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Presidential Documents

Title 3—

The President

Proclamation 5753 of December 11, 1987

National Drunk and Drugged Driving Awareness Week, 1987

By the President of the United States of America

A Proclamation

During the past 5 years, thousands of dedicated citizen volunteers throughout our Nation have taken part in the programs and activities of National Drunk and Drugged Driving Awareness Week. These efforts just before the holiday season have proven enormously successful in increasing public awareness of the dangers of driving while impaired by alcohol or drugs. As the 1987 holiday season approaches, we need to focus once again on the terrible cost in human lives and suffering caused by drunk and drugged driving.

Although alcohol is still involved in more than half of all highway deaths, we are beginning to see signs of real progress in our battle against drunk driving. In 1986, 41 percent of the total traffic fatalities throughout our Nation involved at least one driver or pedestrian who was intoxicated, down from 46 percent in 1982. During the same period, the proportion of intoxicated teenaged drivers involved in fatal crashes dropped from 28 percent to 21 percent, the largest decrease for any driver age group. This is progress, but our battle is far from over. If we hope to realize our goal of eliminating intoxicated drivers from our streets and highways, we must continue the positive momentum of the last few years and resolve to do even more in the future.

Each of us can help reduce the senseless carnage on our highways by refusing to tolerate drunk and drugged driving and by becoming more aware of what can and ought to be done. We must insist upon efficient and effective criminal justice, find improved ways to detect and stop impaired drivers before a crash occurs, and increase our willingness to communicate our concerns to friends and family.

Of increasing concern is the combination of alcohol and drugs and its impact on the incidence of motor vehicle crashes. We should all be aware that driving after the use of drugs—including prescription and over-the-counter drugs—may create safety hazards on our roads and highways, and that combining drugs with alcohol increases these hazards.

In order to encourage citizen involvement in prevention efforts and to increase awareness of the seriousness of the threat to our lives and safety, the Congress, by Senate Joint Resolution 136, has designated the week of December 13 through December 19, 1987, as "National Drunk and Drugged Driving Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of December 13 through December 19, 1987, as National Drunk and Drugged Driving Awareness Week. I ask all Americans to show concern and not to drink or take drugs and drive or to permit others to do so. I also call upon public officials at all levels and all interested citizens and groups to observe this week with appropriate ceremonies and activities in reaffirmation of our commitment to refuse to tolerate drunk and drugged driving.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of December, 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 twelfth.

Ronald Reagan

[FR Doc. 87-28942
Filed 12-14-87; 10:12 am]
Billing code 3195-01-M

Rules and Regulations

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its rules of practice and procedure by eliminating Subpart H—Voluntary Expedited Appeals Procedure (VEAP) as a separate alternative for adjudicating Federal employee appeals of personnel actions. Resulting changes are also being made in subpart B of part 1201.

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav (202) 653–8931.

SUPPLEMENTARY INFORMATION: On March 18, 1983 (48 FR 11399), the Board published interim regulations for a pilot program for expedited processing of appeals of limited application which was extended, expanded and made available generally in a final rule on April 30, 1985 (50 FR 18221). The expedited process has been available to be parties only in those cases where there is agreement for its use and where a determination is made that it is appropriate for the appeal.

From the beginning, the expedited process has been monitored and periodic assessments have been made of its usefulness and scope in the adjudication of appeals processed by the Board. The Voluntary Expedited Appeals Procedure (VEAP) has been successfully used to resolve disputed personnel actions, while providing a fair and impartial forum for hearing those disputes. Recently, the Board has found substantial interest in employing the methods used in the VEAP program and in other methods of dispute resolution for processing all types of appeals. The Board has responded to this interest and the lessons learned from the VEAP program have been adapted and implemented in the formal appeals procedure to the point that there is no reason to maintain VEAP as a separate procedure. Settlements among the parties appearing before the Board have increased in each of the last 3 years and in every type of case.

The Board has determined that all proper dispute resolution techniques should be available and employed for any appeal processed by the Board. The parties and the Board's administrative Judges should not be limited in this regard, and it would be impractical, confusing and unnecessary to provide separate procedural rules for each alternative. Therefore, the Board has decided that two separate appeals processing systems will no longer be maintained and is deleting Subpart H. All appeals will be processed under Subpart B, and a variety of dispute resolution techniques appropriate to the individual circumstance may be employed with full concern for fairness and the rights of all parties.

The Board recognizes that the appeal form in Appendix I of this part is affected by the decision to delete Subpart H. However, no change is being made in the form at this time because it is being reviewed as a part of the Board's project to rewrite all of its' regulations in "plain English."

As a result, the Board is amending Part 1201 by removing Subpart H and making resulting changes in Subpart B as follows:

1. Section 1201.21 has been revised to eliminate paragraph (e) since the notice required by this paragraph no longer applies. Paragraphs (c) and (d) are revised to reflect the elimination of paragraph (e).

2. Section 1201.24 has been changed to eliminate paragraph (a)(10) and paragraphs (a)(8) and (a)(9) revised since the request permitted in paragraph (a)(10) is no longer available. Paragraph (c) has been revised by deleting the last sentence and paragraph (d) has been revised also by deleting the last sentence since these sentences no longer apply.

3. Section 1201.25 has been revised to eliminate paragraph (a)(5) since its requirements no longer apply. Paragraphs (a)(6) and (7) are redesignated (a)(5) and (6) and revised.

4. Subpart H—Voluntary Expedited Appeals Proceure has been eliminated.

Regulatory Flexibility Act

The Clerk, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this final regulation pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of the determination that this regulation would not have significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedures, Civil rights, Government employees.

Accordingly, the Merit Systems Protection Board amends 5 CFR Part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. Authority for Title 5 CFR Part 1201 continues to read:

Authority: 5 U.S.C. 1205 and 7701(j).

Subpart B—Hearing Procedures for Appellate Cases

2. Section 1201.21 is amended by revising paragraphs (c) and (d) and removing paragraph (e) to read as follows:

§ 1201.21 Notice of appeal rights.

* * * * *

(c) A copy of the appeal form—Optional Form 283; and

(d) Notice of any applicable rights to a grievance procedure.

3. Section 1201.24 is amended by revising paragraph (a)(8) and (a)(9), removing paragraph (a)(10), and revising paragraphs (c) and (d) to read as follows:

§ 1201.24 Content of petition for appeal, right to hearing.

(a) * * *

(8) A statement that the appellant or anyone acting on his/her behalf has or has not filed a grievance or complaint with any agency regarding this matter; and

(9) The signature of the appellant and the representative, if any.

* * * * *

(c) *Use of the form.* Completion of the form in Appendix I of this part, if appropriate, shall constitute compliance with paragraph (a) of this section and § 1201.31 if a representative is designated in the form.

(d) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing.

* * * * *

4. Section 1201.25 is amended by removing paragraph (a)(5) and redesignating and revising paragraphs (a)(6) and (a)(7) as new (a)(5) and (a)(6) to read as follows:

§ 1201.25 Content of agency response, request for hearing.

(a) * * *

(5) Designation of and signature by the authorized agency representative; and

(6) Any other documents or responses requested by the Board.

* * * * *

§ 1201.200—1201.222 (Subpart H)—[Removed]

5. Subpart H consisting of §§ 1201.200 through 1201.222, is removed.

* * * * *

Date: December 10, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87-28730 Filed 12-14-87; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-157]

Restrictions on Importation of Horses From the Netherlands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the horse-importation regulations by adding the Netherlands to the list of countries in which contagious equine metritis (CEM) exists.

Dutch stallions and mares older than 731 days will not be permitted into the United States under standard three-day quarantine and testing procedures. Instead, they must submit to the testing and treatment procedures established to qualify stallions and mares from CEM-affected countries for importation into the United States.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 815, Federal Building, Hyattsville, MD 20782, 301-436-8695.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective August 28, 1987 (52 FR 32532-32533, Docket 87-109), we amended the regulations in 9 CFR Part 92 to restrict importation of horses from the Netherlands, where contagious equine metritis (CEM) had been discovered. Section 92.2(h)(i)(1) of Part 92 lists the countries in which CEM exists and, with certain exceptions, prohibits importation of horses from those countries.

We did not receive any comments, which were required to be postmarked or received on or before October 27, 1987. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

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

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

Stallions and mares over 731 days of age and from the Netherlands, must undergo testing and treatment in the Netherlands and the United States more extensive than is standard during a 3-day quarantine. The extra time required for this additional testing and treatment will delay the date of the horses' permanent importation into this country; it will therefore increase the cost to importers of horses from the Netherlands. However, of the 25,742 horses imported into the United States during Fiscal Year 1986, only 418 came from the Netherlands. Of the 418 horses imported from the Netherlands, fewer than half would fall into the category of stallions and mares that this rule will affect. We expect this rule to have no effect on importers. Those deterred by the cost of testing and quarantining a stallion or mare affected by this rule could, instead, import geldings or, for breeding, horses younger than 731 days. Alternatively, they could import horses from any CEM-free country.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 92 and that was published at 52 FR 32532-32533 on August 28, 1987.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 9th day of December, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-28659 Filed 12-14-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-82-130]

Energy Conservation Program for Consumer Products Test Procedures for Dishwashers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy hereby amends its test procedures for dishwashers in order to establish procedures to accurately determine the estimated annual operating cost and the energy factor for dishwashers that operate with 50 °F inlet water and that utilize an electrical supply voltage of 240 volts. These test procedures are a part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act and the National Appliance Energy Conservation Act.

EFFECTIVE DATE: February 16, 1988.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Conservation and Renewable Energy, Mail Station CE-132, Room GF-217, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Room 6B-128, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

U.S. Department of Energy, Conservation and Renewable Energy, Office of Hearings and Dockets, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

SUPPLEMENTARY INFORMATION:

A. Background

Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619), and as amended by the National Appliance Energy Conservation Act (NAECA) (Pub. L. 100-12) [1] created the Energy Conservation Program for Consumer Products Other Than Automobiles. Among other program elements, section 323 of the Act requires that standard methods of testing be prescribed for covered products, including dishwashers. Test procedures appear at 10 CFR Part 430, Subpart B.

Test procedures for dishwashers were prescribed on August 3, 1977. 42 FR 39964, August 8, 1977. DOE amended the energy conservation program for consumer products by notice issued September 18, 1980, so that the Assistant Secretary for Conservation and Solar Energy (now called Conservation and Renewable Energy) can temporarily waive test procedure requirements for a particular product. 45 FR 64108, September 26, 1980. Waivers can be granted when design characteristics for the particular product either prevent testing of the product according to prescribed test procedures, or lead to results so unrepresentative of the product's true energy consumption characteristics as to provide materially inaccurate comparative data to consumers. On November 14, 1986, DOE issued a rule amending the test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver to manufacturers. In addition, the rule made minor revisions to the petition for waiver procedures. 51 FR 42823, November 26, 1986. 10 CFR 430.27(m) states:

> Within one year of the granting of any waiver, the Department of Energy will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy will publish in the **Federal Register** a final rule. Such waiver will terminate on the effective date of such final rule.

The dishwasher text procedures prescribed in 1977 were based on dishwashers using 140 °F inlet water and operating with an electrical supply voltage of 115 volts. DOE amended the test procedures on February 23, 1983, in order to accurately determine the estimated annual operating cost and energy factor for dishwashers that operate with 120 °F inlet water. 48 FR 9202, March 3, 1983. (Hereafter referred to as the 1983 rulemaking.) DOE further amended the test procedures on November 27, 1984, in order to redefine a water heating dishwasher by deleting the requirement for internal water heating in the rinse phase of a normal cycle. 49 FR 46533, November 27, 1984.

ANDI-CO Appliances, Inc. (ANDI-CO) is an agent for a foreign appliance manufacturer that produces dishwashers. These dishwashers, in the normal mode, use cold inlet water (50 °F only, heat it to a designated program-selected temperature and use an electrical supply voltage of 240 volts. ANDI-CO requested DOE to exclude these dishwashers from the prescribed test procedures. On August 12, 1984, ANDI-CO filed a Petition for Waiver of DOE's dishwasher test procedures for two models, Favorite Models 263 and 265. ANDI-CO claimed that these dishwashers incorporate features which are not addressed in the existing test procedures and, consequently, cannot be tested under the existing DOE test procedures for dishwashers. DOE granted a waiver and established an alternate test procedure for these models on May 8, 1985. 50 FR 21488, May 24, 1985.

On April 15, 1987, DOE published proposed rules to amend the dishwasher test procedure published to accurately determine the estimated annual operating cost and energy factor for dishwashers that operate with 50 °F inlet water and utilize an electrical supply voltage of 240 volts. 52 FR 12342. A public hearing was held on May 28, 1987.

B. Discussion of Comments

In response to the proposed amendments, DOE received comments only from the Whirlpool Corporation.

1. Minimum Temperature of Heated Water

Whirlpool commented that the rule, as proposed, did not require that water be heated to above 120 °F, while the discussion section stated this was being proposed.

Whirlpool implied that without this requirement a manufacturer of this type of dishwasher could avoid heating the water and that "artifically low energy costs would result because the amendment does not require water to be heated above even 50 °F. Thus, manufacturers who are concerned with good washing performance and who ensure temperatures of 120 °F and above will be penalized."

DOE acknowledges that the proposed rule did not require that water be heated above 120 °F for any portion of the washing or drying cycle. Previously, for dishwashers using 120 °F supply water, there was no requirement that water be heated to a specified minimum temperature. The only requirement that was included in the definition of a water heating dishwasher was the provision that "thermostatically controlled internal water heating [be] in at least one wash phase of the normal cycle."

[1] Part B of Title III of EPCA, as amended by NECPA and NAECA, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 *et. seq.*

DOE now is revising the definition of a "water heating dishwasher" specifically to include the requirement of "providing internal water heating *to above 120 °F* in at least one wash phase of the normal cycle." (Emphasis added.)

DOE continues to believe that no specified minimum temperature above 120 °F is needed for the reasons discussed below.

2. Dishwasher Performance

Whirlpool commented extensively on its laboratory findings of the need to provide 140 °F for effective removal of food fats from dishes. Whirlpool cited test results in its laboratory showing 145 °F to be the first temperature to effectively remove these fats, i.e., shortening, peanut butter and cream cheese, from dishes.

