered, comments must be received by July 20, 1987.

ADDRESSES: Respondents should address written comments to the Director, Bureau of Health Professions, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: Public Law 99–92, the Nurse Education Amendments of 1985, made numerous amendments to the NSL statute, sections 835–842 of the Public Health Service Act (the Act). This notice of proposed rulemaking (NPRM) proposes to revise the NSL regulations to implement certain provisions of Pub. L. 99–92. (The Secretary published on March 30, 1987 (52 FR 10194–10195) final amendments to the NSL regulations which implement other provisions of Pub. L. 99–92.) In addition, this NPRM proposes to require schools to verify, to the best of their ability, the information provided by the student on the loan application. The proposed amendments are described below according to the section of the regulations which they affect.

Section 57.302 Definitions.

The Secretary is proposing to clarify in this section the definition of "default" which was added to the Act by Pub. L. 99–92 and included in the NSL final regulations published today. The definition of "default," set forth in section 835(c) of the Act, excludes from the default category any loan for which the school reasonably concludes from written contacts with the borrower that the borrower intends to repay the loan. The proposed regulatory definition would clarify that if a borrower has failed to make an installment payment when due, the school may exclude the borrower's loan from the default category, based on the borrower's intent to repay, only if: (1) The loan is in forbearance; or (2) the borrower's repayment schedule has been renegotiated and the borrower is complying with the renegotiated schedule.

Section 57.304 Payment of Federal capital contributions.

Section 838(a)(3) of the Act, as amended by Pub. L. 99–92, authorizes the Secretary to reallocate NSL funds remitted to the Department in any fiscal year, provided that the reallocation occurs in the same or the succeeding fiscal year. These funds are to be allotted among nursing schools in a manner that the Secretary determines will best carry out the NSL program, except that in making these allotments the Secretary must give priority to nursing schools which established an NSL fund after September 30, 1975.

In accordance with this provision, the Secretary is proposing to amend § 57.304 of the regulations to set forth procedures for reallocating funds remitted to the Department to eligible nursing schools. Under this provision, the Secretary would first allocate funds to those eligible schools which established an NSL fund after September 30, 1975. Funds would be awarded to these schools following the same procedure used to allocate new Federal capital contributions, as set forth in § 57.304(a) of the existing NSL regulations. If there were funds remaining after fully funding these schools, a second award cycle would be run for all other eligible schools using the same allocation formula.

Section 57.306 Eligibility and selection of nursing student loan applicants.

The Secretary is proposing to add a new paragraph (c) to this section which would require that the school must verify, to the best of its ability, the information provided by the student on the loan application. This provision is intended to further assure that loans are not made to ineligible students and that schools have accurate information from the student for skiptracing purposes.

Section 57.315 Records, reports, inspection, and audit.

In accordance with Pub. L. 99–92 (section 842 of the Act), the Secretary is proposing to amend paragraph (a)(1) of this section to implement the provision which allows a school to request a hearing with an administrative law judge prior to being terminated from the NSL program. To help assure that the hearing process is administered as efficient and cost-effectively as possible for the schools and the Federal Government, this provision would set forth procedures for determining if a hearing is warranted. These procedures would require that a school's request for hearing be submitted within 90 days after receipt of written notice from the Secretary specifying his or her intention to terminate the school's participation in the program, and contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. The Secretary would be authorized to deny a hearing if: (1) The request for a hearing was untimely; (2) the school did not provide a statement of material factual issues in dispute; or (3) the statement of factual issues in dispute was frivolous or inconsequential. Schools should be aware that the existing regulatory provisions have the effect of law and are not subject to dispute (i.e., they cannot be modified through a hearing before an administrative law judge).

This provision would also provide that the hearings be held in the Washington, DC metropolitan area. The Secretary has determined that this is necessary because of the possibility that a large number of schools could request hearings within a short time period, making it impossible for the Department to schedule and attend hearings in other locations in a timely manner.

Section 57.316a Performance standard.

In accordance with Pub. L. 99–92 (section 842 of the Act), the Secretary is proposing to amend paragraph (d) of this section to implement the provision which allows a school to request a hearing with an administrative law judge prior to being terminated from the NSL program. This provision is identical to the hearing provision described above for § 57.315.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the requirements in this proposed regulation are minimal in comparison to the overall resources of nursing schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that this regulation will not have a significant impact on a substantial number of nursing schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act

Section 57.315(a)(1) contains an information collection requirement subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. OMB has approved this information collection under control number 0915–0047. Sections 57.315(a)(1)(ii) and 57.316a(d) also contain information collections similarly subject to OMB approval. We have submitted a copy of this proposed rule to OMB for review of these information collections. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency office designated for this purpose whose name appears earlier in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attention: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart D of 42 CFR Part 57 is proposed to be amended as follows.