In addition, Whirlpool cited its test results showing that 140 °F for the final rinse cycle was needed in order to achieve 100 percent drying.

Whirlpool raised the issue of performance in the 1983 and 1984 rulemakings. 48 FR 9202, March 3, 1983, and 49 FR 46533, Nov. 27, 1984. DOE believes the issue of dishwasher performance raised in the 1983 and 1984 rulemakings for water heating dishwashers designed to heat inlet water of 120 °F is the same issue being addressed today for water heaters designed to heat inlet water of 50 °F to above 120 °F. Arguments addressed and resolved in 1983 and 1984 apply to either of these types of "water heating dishwashers."

DOE's response to the comments received in these earlier rulemakings concerning performance testing for dishwashers remains unchanged.

In the 1983 rulemaking, DOE stated:

> DOE believes that it would be extremely difficult to quantify these subjective factors into one test that is easily repeatable (testing in one laboratory) and reproducible (testing among laboratories) * * *. Manufacturers have generally commented that dishwashing performance should be excluded from the dishwasher test procedure. DOE believes in allowing manufacturers to determine for themselves whether the dishwashing performance for water heating dishwashers is acceptable. *See* 49 FR 9202, 9204.

While in the 1984 rulemaking, DOE stated:

> With respect to the need for 140 °F water: "DOE continues to believe, as in the March 1983 final rule, that a requirement to heat water to a specified minimum temperature [140 °F] is unnecessarily restrictive in the test procedure and could exclude steam dishwashers from the water heating dishwashers category. *See* FR 46533, 46534.

Today's final rule for water heating dishwashers is believed to be sufficient with the inclusion of the following language in the definition: "providing internal water heating to above 120 °F in at least one wash phase of the normal cycle."

C. Environmental, Regulatory Impact, and Small Entity Impact Reviews

1. Environmental Review

Since today's final rule will be used only to standardize the measurement of energy usage, and will not affect the quality of distribution of energy usage, prescribing test procedures will not result in any environmental impacts. DOE, therefore, has determined that prescribing test procedures under the energy conservation program for consumer products clearly is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environment Policy Act of 1969. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for today's final rule.

2. Regulatory Impact Review

The final rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines "major rule" as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule makes only minor changes in the test procedures for dishwashers to allow for more accurate determinations of estimated annual operating cost and energy factor. Therefore, DOE has determined that this final rule does not come within the definition of "major rule."

3. Small Entity Review

The Regulatory Flexibility Act, Pub. L. 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The rule affects manufacturers of dishwashers. As previously discussed, the changes will not have significant economic impacts, but rather will simply improve the test procedures. Furthermore, DOE is not aware of any dishwasher manufacturers that would be considered small entities under the Act. Therefore, DOE certifies that this final rule will not have a "significant economic impact on a substantial number of small entities."

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations is amended, as set forth below.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, December 1, 1987.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 is revised to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by the National Energy Conservation Policy Act, Title IV, Part 2, and the National Appliance Energy Conservation Act, (42 U.S.C. 6291-6309).

2. Section 430.22 is amended by adding paragraphs (c) (1)(iii) and (2)(iii) to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

* * * * *

(c) * * *

(1) * * *

(iii) When cold water (50 °F) is used, the product of the following three factors:

(A) The representative average use cycle of 322 cycles per year times,

(B) The product of the per-cycle machine electrical energy consumption for the normal cycle in kilowatt-hours per cycle, determined according to 4.3 of Appendix C to this subpart, and

(C) The representative average unit cost in dollars per kilowatt-hours as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) * * *

(iii) When cold water (50 °F) is used, the product of the following three factors:

(A) The representative average use cycle of 322 cycles per year,

(B) One-half the sum of (1) the total per-cycle energy consumption for the normal cycle as defined in 1.3 of Appendix C to this subpart plus (2) the truncated normal cycle as defined in 1.5 of Appendix C to this subpart, each in kilowatt-hours and determined according to 4.4 of Appendix C to this subpart, and

(C) The representative average unit cost in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

* * * * *

3. Subpart B of Part 430 is amended by revising 1.6, 2.2, 2.6.2, and 2.7, and adding 2.2.1, 2.2.2, 2.3.3., 3.2.3, and 4.3.3 to Appendix C as follows:

Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

* * * * *

1.6 "Water Heating Dishwasher" means a dishwasher which is designed for hearing cold inlet water (nominal 50 °F) or a dishwasher for which the manufacturer recommends operation with a nominal inlet water temperature of 120 °F, and may operate at either of these inlet water temperatures by providing internal water heating to above 120 °F in at least one wash phase of the normal cycle.

* * * * *

2.2 *Electrical supply.*

2.2.1 *Dishwashers that operate with an electrical supply of 115 volts.* Maintain the electrical supply to the dishwasher within two percent of 115 volts and within one percent of the nameplate frequency as specified by the manufacturer.

2.2.2 *Dishwashers that operate with an electricial supply of 240 volts.* Maintain the electrical supply to the dishwasher within two percent of 240 volts and within one percent of its nameplate frequency as specified by the manufacturer

* * * * *

2.3.3 *Dishwashers. to be tested at a nominal 50°F inlet water temperature.* Maintain the water supply temperature between 48°F and 52°F.

* * * * *

2.6.2 *Dishwashers to be tested at a nominal inlet water temperature of 50°F or 120°F.* The dishwasher shall be tested or normal cycle and the truncated normal cycle with a test load of eight place settings plus six serving pieces as specified in section 6.1.1 of AHAM Standard DW–1. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place setting then the test load shall be that capacity.

2.7 *Testing requirements.* Provisions in this Appendix pertaining to dishwashers which operate with a nominal inlet temperature of 50°F or 120°F shall apply only to water heating dishwashers.

* * * * *

3.2.3 *Dishwashers that operate with a nominal inlet water temperature of 50°F.* Measure the machine electrical energy consumption, M, specified as the number of kilowatt-hours of electrical energy consumed during the entire test cycle using a water supply temperature as set forth in 2.3.3 of this appendix. Use a kilowatt-hour meter having a resolution no longer than 0.001 kilowatt-hours and a maximum error no greater than one percent.

* * * * *

4.3.3 *Dishwashers that operate with a nominal inlet water temperature of 50°F.* Use the measured value recorded at 3.2.3 as the per-cycle machine electrical consumption, M, expressed in kilowatt-hours per-cycle.

* * * * *

[FR Doc. 87–28691 Filed 12–14–87; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–48–AD; Amdt. 39–5809]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires 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 action 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 result in the inability to properly extend the MLG, which could result in a wheels-up landing.

EFFECTIVE DATE: February 2, 1988.

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

FOR FURTHER INFORMATION CONTACT: Mr. 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: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive 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 on certain Boeing Model 727 series airplanes was published in the **Federal Register** on June 5, 1987 (52 FR 21314). The comment period for the proposal closed on July 27, 1987.

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 stated that the proposed AD is similar to the previously issued AD 79–04–01, Revision 3, which, because of its repetitive inspection requirements, is still an active AD. Therefore, the commenter believes that the proposed AD should be incorporated into AD 79–04–01. The FAA does not concur with this comment. Since AD 79–04–01 requires that modifications and a maintenance/overhaul program be implemented prior to July 1, 1982, the FAA has concluded that any amendment to the existing AD would only create confusion. Therefore, the FAA has determined that issuance of a new AD is appropriate.

The commenter also suggested that the proposed AD be revised to indicate that installation of the steel cranks and oversize bolts constitutes terminating action for the proposed AD, and that no further action is necessary on the part of the operators. The FAA does not occur with this comment. The requirements of this AD are "one-time-only" actions: A one-time inspection to determine if certain MLG manual extension support yoke attach bolts must be replaced, and a one-time replacement of the MLG downlock cranks. In light of this, and the fact that there are no requirements for repetitive inspections or replacement, the FAA has determined it to be unnecessary to include language in the final rule as to what constitutes "terminating action" to a one-time requirement.

Paragraph A. of the final rule has been revised to clarify the requirement that replacement of the yoke attach bolts, if necessary, must be made prior to further flight.

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

It is estimated that 100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplance to accomplish the required actions, and that the average labor cost will 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 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 727 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

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:

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 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, prior to further flight, 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 accordance 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 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 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 permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this 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.

This amendment becomes effective February 2, 1988.

Issued in Seattle, Washington, on December 3, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–28588 Filed 12–14–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R–87–1274; FR–2137]

Manufacturing Home Construction and Safety Standards

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

ACTION: Final rule.

SUMMARY: This final rule contains technical amendments to clarify the Manufactured Home Construction and Safety Standards.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Mr. Mark W. Holman, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9156, Washington, DC 20410–8000. Telephone (202) 755–6590. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 12, 1987 (52 FR 4574), the Department published a final rule in the **Federal Register** which revised its Manufactured Home Construction and Safety Standards to incorporate current and more appropriate reference standards and to delete specific entrance location and placement requirements for water, drain, gas, and electric utility connections for manufactured homes.

This final rule contains technical amendments to the rule published on February 12, 1987 and does not change its substance.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of

1969. The Find of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket at Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule only contains technical amendments to the Manufactured Home Construction and Safety Standards final rule published in the Federal Register on February 12, 1987.

The information collection requirements contained in Part 3280 have been approved by the OMB and the OMB approval numbers are displayed in the text of the existing regulations. The final rule contains no new or altered information collection requirements.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 3280

Fire prevention, Housing standards, Mobile homes.

Accordingly, Part 3280 is amended as follows:

PART 3280—[AMENDED]

1. The authority citation for 24 CFR Part 3280 continues to read as follows:

Authority: Secs. 604 and 625 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403 and 5424; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. Section 3280.4, the alphabetical listing of referenced standards is amended to substitute the following address for the National Forest Products Association:

§ 3280.4 Incorporation by reference.

* * * * *

(N)FPA—National Forest Products Association, 1250 Connecticut Avenue, Washington, DC 20036

* * * * *

§ 3280.8 [Amended]

3. In § 3280.8(c), the undesignated paragraph beginning with the word "however" is removed.

4. Section 3280.203 is amended by adding paragraphs (a)(1) and (2), and a parenthetical phrase at the end of paragraph (a) to read as follows:

§ 3280.203 Flame spread limitations and fire protection requirements.

(a) * * *

(1) Flame-spread rating—76 to 200.

(i) .035-inch or thicker high pressure laminated plastic panel countertop;

(ii) ¼-inch or thicker unfinished plywood with phenolic or urea glue;

(iii) Unfinished dimension lumber (1-inch or thicker nominal boards);

(iv) ⅜-inch or thicker unfinished particleboard with phenolic or urea binder;

(v) Natural gum-varnished or latex or alkyd-painted:

(A) ¼-inch or thicker plywood, or

(B) ⅜-inch or thicker particleboard, or

(C) 1-inch or thicker nominal board;

(vi) 5/16-inch gypsum board with decorative wallpaper; and

(vii) ¼-inch or thicker unfinished hardboard.

(2) Flame-spread rating—25 to 200.

(i) Painted metal;

(ii) Mineral-base acoustic title;

(iii) 5/16-inch or thicker unfinished gypsum wallboard (latex- or alkyd-painted); and

(iv) Ceramic tile.

(The above-listed material applications do not waive the requirements of § 3280.203(c) or § 3280.204 of this subpart)

* * * * *

5. In § 3280.511(a)(1), the quoted information to be supplied in the Comfort Cooling Certificate is amended by removing the paragraph which begins with the words "The temperature to be specified * * *".

6. In § 3280.511(a)(1), in the material captioned "*Example Alternate I*", the quotation mark at the end of *Example Alternate I* is removed, and a new paragraph is added at the end of the example, to read as follows:

§ 3280.511 Comfort cooling certificate and information.

(a) * * *

(1) * * *

Example Alternate I * * *

Information necessary to calculate cooling loads at various locations and orientations is provided in the special comfort cooling information provided with this manfactured home.

* * * * *

§ 3280.602 [Amended]

7. In § 3280.602(a)(49), the word "verticle" is revised to read "vertical".

§ 3280.611 [Amended]

8. In § 3280.611(d)(5), the reference to "EWV grade" is revised to read "DWV grade".

§ 3280.705 [Amended]

9. In § 3280.705(l)(1), the word "connection" is removed and the word "connector" is substituted in its place.

§ 3280.70 [Amended]

10. In § 3280.706(b)(4), the reference to "(ASTM A 539–73)" is removed and "(ASTM A 539–83)" is substituted in its place.

11. In § 3280.707, at the end of paragraph (d)(2), the following material is added:

§ 3280.707 Heat producing appliances.

* * * * *

(d) * * *

(2) * * *

Storage capacity in gallons	Recovery efficiency	Standby loss
Less than 25	At least 75 percent	Not more than 7.5 percent.
25 up to 35	00	Not more than 7 percent.
35 or more	00	Not more than 6 percent.

* * * * *

§ 3280.803 [Amended]

12. In § 3280.803(k)(3)(ii), the abbreviation "NFA" is removed and "NFPA" is substituted in its place.

13. In § 3280.803(k)(3)(iii), the abbreviation "NEPA" is removed and "NFPA" is substituted in its place.

§ 3280.806 [Amended]

14. In § 3280.806(a)(2), the period at the end is removed and "; and" is substituted in its place.

Date: November 5, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87–28692 Filed 12–14–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8166]

Income Tax; Consent Dividends

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that amend the Income Tax Regulations under the consent dividend provisions of section 565 of the Internal Revenue Code of 1986. A review of the legislative history of section 565 has prompted a clarification of certain provisions of the regulations under section 565. The amendments to the regulations will provide the public with the new guidance needed to comply with section 565. The text of these temporary regulations also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations, as well as the deletions to the existing final regulations, are effective for tax years ending after December 15, 1987.

FOR FURTHER INFORMATION CONTACT: David Bergkuist of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention:CC:LR:T (INTL–312–87)) (202–566–6457, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations that amend the Income Tax Regulations (26 CFR Part 1) under section 565 of the Internal Revenue Code of 1986 to clarify the scope of the consent dividend provisions of the Code.

Need for Temporary regulations

The proper application of section 565 is dependent upon the Internal Revenue Service providing detailed specifications of the manner in which the requirements of the statute will be administered. As a result of a review of section 565, it has been determined that it is necessary to clarify the regulations under section 565. Because of the need for immediate guidance in this regard, the Internal Revenue Service has found it to be impractical to issue these temporary regulations either with notice and public comment procedure under section 553(b) of title 5 of the United States Code, or under the effective date limitation of section 553(d) of title 5.