(*Catalog of Federal Domestic Assistance*, No. 13.364, Nursing Student Loan Program)

Dated: January 22, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: March 13, 1987.

Otis R. Bowen,

Secretary.

PART 57—[AMENDED]

Subpart D—Nursing Student Loans

1. The authority for Subpart D is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sections 835–842 Public Health Service Act, 78 Stat. 913–916, as amended, 99 Stat. 397–400, 536–537 (42 U.S.C. 297a–h).

2. Section 57.302 is amended by adding a definition for "default" as follows:

§ 57.302 Definitions.

* * * * *

"Default" means the failure of a borrower of a loan made under this subpart to make an installment payment when due, or comply with any other term of the promissory note for such loan, except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy, the borrower's repayment schedule has been renegotiated and the borrower is complying with the renegotiated schedule, or the loan is in forbearance.

* * * * *

3. Section 57.304 is amended by revising the heading of the section and adding a new paragraph (c) as follows:

§ 57.304 Payment of Federal capital contributions and reallocation of funds remitted to the Secretary.

* * * * *

(c) *Reallocation of funds remitted to the Secretary.* (1) All funds from a student loan fund established under this subpart which are remitted to the Secretary in any fiscal year shall be available for allotment under this subpart, in the same fiscal year and the succeeding fiscal year, to eligible nursing schools. In making these allotments, the Secretary shall give priority to nursing schools which established a student loan fund under this subpart after September 30, 1975. The Secretary will make payments to eligible schools at a time determined by him or her, according to the procedures indicated in paragraphs (c)(2) and (c)(3) of this section.

(2) *Eligible schools which established a nursing student loan fund after September 30, 1975.* The Secretary will make awards first to those eligible schools that established a nursing student loan fund after September 30, 1975. If the total of the amounts requested for any fiscal year by these schools exceeds the amount of funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller:

(i) The amount requested in the application, or

(ii) An amount which bears the same ratio to the total amount of returned funds determined by the Secretary at the time of payment to be available for that fiscal year for the Nursing Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in these eligible schools during that year. Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, with whatever adjustments may be necessary to prevent the total paid to any school from exceeding the total requested by it.

(3) *Eligible schools which established a nursing student loan fund prior to October 1, 1975.* If there are funds remaining after making awards as specified by paragraph (c)(2) of this section, the Secretary will make awards to eligible schools which established a nursing student loan fund prior to October 1, 1975. If the total of the amounts requested for any fiscal year by these schools exceeds the amount of funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller:

(i) The amount requested in the application, or

(ii) An amount which bears the same ratio to the total amount of returned funds determined by the Secretary at the time of payment to be available for that fiscal year for the Nursing Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in these eligible schools during that year. Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, with whatever adjustments may be necessary to prevent the total paid to any school from exceeding the total requested by it.

4. Section 57.306 is amended by adding a new paragraph (c) as follows:

§ 57.306 Eligibility and selection of nursing student loan applicants.

* * * * *

(c) *Verification of loan information.* The school must verify, to the best of its ability, the information provided by the student on the loan application.

5. Section 57.315 is amended by revising paragraph (a)(1) as follows:

§ 57.315 Records, reports, inspection, and audit.

(a) * * *

(1) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its nursing student loan funds as the Secretary may find necessary to carry out the purposes of the Act and these regulations. A school must submit required reports to the Secretary within 45 days of the close of the reporting period.

(i) A school which fails to submit a complete report for its Federal capital contribution fund within 45 days of the close of the reporting period:

(A) Shall be prohibited from receiving new Federal capital contributions;

(B) Must place the revolving fund and all subsequent collections in an insured interest-bearing account; and

(C) May make no loan disbursements.

The above restrictions apply until the Secretary determines that the school is in compliance with the reporting requirement.

(ii) A school that fails to submit a complete report within 6 months of the close of the reporting period will be subject to termination. The Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 90 days after the receipt of this notice, a formal hearing with respect to termination. The request for hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(A) The request for a hearing is untimely;

(B) The school does not provide a statement of material factual issues in dispute; or

(C) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the school setting forth the reasons for denial. If a hearing is denied, or if a result of the hearing termination is still determined to be necessary, the school will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for this reason must continue to pursue collections and may reapply for participation in the program once it has submitted the overdue report.

* * * * *

6. Section 57.316a is amended by revising paragraph (d) as follows:

§ 57.316a Performance standard.

* * * * *

(d) Any school subject to the provisions of paragraph (c)(3) of this section which fails to comply with those requirements will be subject to termination. The Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 90 days after the receipt of this notice, a formal hearing with respect to termination. The request for hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely;

(2) The school does not provide a statement of material factual issues in dispute; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing termination is still determined to be necessary, the school will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for this reason must continue to pursue collections and may reapply for participation in the program only when it has attained a default rate of 5 percent or less.

[FR Doc. 87-12603 Filed 6-4-87; 8:45 am]
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Federal Register

Friday
June 5, 1987

Part VII

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Grant for Nursing Special Projects; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Nursing Special Projects

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations would revise the existing regulations governing the Nursing Special Project Grant Program authorized by section 820 of the Public Health Service (the Act) to conform the regulations with amendments made by Pub. L. 99–92, the Nurse Education Amendments of 1985, enacted on August 16, 1985, and Pub. L. 99–129, the Health Professions Training Assistance Act, enacted on October 22, 1985. These amendments added four new purposes as eligible grant projects authorized under section 820. In accordance with these amendments, this notice also proposes to revise the existing regulations to add project requirements for each of the new purposes. In addition, a project requirement is proposed to be added for one of the original grant projects.

DATE: Comments must be received no later than August 4, 1987.

ADDRESS: Written comments may be addressed to Mr. Thomas D. Hatch, Director, Bureau of Health Professions, Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Eleanor Elliott, Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857; telephone 301 443–5786.

SUPPLEMENTARY INFORMATION: Prior to its recent amendments, section 820 of the Act, implemented by 42 CFR Part 57, Subpart T, authorized grants to assist in meeting the costs of special projects to carry out one or more of the following designated purposes: (1) To increase nursing education opportunities for individuals from disadvantaged backgrounds as determined in accordance with criteria prescribed by the Secretary of Health and Human Services; (2) to provide continuing education for nurses; (3) to provide appropriate retraining opportunities for nurses who (after periods of professional inactivity) desire again actively to engage in the nursing profession; (4) to help to increase the supply or improve the distribution by geographic area or by specialty group of adequately trained nursing personnel (including nursing personnel who are bilingual) needed to meet the health needs of the Nation, including the need to increase the availability of personal health services and the need to promote preventive health care; or (5) to provide training and education to upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel. Public Law 99–92 and Pub. L. 99–129 amended section 820 to add four new purposes as eligible grant projects. These purposes (designated as purposes (4), (7), (8), and (9)) extend support for projects which will:

(4) Demonstrate improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);

(7) Demonstrate clinical nurse education programs which combine educational curricula and clinical practice in health care delivery organizations, including acute care facilities, long-term care facilities and ambulatory care facilities;

(8) Demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities; and

(9) Demonstrate methods to encourage nursing graduates to practice in health manpower shortage areas (designated under section 332) in order to improve the specialty and geographical distribution of nurses in the United States.

(As a result of the addition of the new purpose (4), the previously established and designated purposes (4) and (5) have been redesignated as purposes (5) and (6) respectively. The other new purposes have been designated as purposes (7), (8), and (9).)

The Department proposes to implement these new purposes through the following project requirements:

1. With respect to purpose 4, projects relating to demonstrating improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care), the proposed regulations would require that this project provide an educational program which: (1) Includes both theory and practice in the offering, and (2) will be operational within one year after funding; the project would also be required to develop a plan for becoming self-sufficient. These restrictions would assure timely development and quality education programs in geriatric nursing to prepare nurses for practice in community or institutional settings.

2. With respect to purpose 7, projects relating to demonstrating clinical nurse education programs which combine educational curricula and clinical practice in health care delivery organizations, including acute care facilities, long-term care facilities and ambulatory care facilities, the proposed regulations would require that this project:

(1) Facilitate the transition of students in nursing education programs to nursing practice settings; (2) provide for collaboration between the educational institution and the service agency in the administration, implementation and evaluation of the project; (3) improve access to nursing services; (4) provide for cost sharing and/or in kind contributions between the educational institution and the service agency; and (5) demonstrate a commitment to recruit and retain minority students.

The purpose of these proposed requirements is to assure that collaborative projects between nursing education and practice groups will improve client access to nursing services and provide a quality educational program for students. The client access will be improved in this activity because of the expansion of the clinical practice sites.