Legislative History of Consent Dividend Provisions

The consent dividend provisions were enacted in 1938 as a relief measure against a then generally applicable tax on undistributed corporate profits. This tax formed a part of the basic corporate income tax. The consent dividend provisions were intended to apply equally as broadly as did the tax upon undistributed profits because the consent dividend provisions were intended to provide relief from that tax. The tax on undistributed profits has expired by the time the Internal Revenue Code of 1954 was enacted. The consent dividend provisions were retained in the 1954 Code as a relief measure for a corporation that was required to distribute its earnings but was prevented from distributing cash because of loan restrictions, insufficiency of liquid resources, or other reasons. However, the regulation under section 565 did not make clear that they apply only to corporations or other taxable entities required to distribute their earnings.

Restricted Applicability of Consent Dividend Provisions

Taxable entities required to distribute their earnings are corporations subject to the accumulated earnings tax, personal holding companies, foreign personal holding companies, regulated investment companies, and real estate investment trusts. The amendments to the regulations clarify that the consent dividend provisions apply only to these entities. These amendments do not affect those provisions of the temporary regulations under section 367 [§ 7.367 (b)–9(f) and 7.367 (b)–10(f)) which permit United States shareholders to increase their basis in foreign corporations involved in certain reorganizations and distributions by the amount of earnings and profits of lower-tier foreign corporations on the condition that an election is made to treat such earnings and profits as having been distributed as dividends through intervening corporations to the upper-tier foreign corporation. This procedure differs from a consent dividend election under section 565 in that the electing shareholder is not treated as having received a dividend, and the election is not made with respect to stock held directly by the electing shareholder. The basis adjustment under these provisions is therefore not a consent dividend under section 565, but it is made in accordance with a prodecure that is similar in form to a consent dividend election under that section.

In addition, the Service understands that, in certain circumstances, members of affiliated groups filing consolidated returns have elected consent dividends under section 565, without regard to whether they are required to distribute earnings, for the purpose of preventing the application of § 1.1502–32 (g). Generally, where a subsidiary leaves a consolidated group, §1.1502–32 (g) requires that the members of the group reduce the basis of any stock of the subsidiary that they own on the first day of the subsidiary's first separate return year by the amount of any basis increases in the stock under § 1.1502–32 for all consolidated return years. For this purpose, a year in which a subsidiary is included in the consolidated return of another group is considered a separate return year (*e.g.*, a year where the member of the affiliated group owning the stock of the subsidiary is acquired by another affiliated group filing a consolidated return.)

As noted above, a subsidiary cannot make a consent dividend unless it is a corporation subject to the accumulated earnings tax, a personal holding company, a foreign personal holding company, a regulated investment company, or a real estate investment trust. The Service is studying the feasibility of changes in the consolidated return regulations that would alleviate the application of the § 1.1502–32 (g) adjustment for those corporations that do not qualify under § 1.565–1 to make a consent dividend. Among the changes being considered is an exception similar to the expections under present law (such as § 1.1502–13 (f) (2)) that eliminates some of the effects of deconsolidation in certain circumstances where a group is acquired by another group filing consolidated returns. Guidance will be provided to taxpayers with respect to this issue in sufficient time to meet their tax return filing requirements.

Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

It has been determined that this temporary regulation is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0043.

Drafting Information

The principal authors of these regulations are David Bergkuist of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel and Susan Thompson Baker of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.561–1 Through 1.565–6

Income Taxes, Deduction for dividends paid.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

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

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

§ 1.565–1 [Removed]

Par. 2. Section 1.565–1 is hereby removed.

Par. 3. The following new § 1.565–1T is added immediately after § 1.564–1.

§ 1.565–1T General rule (temporary).

(a) *Consent dividends.* The dividends paid deduction, as defined in section 561, includes the consent dividends for the taxable year. A consent dividend is a hypothetical distribution (as distinguished from an acutal distribution) made by:

(1) A corporation that has a reasonable basis to believe that it is subject to the accumulated earnings tax imposed in Part I of Subchapter G, Chapter 1 of the Code, or

(2) A corporation described in Part II (personal holding companies) or Part III (foreign personal holding companies)of Subchapter G or in Part I (regulated investment companies) or Part II (real estate investment trusts) of Subchapter M, Chapter 1 of the Code.

A consent dividend may be made by a corporation described in this paragraph to any person who owns consent stock on the last day of the taxable year of such corporation and who agrees to treat the hypothetical distribution as an actual dividend, subject to the limitations in section 565, § 1.565–2T, and paragraph (c)(2) of this section, by filing a consent at the time and in the manner specified in paragraph (b) of this section.

(b) *Making and filing of consents.* (1) A consent shall be made on Form 972 in accordance with this section and the instructions on the form issued therewith. It may be made only by or on behalf of a person who was the actual owner on the last day of the corporation's taxable year of any class of consent stock, that is, the person who would have been required to include in gross income any dividends on such stock actually distributed on the last day of such year. Form 972 shall contain or be verified by a written declaration that it is made under the penalties of perjury. In the consent such person must agree to include in gross income for his taxable year in which or with which the taxable year of the corporation ends a specific amount as a taxable dividend.

(2) See paragraph (c) of this section and § 1.565–2T for the rules as to when all or a portion of the amount so specified will be disregarded for tax purposes.

(3) A consent may be filed at any time not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. With such return, and not later than the due date thereof, the corporation must file Forms 972 duly executed by each consenting shareholder, and a return on Form 973 showing by classes the stock outstanding on the first and last days of the taxable year, the dividend rights of such stock, distributions made during the taxable year to shareholders, and giving all the other information required by the form. Form 973 shall contain or be verified by a written declaration that is made under the penalties of perjury.

(c) *Taxability of amounts specified in consents.* (1) The filing of a consent is irrevocable, and except as otherwise provided in section 565(b), § 1.565–2T, and paragraph (c)(2) of this section, the full amount specified in a consent filed by a shareholder of a corporation described in paragraph (a) of this section shall be included in the gross income of the shareholder as a taxable dividend. Where the shareholder is taxable on a dividend only if received from sources within the United States, the amount specified in the consent of the shareholder shall be treated as a dividend from sources within the United States in the same manner as if the dividend had been paid in money to the shareholder on the last day of the corporation's taxable year. See paragraph (b) of this section relating to the making and filing of consents, and section 565(e) and § 1.565–5T, with respect to the payment requirement in the case of nonresident aliens and foreign corporations.

(2) To the extent that the Commissioner determines that the corporation making a consent dividend is not a corporation described in paragraph (a) of this section, the amount specified in the consent is not a consent dividend and the amount specified in the consent will not be included in the gross income of the shareholder. In addition, where a corporation is described in paragraph (a)(1) of this section, but not paragraph (a)(2) of this section, to the extent that the Commissioner determines that the amount specified in a consent is larger than the amount of earnings subject to the accumulated earnings tax imposed by Part I of Subchapter G, such excess is not a consent dividend under paragraph (a) of this section and will not be included in the gross income of the shareholder.

(3) Except as provided in section 565(b), § 1.565–2T and paragraph (c)(2) of this section, once a shareholder's consent if filed, the full amount specified in such consent must be included in the shareholder's gross income as a taxable dividend, and the ground upon which a deduction for consent dividends is denied the corporation does not affect the taxability of a shareholder whose consent has been filed for the amount specified in the consent. For example, although described in Part I, II, or III, of Subchapter G, or Part I or II of subchapter M, Chapter I of the Code, the corporation's taxable income (as adjusted under section 535(b), 545(b), 556(b), 852(b)(2), or 857(b)(2), as appropriate) may be less than the total of the consent dividends.

(4) A shareholder who is a nonresident alien or a foreign corporation is taxable on the full amount of the consent dividend that otherwise qualifies under this section even though that payment has not been made as required by section 565(e) and § 1.565–5T.

(5) Income of a foreign corporation is not subject to the tax on accumulated earnings under Part I, of Subchapter G,

Chapter 1 of the Code except to the extent of U.S. source income, adjusted as permitted under section 535. See section 535(b) and (d) and § 1.535–1(b). Therefore, foreign source earnings (other than those distributions subject to resourcing under section 535(d)) of a foreign corporation that is not described in paragraph (a)(2) of this section cannot qualify for consent dividend treatment. Accordingly, a consent dividend made by a foreign corporation described in paragraph (a)(1) of this section shall not be effective with respect to all of the corporation's earnings, but shall relate solely to earnings which would have been, in the absence of the consent dividend, subject to the accumulated earnings tax.

§ 1.565–2 [Removed]

Par. 4. Section 1.565–2 is hereby removed.

Par. 5. The following new § 1.565–2T is added immediately after § 1.565–1T.

§ 1.565–2T Limitations (temporary).

(a) Amounts specified in consents filed by shareholders or other beneficial owners of a corporation described in § 1.565–1T(a) are not treated as consent dividends to the extent that—

(1) They would constitute a preferential dividend; or

(2) They would not constitute a dividend (as defined in section 316), if distributed in money to shareholders on the last day of the taxable year of the corporation. If any portion of any amount specified in a consent filed by a shareholder of a corporation described in the preceding sentence is not treated as a consent dividend under section 565(b) and this section, it is disregarded for all tax purposes. For example, it is not taxable to the consenting shareholder, and paragraph (c) of § 1.565–1T is not applicable to this portion of the amount specified in the consent.

(b) (1) A preferential distribution is an actual distribution, or a consent distribution, or a combination of the two, which involves a preference to one or more shares of stock as compared with other shares of the same class or to one class of stock as compared with any other class of stock. See section 562(c) and § 1.562–2.

(2) The application of section 565 (b) (1) may be illustrated by the following examples:

Example (1). The X Corporation, a personal holding company, which makes its income tax returns on the calendar year basis, has 200 shares of stock outstanding, owned by A and B in equal amounts. On December 15, 1987, the corporation distributes $600 to B and $100 to A. As a part of the same distribution, A executes a consent to include $500 in high gross income as a taxable dividend although such amount is not distributed to him. The X Corporation, assuming the other requirements of section 565 have been complied with, is entitled to a consent dividends deduction of $500. Although the consent dividend is deemed to have been paid on December 31, 1987, the last day of the taxable year of the corporation, they constitute a single nonpreferential distribution of $1200.

Example (2). The Y corporation, a personal holding company, which makes it income tax returns on the calendar year basis, has one class of consent stock outstanding, owned in equal amounts by A, B, and C. On December 15, 1987, the corporation makes a distribution in cash of $5,000 each to A and B, and $3,000 to C. The distribution is preferential. If A and B, each receive a distribution in cash $5,000 and C consents to include $3,000 in gross income as a taxable dividend, the combined actual and consent distribution is preferential. Similarly, if no one receives a distribution in cash, but A and B each consents to include $5,000 as a taxable dividend in gross income and C agrees to include only $3,000, the consent distribution is preferential.

Example (3). The Z Corporation, which makes its income tax returns on the calendar year basis and is subject, for the taxable year in question, to the accumulated earnings tax, has only two classes of stock outstanding, each class being consent stock and consisting of 500 shares. Class A, with a par value of $40 per share, is entitled to two-thirds of any distribution of earnings and profits. Class B, with a par value of $20 per share, is entitled to one-third of any distribution of earnings and profits. On December 15, 1987, there is distributed on the class B stock $2 per share, or $1,000, and shareholders of the class A stock consent to include in gross income amounts equal to $2 per share, or $1,000. The distribution is preferential, inasmuch as the class B stock has received more than its pro rata share of the combined amounts of the actual distributions and the consent distributions.

(c)(1) An additional limitation under section 565(b) is that the amounts specified in consents which may be treated as consent dividends cannot exceed the amounts which would constitute a dividend (as defined in section 316) if the corporation had distributed the total specified amounts in money to shareholders on the last day of the taxable year of the corporation. If only a portion of such total would constitute a dividend, then only a corresponding portion of each specified amount is treated as a consent dividend.

(2) The application of section 565 (b)(2) may be illustrated by the following example:

Example. The X Corporation, a personal holding company, which makes its income tax returns on the calendar year basis, has only one class of stock outstanding, owned in equal amounts by A and B. It makes no distributions during the taxable year 1987. Its earnings and profits for the calendar year 1987 amount to $8,000, there being at the beginning of such year no accumulated earnings or profits. A and B execute proper consents to include $5,000 each in their gross income as a dividend received by them on December 31, 1987. The sum of the amounts specified in the consents executed by A and B is $10,000, but if $10,000 had actually been distributed by the X corporation on December 31, 1987, only $8,000 would have constituted a dividend under section 316(a). The amount which could be considered as consent dividends in computing the dividends paid deduction for purposes of the accumulated earnings tax is limited to $8,000, or $4,000 of the $5,000 specified in each consent. The remaining $1,000 in each consent is disregarded for all tax purposes. The amount which could be considered as consent dividends in computing the dividends paid deduction for purposes of the personal holding company tax is $10,000 (assuming that the undistributed personal holding company income, determined without regard to distributions under section 316(b)(2), is equal to at least that amount). In that event, A and B would each include $5,000 in gross income as a dividend received on December 31, 1987.

§ 1.565–3 [Removed]

Par. 6. Section 1.565–3 is hereby removed.

Par. 7. The following new § 1.565–3T is added immediately after § 1.565–2T.

§ 1.565–3T Effect of consent (temporary).

(a) The amount of the consent dividend that is described in paragraph (a) of § 1.565–1T shall be considered, for all purposes of the Code, as if it were distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation, received by the shareholder on such day, and immediately contributed by the shareholder as paid-in capital to the corporation on such day. Thus, the amount of the consent dividend will be treated by the shareholder as a dividend. The shareholder will be entitled to the dividends received deduction under section 243 or 245 with respect to such consent dividend. The basis of the shareholder's consent stock in a corporation will be increased by the amount thus treated in his hands as dividend which he is considered as having contributed to the corporation as paid-in capital. The amount of the current dividend will also be treated as a dividend received from sources within the United States in the same manner as if the dividend has been paid in money to the shareholders. Among other effects of the consent dividend, the earnings and profits of the corporation will be decreased by the amount of the consent dividends. Moreover, if the shareholder is a corporation, its accumulated

earnings and profits will be increased by the amount of the consent dividend with respect to which it makes a consent.

(b) The application of section 565 (c) to a corporate shareholder may be illustrated by the following example:

Example. Corporation A, a personal holding company and a calendar year taxpayer, has one shareholder, individual B, whose consent to include $10,000 in his gross income for the calendar year 1987 has been timely filed. A has $8,000 of earnings and profits in 1987 and had no accumulated earnings and profits at the beginning of 1987. A has $10,000 of undistributed personal holding company income (determined without regard to distributions under section 316(b)(2)) for 1987. B must include $10,000 in his gross income as a taxable income and is treated as having immediately contributed $10,000 to A as paid-in capital. See section 316(b)(2).

§ 1.565–5 [Removed]

Par. 8. Section 1.565–5 is hereby removed.

Par. 9. The following new § 1.565–5T is added immediately after § 1.565–4.

§ 1.565–5T Nonresident aliens and foreign corporations (temporary).

In the event that any consent filed by a corporation that is described in paragraph (a) of § 1.565–1T is made by a shareholder to whom the payment of a dividend in cash on the last day of the taxable year of the corporation would have made it necessary for the corporation to deduct and withhold any amount as a tax under section 1441 or section 1442, such consent, when filed by the corporation, must be accompanied by payment of the amount which would have been required to be deducted and withheld if the amount specified in such consent had, on the last day of the corporation's taxable year, been paid to the shareholder in cash as a dividend. Such payment must be in one of the following forms:

(a) Cash;

(b) United States postal money order;

(c) Certified check drawn on a domestic bank, provided that the law of the place where the bank is located does not permit the certification to be rescinded prior to presentation;

(d) A cashier's check of a domestic bank, or

(e) A draft on a domestic bank or a foreign bank maintaining a United States agency or branch and payable in United States funds.

The amount of such payment shall be credited against the tax imposed on the shareholder.

§ 1.565–6 [Removed]

Par. 10. Section 1.565–6 is hereby removed.

Par. 11. The following new § 1.565–6T is added immediately after § 1.565–5T.

§ 1.565–6T Definitions (Temporary).

(a) *Consent stock.* (1) The term "consent stock" includes what is generally known as common stock. It also includes participating preferred stock, the participation rights of which are unlimited.

(2) The definition of consent stock may be illustrated by the following example:

Example. If in the case of the X Corporation, a personal holding company, there is only one class of stock outstanding, it would all be consent stock. If, on the other hand, there were two classes of stock, class A and class B, and class A was entitled to 6 percent before any distribution could be made on class B, but class B was entitled to everything distributed after class A had received its 6 percent, only class B stock would be consent stock. Similarly, if class A, after receiving its 6 percent, was to participate equally or in some fixed proportion with class B until it had received a second 6 percent, after which class B alone was entitled to any further distributions, only class B stock would be consent stock. The same result would follow if the order of preferences were class A 6 percent, then class B 6 percent, then class A a second 6 percent, either alone or in conjunction with class B, then class B the remainder. If, however, class A stock is entitled to ultimate participation without limit as to amount, then it, too, may be consent stock. For example, if class A is to receive 3 percent and then share equally or in some fixed proportion with class B in the remainder of the earnings or profits distributed, both class A stock and class B stock are consent stock.

(b) *Preferred dividends.* (1) The term "preferred dividends" includes all fixed amounts (whether determined by percentage of par value, a stated return expressed in a certain number of dollars per share, or otherwise) the distribution of which on any class of stock is a condition precedent to a further distribution of earnings or profits (not including a distribution in partial or complete liquidation). A distribution, though expressed in terms of a fixed amount, is not a preferred dividend, however, unless it is preferred over a subsequent distribution within the taxable year upon some class or classes of stock other than one on which it is payable.

(2) The definition of preferred dividends may be illustrated by the following example:

Example. If, in the case of the X Corporation, there are only two classes of stock outstanding, class A and class B, and class A is entitled to a distribution of 6 percent of par, after which the balance of the earnings and profits are distributable on class B exclusively, class A's 6 percent is a preferred dividend. If the order of preferences is class A $6 per share, class B $6 per share, then class A and class B in fixed proportions until class A receives $3 more per share, then class B the remainder, all of class A's $9 per share and $6 per share of the amount distributable on class B are preferred dividends. The amount which class B is entitled to receive in conjunction with the payment to class A of its last $3 per share is not a preferred dividend, because the payment of such amount is preferred over no subsequent distribution except one made on class B itself. Finally, if a distribution must be $6 on class A, $6 on class B, then on class A and class B share and share alike, the distribution on class A of $6 and the distribution on class B of $6 are both preferred dividends.

PART 602—[AMENDED]

Par. 12. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 13. Section 602.101(c) is amended by inserting in the appropriate place in the table:

§ 1.565–1T	1545–0043
§ 1.565–2T	1545–0043
§ 1.565–3T	1545–0043
§ 1.565–5T	1545–0043
§ 1.565–6T	1545–0043

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: October 14, 1987.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 87–28635 Filed 12–11–87; 9:13 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 25, 240, 250, 270, 275, and 285

[T.D. ATF—262; Re: Notice Nos. 617, 622]

Timely Remittance of Tax by Electronic Fund Transfer

AGENCY: The Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is amending ATF regulations implementing 26 U.S.C. 5061(e) and 5703(b), relating to the payment of tax on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes by electronic fund

transfer (EFT). The amendments establish that a remittance of tax by electronic fund transfer is considered made when the payment is paid to a Federal Reserve Bank.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: David Brokaw, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC, 20226; (202) 566–7602.

SUPPLEMENTARY INFORMATION: This final rule is based on a notice of proposed rulemaking published in the **Federal Register** on January 26, 1987, at 52 FR 2725, Notice No. 617.

In response to that notice, ATF received written comments from the Association of American Vintners, the Distilled Spirits Council of the United States, Inc., the National Liquor Stores Association, Inc., the Kobrand Corporation and the National Association of Beverage Importers, Inc. Each of the above organizations requested additional time to gather data and to formulate comments. ATF also received verbal inquiries concerning additional time for comments from interested parties directly affected by the issue raised in Notice No. 617.

On February 26, 1987, ATF Published Notice No. 622 (52 FR 5790) extending the comment period until April 15, 1987. In response to both notices ATF received 40 comments. All of the comments recommended that the proposed amendments not be enacted. In addition, two of the comments requested that a public hearing be scheduled pursuant to 27 CFR 71.41(a)(2) if the Bureau was not persuaded by the written comments to withdraw the proposal. The Bureau has decided that the proposed revisions should be adopted and that a hearing is not necessary since the revisions merely correct technical discrepancies in the regulations and will protect the government's interest.

The regulatory revisions are necessary to correct technical discrepancies in ATF regulations implementing 26 U.S.C. 5061(e) and 5703(b) relating to the payment of tax on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes by electronic fund transfer (EFT). 26 U.S.C. 5061(e)(1) provides that any person who was liable in the previous 12-month period for a gross amount equal to or exceeding $5,000,000 in taxes imposed on distilled spirits, wines, or beer "shall pay such taxes during the succeeding calendar year by electronic fund transfer to a Federal Reserve Bank." 26 U.S.C. 5703(b)(3) contains a similar provision for the payment of taxes on tobacco products and cigarette papers and tubes. The statutes thus clearly contemplate that taxes are paid when they are received by a Federal Reserve Bank.

The regulations in 27 CFR Parts 19, 25, 240, 250, 270, 275, and 285 each contain a paragraph outlining the EFT taxpayer's responsibility in terms similar to the following:

For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return * * *. The request shall take into account any time limit established by the bank.

The regulations in 27 CFR Parts 19, 25, 240, 250, 270, 275, and 285 each contain a paragraph which indicates when remittances are considered made, as follows:

Remittances shall be considered as made when a taypayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

ATF believes that these two paragraphs, when read in conjunction, clearly inform the public that the EFT taxpayer is obliged to ensure that the EFT taxpayment arrives at the Treasury Account by the close of business of the last day prescribed for taxpayment. Clearly, EFT taxpayers were put on notice to consult with their banks in order to determine applicable bank procedures and to ensure timely taxpayment in accordance with those procedures. However, ATF has determined that the paragraph which defines remittances has been misinterpreted by some taxpayers as relieving the taxpayer of responsibility for timely remittance once he has directed his bank to make the electronic fund transfer payment. Therefore, as proposed in Notice No. 617, ATF will amend the regulations to indicate that the remittance is considered as made when the taxpayment is credited to the Treasury Account. A taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank. These amendments make clear that the taxpayer is responsible for timely remittance of taxes to the Treasury Account by electronic fund transfer.

A paragraph in each of the previously cited Parts of 27 CFR is titled "Failure to request an electronic fund transfer message." This paragraph states:

The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684 [or 5761], 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

The wording of the paragraph penalizes the taxpayer for failure to deposit a taxpayment by EFT. However, the title indicates that the penalty is for failure to request an electronic fund transfer message. The title of this paragraph and subsequent regulations will be changed to reflect the fact that the remittance is considered as made when the taxpayment is received by the Treasury Account. A taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

Comments

The reasons cited in the comments for recommending rejection of the regulatory revisions revolved around the unfair nature of holding the taxpayer responsible for the actions of a third party (bank) over which the taxpayer has no direct control. ATF considers that this argument is not valid since the law holds the taxpayer ultimately responsible for making the required payment on time. However, the Bureau does agree that the taxpayer should only be held responsible for the tax payment until it enters a Federal Reserve Bank, not until it reaches the Treasury Account at the Federal Reserve Bank in New York.

In 1984, when the original regulations were promulgated, only the Federal Reserve Bank in New York had the capacity to receive electronic fund transfers via Fedwire. Now, all of the Federal Reserve Banks have this capacity. ATF believes that for purposes of penalties and interest, a taxpayment made by electronic fund transfer should be considered to have been received by the Treasury Account when it enters a Federal Reserve Bank. Accordingly, the proposed regulatory wording that appeared in Notice No. 617 has been changed to reflect this fact.

The comments also seemed to reflect a widespread perception that this change in the regulatory language reflected a change in Bureau policy, rather than a clarification of that policy. This perception is incorrect. The Bureau's policy has always been that it is the responsibility of the taxpayer to ensure timely payment of taxes to the

Treasury Account. ATF Proc. 84–2, A.T.F.Q.B. 1984–3, 85, provided that:

Taxpayments shall be considered as made when the taxpayer unconditionally directs his commercial bank to immediately make an EFT to the Treasury Account in accordance with the procedures established by the bank to ensure that the EFT is effected to the Treasury Account by no later than the close of the business day that the tax return is due. Taxpayers must take into account any time limit established by their commercial bank to timely make the EFT into the Treasury Account. Penalties and interest for late payment may be assessed when an EFT has not been timely credited into the Treasury Account.

This procedure has since been superseded by ATF Proc. 87–3 which provides some new guidelines for the payment of tax by EFT as a result of ATF assuming the deposit function from IRS. However, the policy remains the same. Thus, the change in the regulatory language does not reflect a change in ATF policy. Instead, these regulatory amendments make technical corrections in the regulatory language to prevent any possible misinterpretations by taxpayers.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. This final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantral number of small entities. This final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is David Brokaw of the Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfer, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfer, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfer, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfer, Excise taxes, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety Bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

Authority and Issuance

Title 27 CFR is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 19.524(c)(2) is revised and the heading of paragraph (d) is revised to read as follows:

§ 19.524 Payment of tax by electronic fund transfer.

* * * * *

(c) *Remittance.* * * *

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

* * * * *

(d) *Failure to make a taxpayment by EFT.* * * *

* * * * *

PART 25—BEER

Par. 3. The authority citation for Part 25 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Par. 4. Section 25.165(c)(2) is revised and the heading of paragraph (d) is revised to read as follows:

§ 25.165 Payment of tax by electronic fund transfer.

* * * * *

(c) *Remittance.* * * *

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

* * * * *

(d) *Failure to make a taxpayment by EFT.* * * *

* * * * *

PART 240—WINE

Par. 5. The authority citation for Part 240 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5332, 5351, 5353, 5354, 5356–5358, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 27 U.S.C. 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 6. Section 240.591a(c)(2) is revised and the heading of paragraph (d) is revised to read as follows:

§ 240.591a Payment of tax by electronic fund transfer.

* * * * *

(c) *Remittance.* * * *

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

* * * * *

(d) *Failure to make a taxpayment by EFT.* * * *

* * * * *

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 7. The authority citation for Part 250 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5146, 5205, 5207, 5232, 5301, 5314, 5555, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 8. Section 250.112a(c)(2) is revised and the heading of paragraph (d) is revised to read as follows:

§ 250.112a Payment of tax by electronic fund transfer.

* * * * *

(c) *Remittance.* * * *

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

* * * * *

(d) *Failure to make a taxpayment by EFT.* * * *

* * * * *

PART 270—MANUFACTURE OF CIGARS AND CIGARETTES

Par. 9. The authority citation for Part 270 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711–5713, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 10. Section 270.165a(c)(2) is revised and the heading of paragraph (d) is revised to read as follows:

§ 270.165a Payment of tax by electronic fund transfer.

* * * * *

(c) *Remittance.* * * *

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

* * * * *

(d) *Failure to make a taxpayment by EFT.* * * *

* * * * *

PART 275—IMPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

Par. 11. The authority citation for Part 275 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5708, 5722, 5723, 5741, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 12. Section 275.115a(c)(2) is revised and the heading of paragraph (d) is revised to read as follows:

§ 275.115a Payment of tax by electronic fund transfer.

* * * * *

(c) *Remittance.* * * *

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

* * * * *

(d) *Failure to make a taxpayment by EFT.* * * *

* * * * *

PART 285—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

Par. 13. The authority citation for Part 285 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6302, 6402, 6404, 6676, 7212, 7325, 7342, 7606; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 14. Section 285.27(c)(2) is revised and the heading of paragraph (d) is revised to read as follows:

§ 285.27 Payment of tax by electronic fund transfer.

* * * * *

(c) *Remittance.* * * *

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

* * * * *

(d) *Failure to make a taxpayment by EFT.* * * *

* * * * *

Signed: August 24, 1987.

Stephen E. Higgins,

Director.