3. With respect to purpose 8, projects relating to demonstrating methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities, the proposed regulations would require that this project:

(1) Improve access to nursing service in community noninstitutional settings particularly to the elderly; (2) evaluate the cost effectiveness of the nursing services provided; (3) be operational (providing patient care services) within 6 months of the grant award and develop a plan for becoming self-sufficient; (4) identify payment policy utilized for patient care services; and (5) emphasize preventive care.

The purpose of these requirements is to assure that the community nursing practice arrangement is well formulated, will increase access to nursing services within a specified time frame and is cost effective. Particular attention is given to reporting payment policy used for patient care since this information would be helpful to the Federal Government in developing policy concerning reimbursement.

In accordance with section 820(d) of this Act, the Secretary will give priority to applications for this purpose. Special consideration will be given to projects to demonstrate innovative ways to provide improved and more effective long-term care for the elderly, emphasizing preventive care. Particular emphasis will be given to projects dealing with the elderly as well as demonstrations which provide information on costs, effectiveness, accessibility and payment policy, in an effort to be responsive to congressional intent (House Report 99–161).

4. With respect to purpose 9, projects relating to demonstrating methods to encourage nursing graduates to practice in health manpower shortage areas (designated under section 332) in order to improve the specialty and geographical distribution of nurses in the United States, the proposed regulations would require that this project: (1) Improve the geographic and/or specialty distribution of nurses through innovative methods of recruitment and retention; (2) develop a plan for retaining nurses who work in shortage areas; and (3) develop a plan for recruiting and retaining minority nurses.

The Department also proposes to add a project requirement for purpose 5, projects which address the geographic and specialty distribution of nurses. The proposed amendment would require a program under this purpose to be operational after the first year of funding. This requirement is proposed to ensure the timely implementation of the program activity and judicious use of Federal funds.

In addition to the change proposed above, a number of technical and clarifying changes are necessary to conform the regulations with amendments made by Pub. L. 99–92 and with Pub. L. 99–129, as follows:

1. Revise § 57.1902, *"Definitions."*, to change the definition of "State" by striking out "the Canal Zone" and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands" and inserting "the Commonwealth of" before Puerto Rico.

2. Revise § 57.1906, *"Evaluation and grant award."*, to add a funding preference for purpose (8). The last two sentences in paragraph (a) regarding special funding preferences that the Secretary *may* announce, addressing purposes (1) through (6), would be revised and designated as the new paragraph (b)(2).

3. Revise the heading of § 57.1908, *"Expenditure of grant funds."*, to read *"For what purposes may grant funds be spent?"* and revise the text to reflect current departmental boilerplate language.

4. Revise § 57.1909, *"Nondiscrimination."*, in its entirety to reflect a new heading and text to include what additional Department regulations apply to the grantee.

5. Delete § 57.1910, *"Grantee accountability."*, § 57.1911, *Publications and copyright."*, and § 57.1912, *"Applicability of 45 Part 74."*, in their entirety.

6. Redesignate § 57.1913, *"Additional conditions."*, to read § 57.1910.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The recordkeeping and reporting requirements in § 57.1904 and the application forms and instructions for this grant program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (OMB approval numbers are 0915–0060 for the competing application form and 0915–0061 for the continuation application form).

List of Subjects in 42 CFR Part 57

Educational study programs, Grant programs-education, Grant programs-health, Health professions, Public health, Student aid.

Accordingly, 42 CFR Part 57, Subpart T is proposed to be amended as follows:

(*Catalog of Federal Domestic Assistance*, No. 13.359, Nursing Special Project Grants.)

Dated: April 1, 1987.

Robert E. Windom,
Assistant Secretary for Health.

Approved: May 5, 1987.

Otis B. Bowen,
Secretary.

PART 57—[AMENDED]

Subpart T—Nursing Special Project Grants

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

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 820, Public Health Service Act, 89 Stat. 359–360, as amended by 95 Stat. 929–930, and 99 Stat. 393 and 547–548 (42 U.S.C. 296k).

2. In § 57.1902, place the definitions in alphabetical order and the term "State" is revised to read as follows:

§ 57.1902 Definitions.

* * * * *

"State," except as otherwise provided herein, means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

* * * * *

3. Section 57.1903 is amended by removing the footnote in the introductory text of paragraph (b), by redesignating paragraphs (b)(4) and (b)(5) as (b)(5) and (b)(6), and adding new paragraphs (b)(4), (b)(7), (b)(8), and (b)(9) to read as follows:

§ 57.1903 Eligibility.