Approved: October 23, 1987.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 87–28579 Filed 12–14–87; 8:45 am]

BILLING CODE 4810–31–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2613, 2617, and 2619

Guaranteed Benefits; Determination of Plan Sufficiency and Termination of Sufficient Plans; Valuation of Plan Benefits in Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulations on Guaranteed Benefits (29 CFR Part 2613), Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR Part 2617), and Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619). Those regulations set forth, among other things, rules concerning the circumstances under which benefits in a terminating single-employer pension plan may be paid in an alternative form (that is, a form other than an annuity, such as a lump sum). This rule raises the limit on benefits that may be paid in an alternative form without the recipient's consent from $1,750 to $3,500. The rule is needed to recognize the effects of inflation on the value of small benefits payable under a pension plan.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 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: This final rule increases from $1,750 to $3,500 the limit on benefits that may be paid in a lump sum or other non-annuity form without the recipient's consent under a terminated plan. The amendments adopted herein apply both to guaranteed benefits under a plan trusteed by the Pension Benefit Guaranty Corporation (PBGC) (§ 2613.8(b)(1) of the PBGC's regulation on Guaranteed Benefits) and to benefits under a sufficient plan that is closed out by the plan administrator (§ 2617.4(b)(2) of the PBGC's regulation on Determination of Plan Sufficiency and Termination of Sufficient Plans). This document also makes conforming and technical amendments to the Guaranteed Benefits and Sufficiency regulations and to the PBGC's regulation on Valuation of Plan Benefits in Single-Employer Plans. (This document does not address other aspects of those regulations affected by the Retirement Equity Act of 1984 (REA). Amendments to those regulations dealing with REA issues will be the subject of a future rulemaking proceeding.) These amendments were published in the **Federal Register** in proposed form for public comment on December 12, 1986 (51 FR 44798). One comment, approving the proposal, was received.

The PBGC has made a change from the proposal to clarify that the plan administrator of a sufficient plan must take all of a participant's benefits into account in determining whether the value of the benefits is less than $3,500. In § 2617.4(b)(2), the words "present value of the benefit" have been changed to read "present value of the participant's total benefits under the plan, including amounts previously distributed to the participant." The introductory text of § 2617.4(b) has also been changed to make clear that benefits already in pay status may not be cashed out.

The PBGC has also made a change from the proposal to clarify the applicability of these amendments to plans that have begun but not completed the termination process when the amendments become effective. The PBGC believes that the increased cashout limit should not be applied to participants and beneficiaries who have already been given notices of benefit commitments subject to the existing $1,750 rule. Accordingly, the amendment to § 2617.4(b)(2) has been changed to retain the $1,750 limit for plans that have issued notices of benefit commitments before the effective date of the amendment. Plans issuing notices of benefit commitments after that date will be allowed to use the new $3,500 rule. Plans that close out under the distress termination procedures (which do not provide for a notice of benefit committment) after the effective date of the amendment may also use the $3,500 limit.

In an editorial change from the proposal, the words "payable by the PBGC" have been added following the words "guaranteed benefit" in § 2613.8(b)(1).

The PBGC stresses that neither a plan administrator nor the PBGC as plan trustee is required by PBGC regulations to cash out any benefit simply because its value is less than the limit provided by the regulations. For example, a plan administrator may be required by a plan provision, or the PBGC may decide, to cash out only the benefits that fall below $2,500 or $1,500. In particular, the PBGC may vary from time to time the maximum size of guaranteed benefits it cashes out—while never exceeding $3,500—depending on its cash flow situation and other factors.

Compliance With Rulemaking Guidelines

The PBGC has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PBGC certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, that this rule will not have a significant economic effect on a substantial number of small entities. This rule will not have such an impact since it affects only the distribution of benefits of minimal size. Accordingly, compliance with sections 603 and 604 of the Regulatory Flexibility Act is waived.

List of Subjects

29 CFR Part 2613

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 2617

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Parts 2613, 2617, and 2619 of Subchapters B and C of Chapter XXVI of Title 29, Code of Federal Regulations, are amended as follows:

PART 2613—GUARANTEED BENEFITS

1. The authority citation for Part 2613 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1322, as amended by sec. 11016(c)(9), Pub. L. 99–272, 100 Stat. 274.

2. Section 2613.2 is amended by revising the definition of "Act" to read as follows:

§ 2613.2 Definitions.

* * * * *

"Act" means the Employee Retirement Income Security Act of 1974, as amended.

* * * * *

§ 2613.8 [Amended]

3. Section 2613.8(b)(1) is amended by changing the words "the value of a

guaranteed benefit is $1,750" to read "the value of a guaranteed benefit payable by the PBGC is $3,500" and by removing the phrase "or in any case in which a benefit is payable under a plan for which the PBGC has issued a notice of sufficiency pursuant to section 4041 of the Act,".

§ 2613.8 [Amended]

4. Section 2613.8(b)(2)(i) is amended by changing "§ 2618.7" to read "§ 2618.12" and by removing "(Valuation of Benefits)".

PART 2617—DETERMINATION OF PLAN SUFFICIENCY AND TERMINATION OF SUFFICIENT PLANS

5. The authority citation for Part 2617 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341 and 1344, as amended by secs. 11007–11009 and 11016(c)(12)–(c)(13), Pub. L. 99–272, 100 Stat. 244–252 and 274.

6. In § 2617.4, paragraph (b) introductory text and paragraph (b)(2) are revised to read as follows:

§ 2617.4 Requirement for annuities.

* * * * *

(b) *Exceptions.* A benefit that is payable as an annuity under the provisions of a plan need not be provided in annuity form as required by paragraph (a) of this section if the benefit is not in pay status and if—

* * * * *

(2) The present value of the participant's total benefits under the plan, including amounts previously distributed to the participant, determined in accordance with § 2619.26 of this part, is—

(i) In the case of a plan that issues notices of benefit commitments under section 4041(b)(2)(B) of the Act or closes out under section 4041(c)(3)(B) (i) or (ii) of the Act after January 14, 1988, $3,500; and

(ii) In the case of any other plan, $1,750.

* * * * *

PART 2619—VALUATION OF PLAN BENEFITS IN SINGLE-EMPLOYER PLANS

7. The authority citation for Part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 11004(a), 11007–11009, 11016(c)(12)–(c)(13) and 11011(a), Pub. L. 99–272, 100 Stat. 239–240, 244–252, 274 and 253–257.

§ 2619.26 [Amended]

8. In § 2619.26 paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively; newly redesignated paragraph (a)(1) is amended by removing the phrase "payable under this section", and newly redesignated paragraph (b)(1) is amended by changing the reference to "paragraph (b)" to read "paragraph (a)".

Effective Date: January 14, 1988.

Issued at Washington, DC, this 8th day of December 1987.

Dennis E. Whitfield,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving, and authorizing its chairman to issue, this final regulation.

Gary M. Ford,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 87–28766 Filed 12–14–87; 8:45 am]

BILLING CODE 7708–01–M

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29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) by adding a new Table I–88 to Appendix D. Table I–88 is to be used by any terminating pension plan with a valuation date falling in 1988 to determine expected retirement ages for plan participants in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 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: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 change significantly the rules for terminating single-employer plans, the rules for valuing benefits in such plans are much the same. Under ERISA section 4041(c), plans wishing to terminate in a distress termination generally must value guaranteed benefits and benefit commitments under the plan using formulas set forth in Part 2619. Plans terminating in a standard termination may also use the formulas in Part 2619 to value benefit commitments for purposes of the notice to the PBGC required by ERISA section 4041(b)(2)(A), although this is not required. (Such plans may value benefit commitments that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Under § 2619.46, early retirement benefits are valued according to the annuity starting date, if a retirement date has been selected, or according to the expected retirement age, if the annuity starting date is not known on the valuation date. Subpart D of Part 2619 sets forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendices D and E of Part 2619 contain tables and examples to be used in determining the expected early retirement ages.

There are two sets of tables in Appendix D. The first set, Selection of Retirement Rate Category (I–79 through I–87), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II–A, II–B, and II–C), is used to determine the expected retirement age after the probability of early retirement has been determined.

The first set of tables determines the probability of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the normal retirement age under the plan. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

Tables I–79 through I–87 in Appendix D establish retirement rate categories for the calendar years 1979 through 1986. The table for each year applies only to plans with valuation dates in that year. This rule amends Appendix D to add Table I–88 in order to provide an updated correlation, appropriate for calendar year 1988, between the amount

of a participant's benefit and the probability that the participant will elect early retirement. Table I–88 will be used to value benefits in plans with valuation dates that occur during calendar year 1988.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1988, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1988. Moreover, because of the need to provide immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Appendix D to Part 2619 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 11004(a), 11007–11009, 11016(c)(12)–(c)(13) and 11011(a), Pub. L. 99–272, 100 Stat. 239–240, 244–252, 274 and 253–257.

2. Appendix D to Part 2619 is amended by adding Table I–88 as follows:

Appendix D—Tables Used to Determine Expected Retirement Age

* * * * *

TABLE I–88—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with valuation dates after Dec. 31, 1987, and before Jan. 1, 1989]

Participant reaches NRA in year—	Participant's Retirement Rate Category is—			
	Low [1] if monthly benefit at NRA is less than—	Medium [2] if monthly benefit at NRA is—	From— High [3] if monthly benefit at NRA is greater than—	To—
1989	297	297	1,250	1,250
1990	307	307	1,295	1,295
1991	317	317	1,337	1,337
1992	326	326	1,374	1,374
1993	333	333	1,404	1,404
1994	341	341	1,435	1,435
1995	348	348	1,467	1,467
1996	356	356	1,499	1,499
1997	364	364	1,532	1,532
1998 or later	372	372	1,566	1,566

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

Issued at Washington, DC, this 9th day of December, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–28767 Filed 12–14–87; 8:45 am]
BILLING CODE 7708–01–M

29 CFR Part 2621

Limitation on Guaranteed Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the Limitation on Guaranteed Benefits regulation contains the maximum guaranteeable pension benefit that may be paid by the Pension Benefit Guaranty Corporation under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") to a plan participant in a covered single-employer pension plan that terminates in 1988. Section 4022(b)(3) of ERISA provides that the maximum benefit guaranteeable by the PBGC is based on the contribution and benefit base determined under section 230 of the Social Security Act. An increase in the contribution and benefit base increases

the dollar amount of the maximum guaranteeable benefit. This amendment is needed to include the dollar amount of the increased maximum guaranteeable benefit for 1988 in the regulation.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation ("PBGC") entitled Limitation on Guaranteed Benefits (29 CFR Part 2621) describes the limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"). One of the limitations, set forth in section 4022(b)(3) of ERISA, is a dollar ceiling on the amount of the monthly benefit that may be paid by the PBGC. The Single-Employer Pension Plan Amendments Act of 1986 amended Title IV to change significantly the rules governing the termination of single-employer plans; however, the rules establishing the maximum monthly guaranteeable benefit were unchanged.

Subparagraph (B) of section 4022(b)(3) provides that the amount of monthly benefit payable in the form of a life annuity beginning at age 65 shall not exceed "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974" ($13,200).

In the Social Security Amendments of 1977, special increases were added to the contribution and benefit base. However, the amended Social Security Act specifically states that, for the purpose of section 4022(b)(3)(B) of ERISA, the contribution and benefit base for each year after 1976 will be the base that would have been determined for each year if the law in effect immediately before the amendment had remained in effect without change. 42 U.S.C. 430(d) (1982).

The PBGC has been notified by the Social Security Administration that the contribution and benefit base for 1988 that is to be used to calculate the PBGC maximum guaranteeable benefit is $33,600. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR 2621.3(a)(2) is: $750 multiplied by $33,600/$13,200. Thus, the maximum benefit guaranteeable by the PBGC in 1988 will be $1,909.09 per month in the form of a life annuity commencing at age 65. If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount will be the actuarial equivalent of $1,909.09 per month.

Appendix A to Part 2621 lists the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in each year from 1974 through 1987. This amendment updates Appendix A for plans that terminate in 1988.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and this amendment makes no change in its method of calculation but simply lists the 1988 maximum guaranteeable benefit amount for the public's knowledge, general notice of proposed rulemaking is not required. Moreover, because the 1988 maximum guaranteeable benefit is effective, under the statute, at the time that the Social Security contribution and benefit base is effective, *i.e.*, January 1, 1988, and is not dependent on the issuance of this regulation, the PBGC finds that good cause exists for making this amendment effective less than 30 days after publication (5 U.S.C. 553).

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2621

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2621 of Subchapter C, Chapter XXVI, Title 29, Code of Federal Regulations is hereby amended as follows:

PART 2621—LIMITATION ON GUARANTEED BENEFITS

1. The authority citation for Part 2621 is revised to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b.

2. Appendix A to Part 2621 is amended by adding a new entry to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix A to Part 2621—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 2621.3(a)(2) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
* * * * *	
1988	1,909.09

Issued at Washington, DC, this 4th day of December, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–28768 Filed 12–14–87; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of January 1988.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 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: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning 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, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation of Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_k are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*	*		*		*		*			*			*			
January 1988.....	.10125	.0975	.0925	.0875	.0825	.07625	.07625	.07625	.07625	.07625	.07	.07	.07	.07	.07	.06

Issued at Washington, DC, on this 4th day of December 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-28765 Filed 12-14-87; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3301-2]

Approval and Promulgation of Implementation Plans; Implementation of Emissions Trading and Generic Procedures in Nashville/Davidson County, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency regarding State rules.

SUMMARY: Under its Emissions Trading Policy Statement (ETPS), EPA is required to review approved generic bubble rules to ensure that the existing rules are consistent with the ETPS, published December 4, 1986 (51 FR 43814). Nashville/Davidson County, Tennessee has three approved rules which the local agency considers generic in authority for emissions trading. The rules are Regulation No. 7 (Regulation for Control of Volatile Organic Compounds), section 7-2 (Prohibited Act) approved by EPA on July 26, 1982 (47 FR 32124) along with section 7-3 (Petition for Alternative Control) approved by EPA on June 24, 1982 (47 FR 27267) and section 7-20(e) (emission standards for Surface Coating Aerospace Assembly and Components) approved by EPA on October 31, 1983 (48 FR 50079). It is EPA's position that the intent of these rules was not to provide for generic authority, but to provide a means of application for an alternative emission standard which must be submitted as a revision to the State Implementation Plan (SIP) in order to be enforceable by EPA. However, if Nashville/Davidson County intends to interpret the rules generically in the future, then the rules must be consistent with the ETPS. After a thorough review, EPA has concluded that Rules 7-2, 7-3, and 7-20(e) are inconsistent with the ETPS.

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes of the EPA Region IV, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365 at (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: EPA's ETPS requires the Agency to review all approved generic bubble rules to ensure consistency with the ETPS. Nashville/Davidson County, Tennessee's rules, which the local agency interprets generically, for Volatile Organic Compounds (VOCs) have been reviewed and found to be inconsistent with the ETPS. Several changes should be made in order for Nashville/Davidson County's regulation to be approvable under the current ETPS. The generic VOC trading rules should require that surface coating emissions be calculated on a solids applied basis. Also, the maximum time period over which emissions may be averaged in an acceptable compliance demonstration should be specified. The averaging time for VOC's should not exceed 24-hours unless the rule contains EPA-approved language specifying otherwise.

The generic bubble rule should describe the creation of an emission reduction credit (ERC), its use in a trade and its possible storage in a bank prior to use. ERC's must be surplus, enforceable, permanent and quantifiable. Nashville/Davidson County is an ozone nonattainment area with an approved attainment demonstration. Therefore, the VOC baseline emissions for a source used in determining surplus ERC's may be calculated using either allowable values or actual values for the three baseline factors (emission rate, capacity utilization, and hours of operation), depending on the assumptions used in developing the area's demonstration.

Next, the reductions should not be double counted. That is, an emission reduction cannot already have been claimed as part of a demonstration or updated emission inventory by any state or local air quality plan, or have been used by the source to meet any other regulatory requirement.

Once the surplus reductions are credited, Nashville/Davidson County

must prohibit their multiple use. One way to prohibit multiple use is by establishing banking rules, but this will be appropriate only if Nashville/Davidson County wants to bank the surplus ERC's. Immediate consumption of ERC's would also prevent multiple use.

The use of emission reduction credits is broken down into two parts, substantive and procedural. The substantive principles are essential to the generic bubble rule. Emission trades must involve the same pollutant and all uses of ERC's must satisfy ambient tests. Since Nashville/Davidson County is a nonattainment area, the use of ERC's cannot create a new violation of an ambient standard or delay the planned removal of an existing violation. For VOC trades these criteria are met if no increase in net baseline emissions occurs. VOC trades should also assure that no net increase in applicable baseline emissions may occur without case-by-case SIP revisions.

The bubble rule should address trades involving hazardous or toxic air pollutants (NESHAP). Trades involving NESHAP pollutants should (1) result in emission limits for each source emitting the relevant pollutant which are equivalent to or less than those that the approved NESHAP requires or the proposed NESHAP would require if promulgated, (2) rely only on reductions below actual or allowable levels, whichever are less, of that pollutant, and (3) take place within a single contiguous plant.

Existing source credits cannot be used to meet applicable technology-based requirements for new sources. Under sections 165 and 173 of the Clean Air Act and EPA's implementing regulations, new or modified major sources must satisfy technology-based control requirements associated with preconstruction permits. These requirements prohibit use of such credits to meet applicable New Source Performance Standards (NSPS) and bar use of such credits to meet applicable new source review requirements for lowest achievable emission rate control technology (LAER) in nonattainment areas.

Certain emission trades may not in general be exempted from the requirements of case-by-case SIP revisions. Some of the nonexempt trades are (1) Particulate, SO_2, CO, or Pb trades requiring full scale dispersion modeling under Level III, (2) particulate, SO_2, CO, or Pb trades where complex terrain is within the area of the source's significant impact or 50 km, whichever is less, unless the trade does not result in a modification of effective stack heights and the trade otherwise qualifies as de minimis or Level I, (3) open dust trades and (4) Level II trades involving process fugitive particulate, SO_2, CO, or Pb emissions not discharged through stacks. These nonexempt trades are discussed in detail in the ETPS.

The procedural steps for using ERC's, such as the effects of existing compliance schedules, extensions of compliance deadlines the compliance instrument under which the conditions of the trade will be implemented and pending enforcement actions on bubbles, should be addressed in the rule. A provision for EPA notification for review and comment on proposed bubbles prior to approval by Nashville/Davidson County should be contained in the rule. Also, if Nashville/Davidson County is interested in banking ERC's, rules for use and storage of credits must be included in its generic bubble rule.

Nashville/Davidson County has proposed a schedule for the submission of the revised regulation. The agency will develop the proposed revision to the rule within 90 days. Once the proposal has been developed a public hearing will be scheduled which requires a 30-day notice. Approximately 30 days after the public hearing the Metropolitan Board of Health can take action on the proposed revision. Therefore, Nashville/Davidson County has proposed to correct the discrepancies within approximately six months.

Authority: 42 U.S.C. 7401–7642.

Dated: December 1, 1987.

Charles H. Sutfin,

Acting Deputy Regional Administrator.

[FR Doc. 87–28506 Filed 12–14–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3302–1; NC–034]

Approval and Promulgation of Implementation Plans; North Carolina; Revisions to Visible Emission Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 11, 1987, the North Carolina Division of Environmental Management submitted regulatory amendments for incorporation into their federally approved State Implementation Plan (SIP). The changes were proposed for approval on July 22, 1987 (52 FR 27569). The comment period ended August 22, 1987, and no comments were received. This notice finalizes the approval of the changes, making them part of the federally approved SIP.

DATE: This rule will become effective on January 14, 1988.

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

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

Public Information Reference Unit, Library Systems Branch, US EPA, 401 M Street SW., Washington, DC 20460;

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

FOR FURTHER INFORMATION CONTACT: Bob Peddicord of the Region IV EPA Air Programs Branch, at the above address and the following phone: (404) 347–2864, or (FTS) 257–2864.

SUPPLEMENTARY INFORMATION: On December 17, 1985, the State of North Carolina submitted three revisions to their State Implementation Plan (SIP). The revisions were adopted by the Environmental Management Commission on December 12, 1985, after a public hearing held on September 6, 1985.

The changes to regulations 2D.0501, 2D.0508 and 2D.0521 were made in response to EPA's 1985 midyear audit comments. The audit indicated that the opacity method used in the regulations lacked the proper data reduction and certification techniques. To rectify this the State chose to make their method consistent with the approved federal method, i.e., Method 9.

The original submittals' effective date was one year after the quality assurance plans had been approved for the State's electric utility companies.

This was unacceptable and the amendments to the regulation were returned.

On February 11, 1987, the State of North Carolina resubmitted the amendments with an effective date of August 1, 1987. This was acceptable and EPA proposed to approved the changes to the regulations on July 22, 1987 (52 FR 27569). EPA is now taking final action on these revisions as submitted February 11, 1987. A discussion of the revisions now follows:

2D.501—Compliance With Emission Control Standards.

This change incorporates Method 9 of Appendix A, 40 CFR Part 60 as the opacity method of reference to be used by State inspectors.

2D.0508—Control of Particulates from Pulp and Paper Mills.

The amendment incorporates the procedures and standards of Method 9 into this section. The change is from a five-minute aggregate to a six-minute average without changing the opacity standard for pulp and paper mills. A second change alters the title of the section from "Control of Particulates * * *" to "Control of Emissions from Pulp and Paper Mills."

2D.0521—Control of Visible Emissions.

The revisions in this Section incorporate the procedures and standards of Method 9 so that they may be applied to all sources. The change adopts the six-minute averaging period. The change was made without altering the opacity levels. Modeling to show compliance with the NAAQS was not needed because the standards were not relaxed. The opacity levels in the regulation were converted from a five-minute aggregate basis to a six-minute average basis. This was done using the same method EPA used when switching from an aggregate to an average period.

The present regulation states that opacity may not exceed 40 percent for one class of sources or 20 percent for another class, except for five minutes in any one hour.

The proposed regulation converts the five-minute aggregate levels to comparable levels based on a six-minute average.

In the worst possible case with the present regulation, five consecutive minutes could be at 100 percent opacity, with the sixth minute at 40 percent opacity. The average opacity over the six-minutes would then be $[(100 \times 5) + (40)/6] = 90$ percent opacity.

This 90 percent level is used in the proposed regulation as the maximum allowable level that may never be exceeded by any six-minute average. The proposed regulation allows only one six-minute average over 40 percent in any one hour. During this period the opacity may not exceed the maximum, 90 percent, and such a period may not occur more than four times in a day.

The same was done with other class of sources and an 87 percent maximum six-minute average was calculated. The same exemptions apply to this category as well.

(The 87 percent level could not be read directly because opacities can only be read at 5 percent intervals. However, since the average of several readings could turn out to be any number, and not just numbers at 5 percent intervals, 87 percent is a legitimate level.)

Final Action

EPA is approving the above regulation changes which were submitted to EPA February 11, 1987.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed with the United States Court of Appeals for the appropriate circuit by February 16, 1988. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Intergovernmental relations.

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

Date: December 8, 1987.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

Subpart II—North Carolina

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1770 is amended by adding paragraph (c)(54) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(54) Revisions to the visible emission regulations of Title 15 of the North Carolina Administrative Code (15 NCAC) were submitted February 11, 1987.

(i) Incorporation by reference. (A) Letter to EPA dated February 11, 1987 and amendments to the following North Carolina Administrative Code regulations:

15 NCAC 2D.0501(c)(8), Compliance with Emission Control Standards;

15 NCAC 2D.0508(b), Control of Emissions from Pulp and Paper Mills; and

15 NCAC 2D.0521 (c), (d), and (f), Control of Visible Emissions, which became effective on August 1, 1987.

(ii) Additional material—none.

[FR Doc. 87-28753 Filed 12-14-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

Oversight of the Radio and TV Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast regulations in 47 CFR Parts 73 and 74. Amendments are made to correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for clarity and ease of understanding.

EFFECTIVE DATE: January 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau (202) 632–5414.

SUPPLEMENTARY INFORMATION: In this Order modifications are made to update, delete, clarify or correct regulations in Title 47, Code of Federal Regulations. Adopted November 19, 1987; released December 4, 1987.

Order

In the Matter of Oversight of the Radio and TV Broadcast Rules

Adopted: November 19, 1987.

Released: December 4, 1987.

By the Chief, Mass Media Bureau.

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

(a) Section 73.25 lists the AM frequencies to which Class I and Class II clear channel stations are assigned. In paragraph (a), the Class I–A channel assignments are designated. One frequency, 670 kHz, has inadvertently been dropped from the text. It is replaced here. (See appendix rule item 2).

(b) The Report and Order in Mass Media Bureau Docket 86–144 deleted the reservation of certain commercial FM channels for class A use; and removed § 73.206, Classes of stations and permissible channels, from the Code of Federal Regulations (52 FR 8259, March

17, 1987). Paragraphs (b) and (c) of § 73.206 were transferred to § 73.211, Power and antenna height requirements, and designated as paragraphs (d) and (e) therein.

There is a cross reference to the removed § 73.206 in § 73.506 which is deleted in this Order, and the correct cross references are added.

In addition, the transferred § 73.206 (b) and (c), now paragraphs (d) and (e) in § 73.211, are textually revised to more closely conform to the content of § 73.211, and greater focus is given to "Classes of stations", now in § 73.211, by adding the term to the section title and starting the section with "Classes" as paragraphs (a) (1) and (2). The former paragraphs (a), and (b) and (c) will be redesignated (b), (c) and (d). The new section title will read "Classes of stations; power and antenna height requirements." Paragraph (a) will be designated *Classes of stations;* paragraph (b), which is former (a), will continue to read *Minimum requirements;* paragraph (c), which is former (b), will continue to read *Maximum power and antenna height;* and paragraph (d), which is former (c), will continue to read *Existing stations.* With the change in section title, as described above, the alphabetical index is amended accordingly (See rule appendix items 3, 4 and 10).

(c) Section 73.933, Emergency Broadcast System operation during a National level emergency, contains, in paragraph (b)(12), a cross reference to § 73.52 which is incorrect. Section 73.52 was removed from 47 CFR Part 73 in 1979, and the requirements therein were added to the new § 73.1560, Operating power and mode tolerances. The cross reference is corrected herein. (See appendix item 5).

(d) In the Second Report and Order in Mass Media Bureau Docket 83–523 regarding Instructional TV Fixed Service (50 FR 26736, June 26, 1985) the Commission adopted a new FCC Form 330 to replace FCC Form 330–P. Inadvertently, the form was not listed in § 73.3500 Application and report forms. Via this Order, the eliminated form 330–P is removed from § 73.3500 and the new Form 330 added to it. (See appendix rule item 6).

(e) In the Order adopted June 7, 1979, the Commission revised station identification requirements for remote pickup broadcast stations (47 CFR 74.482) to permit the use of International Morse Code in the event the licensee wanted to use the Code for automatic ID purposes (*See* In the Matter of Reregulation of Radio and TV Broadcasting. 44 FR 36034, June 20, 1979).

The identification rule was revised to specify a modulation tone range similar to that originally proposed for use with similar identification methods used by the land mobile services as 750 Hz ± 10 Hz. However, the actual rule adopted for use by the land mobile services stated that a 1200 Hz tone ± 800 Hz may be used. Corrections are being made in § 74.482 to specify the same modulation tone range for Morse Code identification as that used by the mobile services since both the transmitting equipment and general operating procedures are similar. (See appendix rule item 7).

(f) To provide auxiliary station licensees with maximum allowable operational flexibility, the Commission, in 1986, adopted revisions in Part 74, Subparts D and H. (Report and Order in Mass Media Docket 85–126. 51 FR 4599, February 6, 1986).

Among the many amendments in that proceeding was the transfer of license posting and retention requirements into §§ 73.432 and 73.832, both entitled Licensing requirements and procedures. Concurrently, the old sections, formerly pertaining to license posting, were eliminated. While the Order eliminated the posting sections and the old alphabetical index listings, it failed to show the new section numbers for posting of licenses in the index. Accordingly, the alphabetical index is amended here to show the present sections in which these requirements are found. (See appendix rule items 8 and 9).

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

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

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

5. Therefore, it is ordered, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 of the FCC Rules and Regulations are amended as set forth in the attached Appendix, effective 30 days from the date of publication in the **Federal Register.**

6. For further information on this *Order,* contact Steve Crane, (202) 632–5414, Mass Media Bureau.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

Appendix

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting.