* * * * *

(b) * * *

(4) To demonstrate improved geriatric training in preventive care, acute care, long-term care (including home health care and institutional care);

* * * * *

(7) To demonstrate clinical nurse education programs which combine educational curricula and clinical practice in health care delivery organizations, including acute care facilities, long-term care facilities, and ambulatory care facilities;

(8) To demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities; and

(9) To demonstrate methods to encourage nursing graduates to practice in health manpower shortage areas (designated under section 332) in order to improve the specialty and geographical distribution of nurses in the United States.

4. Section 57.1905 is amended by redesignating paragraph (e) as paragraph (g), adding new paragraphs (e), (f), (h), (i), and (j), and revising

newly redesignated paragraph (g) to read as follows:

§ 57.1905 Project requirements.

* * * * *

(e) If the project is designed to carry out the purpose of § 57.1903 (b)(4), the project shall provide an education program which:

(1) Includes both theory and practice in the offering; and

(2) Will be operational within one year after funding.,

The project shall also develop a plan for becoming self-sufficient.

(f) If the project is designed to carry out the purpose of § 57.1903 (b)(5), the project shall be operational within one year after funding.

(g) If the project is designed to carry out the purpose of § 57.1903 (b)(6), the project shall provide a training program which:

(1) Is designed to have wide applicability for the nursing field, and

(2) Has an enrollment not limited to nurses employed by a single institution.

(h) If the project is designed to carry out the purpose of § 57.1903 (b)(7), the project shall:

(1) Facilitate the transition of students in nursing education programs to nursing practice settings;

(2) Provide for collaboration between the educational institution and the service agency in The administration, implementation and evaluation of the project;

(3) Improve access to nursing services;

(4) Provide for cost sharing and/or in kind contributions between the educational institution and the service agency; and

(5) Demonstrate a commitment to recruit and retain minority students.

(i) If the project is designed to carry out the purpose of § 57.1903 (b)(8), the project shall:

(1) Improve access to nursing services in community noninstitutional settings particularly to the elderly;

(2) Evaluate the cost effectiveness of the nursing services provided;

(3) Be operational (providing patient care services) within 6 months of the grant award and develop a plan for becoming self-sufficient;

(4) Identify payment policy utilized for patient care services; and

(5) Emphasize preventive care.

(j) If the project is designed to carry out the purpose of § 57.1903 (b)(9), the project shall:

(1) Improve the geographic and/or specialty distribution of nurses through innovative methods of recruitment and retention;

(2) Develop a plan for retaining nurses who work in shortage areas; and

(3) Develop a plan for recruiting and retaining minority nurses.

5. Section 57.1906 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d); paragraph (a) is amended by removing the paragraph designation (1); by redesignating (i) through (vii) as (1) through (7) respectively; and by removing the last two sentences of the paragraph; and adding a new paragraph (b) to read as follows:

§ 57.1906 Evaluation and Grant Award.

* * * * *

(b) *Funding preferences*: (1) In determining the priority for funding projects under paragraphs (7), (8), and (9) as described in § 57.1903(b), the Secretary will give priority to projects approved under purpose (8), with special consideration to those projects which demonstrate innovative ways to provide improved and more effective long-term care for the elderly, emphasizing preventive care.

(2) The Secretary may announce additional special funding preferences should specific needs warrant such action. Preferences will be announced by publishing a notice in the **Federal Register.**

* * * * *

6. Section 57.1908 is revised to read as follows:

§ 57.1908 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

7. Section 57.1909 is revised to read as follows:

§ 57.1909 What additional Department regulations apply to grantees?

Several other regulations apply to these grants. They include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 83—Regulation of the administration and enforcement of sections 799A and 845 of the Public Health Service Act [1]

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

§ 57.1910 [Removed]

8. Section 57.1910 *Grantee accountability.* is removed in its entirety.

§ 57.1911 [Removed]

9. Section 57.1911 *Publications and copyright.* is removed in its entirety.

§ 57.1912 [Removed]

10. Section 57.1912 *Applicability of 45 CFR Part 74.* is removed in its entirety.

§ 57.1913 [Redesignated as § 57.1910]

11. Section 57.1913 is redesignated as § 57.1910.

[FR Doc. 87-12809 Filed 6-4-87; 8:45 am]
BILLING CODE 4160-15-M

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

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LIST OF PUBLIC LAWS

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