Rule Changes

47 CFR is amended to read as follows:

PART 73—[AMENDED]

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

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

2. Section 73.25 is amended by revising paragraph (a) to read as follows:

§ 73.25 Clear channels; Classes I and II stations.

* * * * *

(a) On each of the following channels, one Class I–A station will be assigned, operating with power of 50 kW: 640, 650, 660, 670, 700, 720, 750, 760, 770, 780, 820, 830, 840, 870, 880, 890, 1020, 1030, 1040, 1100, 1120, 1160, 1180, 1200, and 1210 kHz. In Alaska, these frequencies can be used by Class I–N stations subject to the conditions set forth in § 73.182(a)(1)(iii). In addition, on the channels listed in this paragraph, Class II stations may be assigned as follows:

* * * * *

3. Section 73.211 is amended by adding new paragraphs (a) (1) and (2); redesignating present paragraphs (a), (b) and (c) as paragraphs (b), (c) and (d); and by amending the section heading to read as follows:

§ 73.211 Classes of stations; power and antenna height requirements.

(a) *Classes of station* (1) Stations designated as Class A, B1, and B may be authorized in Zones I and I–A. Classes A, C2, C1, and C may be authorized in Zone II. The facilities for each class of station are listed in paragraphs (b), and (c) and (d) of this section.

(2) The rules applicable to a particular station, including minimum and maximum facility requirements, are determined by its class. Class designation is based on the zone in which the station's transmitter is located, or proposed to be located.

* * * * *

4. Section 73.506 is amended by removing the **Note** following paragraph

(a)(3) and revising paragraph (a)(3) to read as follows:

§ 73.506 Classes of noncommerical educational FM stations and channels.

(a * * *

* * * * *

(3) Noncommercial educational FM stations (NCE–FM) with more than 0.01 kW transmitter power output are classified Class A, B1, B, C2, C1, or C depending on the effective radiated power, antenna height above terrain, and the zone in which the station's transmitter is located, on the same basis as provided in §§ 73.205, 73.210 and 73.211.

* * * * *

5. Section 73.933 is amended by revising paragraph (b)(12) to read as follows:

§ 73.933 Emergency Broadcast System operation during a National level emergency.

* * * * *

(b) * * *

(12) Broadcast stations holding an EBS Authorization are specifically exempt from complying with § 73.1560 (pertaining to maintenance of operating power) while operating under this subpart of the rules.

* * * * *

§ 73.3500 [Amended]

6. Section 73.3500, Application and report forms, is amended by removing:

Form Number and Title

330–P Application for Authority to construct or Make Changes in Instructional TV Fixed and/or Response Station(s) and Low Power Relay Station(s) License.

and by adding:

330 Application for authorization to construct new or make changes in Instructional TV Fixed and/or Response Stations, or to assign or transfer such stations.

PART 74—[AMENDED]

7. Section 74.482 is amended by revising paragraph (d) to read as follows:

§ 74.482 Station identification.

* * * * *

(d) Automatically activated equipment may be used to transmit station identification in International Morse Code, provided that the modulation tone is 1200 Hz±800 Hz, the level of modulation of the identification signal is maintained at 40%±10%, and that the code transmission rate is maintained between 20 and 25 words per minute.

8. The alphabetical index of 47 CFR Part 74 is amended by adding the following index entries under Posting of licensees:

(Following "Experimental Broadcast Stations"	74.165)
Remote pickup broadcast stations	74.432
(Following "LPTV/TV Translators"	74.735)
Low power auxiliary stations	74.832

9. The alphabetical index of 47 CFR Part 74 is amended by adding the following index entries under Licenses, Posting of:

(Following "Experimental Broadcast Stations"	74.165)
Remote pickup broadcast stations	74.432
(Following "LPTV/TV Translators	74.735)
Low power auxiliary stations	74.832

PART 73—[AMENDED]

10. The alphabetical index of 47 CFR Part 73 is amended by adding the following index entry:

(Following "Classes of noncommercial educational FM Stations and Channels"	73.506)
Classes of stations; power and antenna height requirements	73.211

[FR Doc. 87–28479 Filed 12–14–87; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 86–37; FCC 87–360]

Amendment of Rules Restricting the Use of Radio Transmitters With External Frequency Controls

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order amending the rules in Part 90 which governs the Private Land Mobile Radio Services. The rules establish restrictions against the type acceptance, manufacture, sale, and use of certain radio transmitters with external controls that permit simple frequency programming. Transmitters specifically designed for and utilized in aircraft operations under Part 90 are exempted from the new rules. Equipment with external frequency programming controls type accepted prior to January 15, 1988, shall not be manufactured in or imported into the United States after March 15, 1988. Marketing of these transmitters shall not be permitted after March 15, 1989. This action is taken to inhibit willful or unintentional transmissions on unauthorized frequencies, resulting in less interference to authorized operations.

EFFECTIVE DATE: January 15, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 86–37, adopted November 24, 1987 and released December 7, 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, 2100 M Street NW., Washington, DC 20037, telephone (202) 857–3800.

Summary of Report and Order

The Report and Order concerns the technical and operational characteristics of programmable transmitters type accepted for private land mobile radio use. A few years ago it was difficult to change a transmitter's frequency since it usually involved opening the case, installing a new crystal, and retuning the radio. Today, with the introduction of frequency synthesizers, inexpensive radios are available that allow simple frequency programming using front panel controls. Frequencies can now be entered into a radio in a manner similar to entering telephone numbers into a telephone's memory. This feature, while operationally convenient, can result in intentional and unintentional programming of, and more importantly, transmission on frequencies not authorized to the user.

Recognizing that interference to authorized operations, particularly to public-safety radio systems, was increasing because of misuse of such radios, the Commission released a Notice of Proposed Rule Making, 51 FR 6149 (February 20, 1986), that proposed to restrict the availability of such radios in the private land mobile radio services. The comments to the Notice generally agreed with our objective to minimize interference to authorized operations, but indicated that the

methodology and the proposed rules were overly restrictive. The Electronic Industries Association (EIA), therefore, proposed alternative rules that it believed would accomplish the Commission's objective.

To permit public comment on the EIA proposal, the Commission adopted a Further Notice of Proposed Rule Making, 52 FR 21335 (June 5, 1987), incorporating EIA's suggestions. Basically, the EIA proposal would deny type acceptance to certain radio transmitters for Part 90 use if simple programming of frequencies was possible using front panel controls.

The Report and Order adopts essentially the proposals made by EIA. It does not ban the use of programmable radios, but allows them to be type accepted and used if frequencies can be programmed by methods and equipment not normally available to the operator. It exempts from the new rules programmable radios that are specifically manufactured for and used aboard aircraft, as their operations often require in-flight programming to operate on any one of many frequencies. From the effective date of the Report and Order (January 15, 1988), 60 days are allowed to halt production and importation of front panel programmable radios (March 15, 1988). To permit the disposal of existing stock, marketing of such equipment must stop in 14 months (March 15, 1989).

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis follows.

This action is being taken to incorporate into the Commission's rules a restriction against the type acceptance of radio transmitters with external frequency programming capabilities that would permit operation on unauthorized frequencies. The use of such units by those who would willfully or inadvertently select unauthorized frequencies has the likely potential of degrading operations in the private land mobile radio spectrum to the detriment of the public as a whole. Equipment specifically designed for and used in aircraft for emergency operations under Part 90 of the rules would be exempt from the new requirements. This action will now make it more difficult to transmit on unauthorized frequencies, thus minimizing intentional or unintentional interference to authorized operations.

No new requirements will be imposed upon private land mobile radio licensees. Any impact from the adopted rules will be on equipment manufacturers. However, since the new rules are those submitted by the EIA with concurrence from equipment manufacturers, the manufacturers appear to be willing to absorb any resulting impact. The comments received corroborate this position. To the extent manufacturers are affected, we believe our decision here is in the public interest. We have tempered any impact by delaying implementation of the manufacturing and marketing restrictions. Additional time could have been allowed, but for the reasons outlined above, we believe that the time provided is adequate.

Paperwork Reduction Act

The discussion 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 recordkeeping, labeling disclosure or record retention requirements, and will not increase or decrease burden hours imposed upon the public.

Ordering Clause

Accordingly, *it is ordered* that effective January 15, 1988, Part 90 of the Commission's Rules, 47 CFR Part 90, *is amended* as set forth at the end of this document. Authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i) and 303. It is further ordered that this proceeding is *terminated.*

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Programmable transmitters, Type acceptance, Radio.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 STAT., as amended, 1066, 1082; 47 U.S.C. 154, 303.

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 program and transmit on frequencies, other than those programmed by the manufacturer, service or maintenance personnel, using the equipment's external operation controls.

(f) Except as provided in paragraph (g) of this section, transmitters designed to operate above 25 MHz that have been type accepted prior to January 15, 1988, and that permit the operator, by using external controls, to program the transmitter's operating frequencies, shall not be manufactured in, or imported into the United States after March 15, 1988. Marketing of these transmitters shall not be permitted after March 15, 1989.

(g) Transmitters having frequency programming capability and that are designed to operate above 25 MHz are exempt from paragraphs (e) and (f) of this section if the design of such transmitters:

(1) Is such that transmitters with external controls normally available to the operator must be internally modified to place the equipment in the programmable mode. Further, while in the programmable mode, the equipment shall not be capable of transmitting. The procedures for making the modification and altering the frequency program shall not be made available with the operating information normally supplied to the end user of the equipment; or

(2) Requires the tramsitter 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 pesonnel.

(h) The requirements of paragraphs (e), (f), and (g) of this section shall not apply if:

(1) The equipment has been designed and manufactured specifically for aircraft use; and,

(2) The Part 90 type acceptance limits the use of the equipment to operations only under § 90.423.

3. In § 90.427, the existing text is now designated as paragraph (a), and a new paragraph (b) is added as follows:

§ 90.427 Precautions against unauthorized operations.

(a) * * *

(b) Except for frequencies used in accordance with § 90.417, 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. 87-28478 Filed 12-14-87; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

Distinctive Symbols for the Federal Aid In Wildlife Restoration and Federal Aid in Sport Fish Restoration Grants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes distinctive symbols to identify projects completed using funds derived by authority of the Federal Aid In Wildlife Restoration Act and the Federal Aid In Sport Fish Restoration Act and offers to manufacturers an opportunity to use the symbol(s) to mark items on which excise taxes and import duties are collected to fund fish and wildlife restoration projects. This rule gives public notice of the intent of the U.S. Fish and Wildlife Service to use and protect the symbols from unauthorized uses under protection afforded by section 701 of Title 18 of the United States Code.

This rule also authorizes recipients and sub-recipients of Federal aid grants to use the symbols on project accomplishments and establishes a process by which others may be authorized to display the symbols on certain items.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Conley Moffett, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone 703/235-1526.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The basis for determining that the rule does not constitute a major rule is that it will result in an annual gross effect on the economy of less than $100 million dollars; is not likely to increase costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; is not likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets; and that neither the Department of the Interior nor the Director of the Office of Management and Budget has designated the rule as major. The rule will apply to small businesses, small organizations or small governmental jurisdictions only if such entities wish to be authorized to use the symbols protected by this rule.

Information Collection

No information collection requirements is imposed by this rule and therefore it does not require an OMB clearance number required for certain rules by the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

Environmental Effects

The Department of the Interior finds this rule to be a regulatory action which licenses use of declared program symbols to grantees and other parties. This action has been found to be categorically excluded from the National Environmental Policy Act of 1969 process because the action would have no significant effect on the quality of the human environment, and would not involve unresolved conflicts concerning alternative uses of available resources.

Public Comments

Notice of the proposal of this rule was published in the **Federal Register** on July 15, 1987 (52 FR 26660-61), and comments were invited for a 30-day period ending August 14, 1987. Four written comments were received. Two were from directors of State fish and wildlife management agencies and two were from major manufacturers of fishing equipment. All supported the rule without reservation. One telephone call was received expressing the opinion that the words U.S. Fish and Wildlife Service should be on the symbols, that the symbols should incorporate some references to handicapped and minority persons, and that a disclaimer of liability relating to program funded projects be included. These suggestions were not adopted because the symbols were not intended to be an expression of policy or to establish another symbol for the U.S. Fish and Wildlife Service. The symbol is intended to be a simple, easily recognized design that recognizes the contributions of the sport hunters, sport anglers, and recreational shooters and boaters; manufacturers, importers and businesses associated with sporting equipment; and the State and territorial fish and wildlife management agencies.

Authorship Statement

The principal author of this proposal is Thomas W. Taylor, Division of Federal Aid, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 80

Fish, Grant programs, Natural resources, Grants administration, Wildlife.

Accordingly, 50 CFR Part 80 is amended as follows:

PART 80—ADMINISTRATIVE REQUIREMENTS, FEDERAL AID IN FISH AND FEDERAL AID IN WILDLIFE RESTORATION ACTS

1. The authority citation for Part 80 is revised to read as follows:

Authority: 16 U.S.C. 777i; 16 U.S.C. 669i; 18 U.S.C. 701.

2. A new § 80.26 is added to read as follows:

§ 80.26 Symbols.

Distinctive symbols are prescribed to identify projects funded by the Federal Aid in Wildlife Restoration Act and the Federal Aid in Sport Fish Restoration Act and to identify items on which taxes and duties have been collected to support the respective Acts.

(a) All recipients identified in § 80.2 of this part are authorized to display the appropriate symbol(s) on areas, such as wildlife management areas and fishing access facilities, acquired, developed, operated or maintained by these grants, or on printed material or other visual representations relating to project accomplishments. Recipients may require sub-recipients to display the symbol(s) and may authorize use by others, or for purposes other than as stated above, only with approval of the Director, U.S. Fish and Wildlife Service.

(b) Other persons or organizations may use the symbol(s) for purposes related to the Federal Aid programs as authorized by the Director, U.S. Fish and Wildlife Service. Authorization for the use of the symbol(s) shall be by written agreement executed by the Service and the user. To obtain authorization a written request stating the specific use and items to which the symbol(s) will be applied must be submitted to Director, U.S. Fish and Wildlife Service, Washington, DC 20240.

(c) The user of the symbol(s) shall indemnify and defend the United States and hold it harmless from any claims, suits, losses and damages arising out of any allegedly unauthorized use of any

patent, process, idea, method or device by the user in connection with its use of the symbol(s), or any other alleged action of the user and also from any claims, suits, losses and damages arising out of alleged defects in the articles or services with which the symbol(s) is associated.

(d) The appearance of the symbol(s) on projects or items is to indicate that the manufacturer of the product is taxed by, and that the State project was funded through, the respective Act(s). The U.S. Fish and Wildlife Service and the Department of the Interior make no representation or endorsement whatsoever by the display of the symbol(s) as to the quality, utility, suitability or safeness of any product, service or project with which the symbol(s) is associated.

(e) Neither symbol may be used in any other manner except as authorized by the Director, U.S. Fish and Wildlife Service. Unauthorized use of the symbol(s) will constitute a violation of Section 701 of Title 18 of the United States Code and subject the violator to possible fines and imprisonment as set forth therein.

(f) The symbol pertaining to the Federal Aid in Wildlife Restoration Act is depicted below.

(g) The symbol pertaining to Federal Aid in Sport Fish Restoration Act is depicted below.

(h) The symbol pertaining to the Federal Aid in Wildlife Restoration Act and the Federal Aid in Sport Fish Restoration Act when used in combination is depicted below.

Date: October 19, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-28769 Filed 12-14-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 70751-7257]

Western Pacific Crustacean Fisheries

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 5 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). Implementation of the amendment will establish a size limit for slipper lobster, require escape vents for all lobster traps, require fishermen to release egg-bearing female slipper lobsters, and change existing permit and reporting requirements. The amendment also presents an updated estimate of maximum sustainable yield of spiny lobster based upon knowledge gained from the fishery since 1983, and changes the name of the FMP. The intended effect of this action is to maintain the optimum yield of the spiny and slipper lobster resources of the Northwestern Hawaiian Islands (NWHI).

EFFECTIVE DATE: January 14, 1988.

ADDRESS: Copies of the amendment are available from Kitty B. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813 (808-523-1368).

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, 2570 Dole Street, P.O. Box 3830, Honolulu, HI 96812 (808-955-8831).

SUPPLEMENTARY INFORMATION: When the FMP was implemented (February 7, 1983, 48 FR 5560), only a directed fishery for spiny lobster (*Panulirus marginatus*) existed in the NWHI. Since then, a directed fishery for the common slipper lobster (*Scyllarides squammosus*) has developed without any conservation measures. The total catch of slipper lobster rose from 25,610 animals in 1983 to over 1,200,000 animals in 1986, almost matching the total harvest of spiny lobster for both 1985 and 1986, resulting in a multispecies lobster fishery. This catch level is not sustainable. The best estimate of maximum sustainable yield (MSY) is 600,000 slipper lobsters, annually.

At its 57th meeting in June 1987, the Western Pacific Fishery Management Council (Council) adopted a minimum tail width of 5.6 cm for slipper lobster and a system of standardized escape vents for lobster traps. The 5.6 cm tail width is expected to protect the reproductive capacity of the slipper lobster resource and allow the MSY of 600,000 animals to be achieved. The escape vents will minimize the mortality of undersized spiny and slipper lobster that results from handling, exposure to sunlight, and predation when the animals are removed from their habitat and then returned to the sea. Reducing the mortality of undersized lobster will help to maintain the reproductive stock of the resource.

The Council also adopted the requirement that all egg-bearing lobsters

be released. In addition, the daily lobster catch report was amended to add species of slipper lobster and bycatch and to delete requests for duplicative information; also, reporting requirements were modified to add to the permit application the price paid for a vessel, its date of purchase, and other information concerning the fishing vessels to better depict capital investment. The requirement for an annual processor's report is removed because virtually all of the lobster catch is processed at sea, and the current Trip Processing and Sales Report will be replaced by the Lobster Report for Transshipment and Sales. The Lobster Report for Transshipment and Sales obtains the necessary information to monitor shipment and sales of lobsters. The amount transshipped and total sales of each species has been added to this form to indicate if the actual sale was made to a buyer outside of Hawaii or locally. This report is changed from the current, Trip Processing and Sales Report, to include slipper lobster, octopus, and other species.

The regulatory text is being changed so that the phrase, "fishery conservation zone" and its abbreviation "(FCZ)" are replaced by the phrase, "exclusive economic zone" and its abbreviation "(EEZ)". Certain portions of the regulatory text now apply to both spiny and slipper lobsters, so that the word "spiny" is being removed from appropriate sections; thus leaving the general term "lobsters" by itself. Some sections of the regulatory text purposefully will retain the phrase, "spiny lobster". Finally, the name of the FMP has been changed to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region to reflect the broader scope of management.

A proposed rule was published in the Federal Register on July 27, 1987 (52 FR 28028). Subsequently, Amendment 5 was disapproved and withdrawn from public review because no determination of optimum yield and total allowable level of foreign fishing was provided as required by the Magnuson Fishery Conservation and Management Act. The Council corrected the document and resubmitted the amendment on September 22, 1987. The public comment period for the proposed rule was reopened on October 16, 1987 (52 FR 38490). The public comment period ended on November 2, 1987.

Changes From the Proposed Rule in the Final Rule

NOAA has made changes from the proposed rule in the final rule. Some material was inadvertently omitted from the proposed rule; other changes are for further clarification of proposed management measures:

(1) In § 681.2, revised definitions of *Closed area* and *U.S.-harvested lobster* are added to the final rule to highlight the change in terminology from FCZ to EEA.

(2) In § 681.4, paragraph (b)(2)(ix) is changed from "the processing capacity of the vessel" in the proposed rule to "the date of purchase of the vessel" in the final rule.

(3) In § 681.4, paragraph (b)(2)(xvi) is deleted and redesignated, "Fuel capacity".

(4) In § 681.4, paragraph (b)(2)(xvii) is revised by deleting the word "other".

(5) In § 681.4, paragraph (b)(2)(xxi) is added to cross-reference minor additional items proposed within the information on fishing permit applications.

(6) In § 681.5, paragraphs (b)(2) (iv), (v), and (vi) have been revised to omit the proposed rule's requirement to specify separate species of slipper lobsters.

(7) In § 681.5, paragraph (b)(2)(ix) is added in the final rule.

(8) In § 681.5, paragraph (b)(2)(x) is added to cross-reference minor additions proposed within the information on daily lobster catch reports and lobster reports for transshipment and sales.

(9) In § 681.24, paragraph (c)(1) is revised to clarify that the centers of adjacent escape vents should be "at least" 82 mm apart.

(10) In § 681.24, paragraph (d) provides for a prohibition related to lobster trap management measures and is placed in the final rule. It was inadvertantly omitted from the proposed rule.

(11) The proposed rule did not list several paragraphs of various sections in which the Council intended to remove the word "spiny". Paragraphs not listed in the proposed rule which are listed in the final rule include: Sections 681.4(k), 681.5(a), 681.5(a)(1), 681.5(a)(2), 681.5(a)(4), 681.5(b), 681.5(c), 681.7(a)(1), 681.7(b)(1), 681.10(b), and 681.27(d).

Public Comments Received

Several comments were received on the amendment.

Comments and responses are listed below:

Comment 1: Justification for the size limit and the escape vents is wea:, for example, the slipper lobster catch per unit of effort (CPUE) for 1985 and 1986 remains higher than 1983 and 1984.

Response: The present situation with slipper lobster is the same as that faced with spiny lobster when the plan was implemented. A size limit for slipper lobster is needed because the MSY is estimated to be 600,000 animals, while the harvest has been over 1,000,000 animals in the last two years. Establishing a size limit will ensure that the MSY will not be exceeded, thereby protecting the long-term yield of the resource.

Lobster fishermen were only beginning to direct effort at the slipper lobster resource in the latter part of 1984, with significant harvest occurring for the first time in 1985; therefore, a higher CPUE in 1985 and 1986 than in 1984 is expected because the resource was unexploited in 1984. Catch data for the period of January through August of 1987 indicates a decline in the slipper lobster catch apart from other factors such as total effort and market conditions. The CPUE for all spiny lobster has increased 5 percent during this period compared to January through August 1986, while the CPUE for slipper lobster has declined 52 percent.

Comment 2: There is only limited evidence provided in the FMP that mortality rates of captured and released lobster justify the need for installing escape vents in traps.

Response: The mortality resulting from handling lobsters and returning them to the sea is believed to be significant. This is supported by many studies in other lobster fisheries. Experiments also were conducted in the NWHI on predation of spiny lobster at Maro Reef Midway Island, and Pearl and Hermes Reef. During the experiment, white uluas (*Caranx ignobilis*) were found to be voracious consumers of lobster returned to the sea from a fishing vessel. Actual mortality of released lobster, and the relation of the mortality to productivity is not known; however, there is evidence at Maro Reef and Necker Island that the CPUE for sublegal spiny lobsters is declining, and that it is having an effect on the CPUE for legal spiny lobster.

Classification

The Director, Southwest Region, National Marine Fisheries Service determined that this FMP is necessary for the conservation and management of the crustacean fishery of the western Pacific region and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for this amendment. The Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. A copy of the amendment

containing the EA may be obtained from the Council at the above address.

The Assistant Secretary of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cummulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investments, productivity, innovation, or competitiveness of U.S. based enterprises are anticipated. A summary of this determination appears in the proposed rule and is based on the regulatory impact review (RIR) which is included in the Amendment.

In the absence of regulation action, the slipper lobster resource and catches are expected to decline rapidly. Catches of 1,238,000 lobsters in 1986 were double the estimated 600,000 lobster maximum sustainable yield level. If the current level of effort continues or increases as projected, the viability of the fishery could be threatened in a resonabley short period of time. Implementation of the proposed 5.6 cm minimum size limit for slipper lobster is expected to increase spawning and, therefore, catches and revenue relative to the no action alternative, and will more than offset an estimated $413,000 reduction in revenue during the first year after implementation.

The use of escape vents is expected to substantially reduce sublegal mortality of both spiny and slipper lobster, as well as increasing the efficiency of traps in the retention of legal spiny lobsters. Studies indicate that about 20 percent of sublegal lobsters die upon release. Assuming that 80 percent of those lobsters survive through the use of escape vents, benefits to the spiny lobster fishery of about $248,000 in higher revenue are expected in the first year and in subsequent years. In addition, revenue in the slipper lobster fishery is expected to increase by about $85,920 based on reductions in sublegal mortality similar to those for spiny lobsters. Additional benefits from the preservation of the reproductive capacity of the resources will be gained through the use of escape vents.

Benefits from escape vents will also accrue from an increase in the efficiency of traps in retaining legal size spiny lobsters. The escapement of sublegal spiny lobsters and less crowding in the trap is expected to increase retention of legal spiny lobsters by about 10 percent. This gain will be offset by a 10 percent reduction in the retention of legal slipper lobsters, because escape vents are not as effective in retaining legal slipper lobsters compared to spiny lobsters due to a difference in body morphology. The total number of legal lobsters retained should be unchanged in the first year of implementation of Amendment 5 compared to landings of the previous year; but, the increase in the more valuable spiny lobsters will result in a net gain in value to the industry of about $184,000.

Implementing a requirement for escape vents in traps is estimated to be a one-time cost of about $48,000. This is based on a cost for materials of $2.50 per trap (for 2 escape panels) in each of 19,200 traps in the fishery (16 vessels × 1200 traps/vessel). Additional labor costs for installation of the vents are not expected because the rule would become effective in early January when the vessels are tied up for the season and are completing normal maintenance activities. There would be no loss of fishing time or revenue to comply with the regulation; therefore, no hiring of additionsl crew would be required to complete the effort. If some vessels do not complete the installation during the off season, a cost per vessel of about $5,000 might be incurred based on a 5 crewmen working for 5 days at about $200 per crewman per day.

The requirement that fishermen release egg bearing females will greatly add to the protection of the resource. Allowing female lobsters to complete the spawning cycle will contribute significantly to the reproduction capacity of the stock and should result in higher abundance, catches and revenues in the long term. Minor costs associated with sorting and returning lobsters to the sea may be incurred, as well as a possible small reduction in revenue stemming from a 1 to 2 month delay in the capture of those released lobsters.

The revised reporting requirements and additional information required for permits will not significantly change the burden hours while providing essential data necessary for the management of the fishery. The annual reporting burden as a combined total for all fishermen is estimated to be 4 hours for permits and 54 hours for reporting transshipment and sales data.

The General Counsel of the Department of Commerce certified to the Cheif Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small businesses. A summary of this determination appears in the proposed rule.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information requirements have been submitted to OMB for review under section 3504(h) of the Act.

The Council has determined, and the appropriate State and territorial governments offices have found, that the measures established in the FMP amendment are consistent to the maximum extent practicable with the approved coastal zone management programs of Hawaii and the territories of American Samoa and Guam.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Dated: December 10, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 681 is proposed to be amended as follows:

PART 681—[AMENDED]

1. The authority citation for 50 CFR Part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The heading of Part 681 is revised to read as follows:

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

3. § 681.1 is revised to read as follows:

§ 681.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP) developed by the Western Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

(b) These regulations govern commercial fishing for spiny and slipper lobsters by fishing vessels of the United States within the U.S. exclusive economic zone (EEZ) seaward of American Samoa, Guam, and Hawaii. The management measures specified in Subpart B apply only in the EEZ seaward of the Northwestern Hawaiian Islands (Permit Area 1). The management measures specified in Subpart C apply only in the EEZ seaward of the main Hawaiian Islands (Permit Area 2).

4. In § 681.2, the definition for *"Authorized Officer"*, paragraph (b) is revised; the definitions for *"Carapace length"*, *"Closed area"*, *"Commercial fishing"* and *"U.S. harvested spiny lobster"* are revised; the definition of *"Tail width"* is removed and new

definitions for *"Tail width of slipper lobster"* and *"Tail width of spiny lobster"* are added in its place; Figure 2—TAIL WIDTH" is redesignated "Figure 2—TAIL WIDTH OF SPINY LOBSTER" to appear after the definition for "Tail Width of Spiny Lobster," and a new "Figure"—TAIL WIDTH OF SLIPPER LOBSTER" is added, to read as follows:

§ 681.2 Definitions.

* * * * *

Authorized officer means:

* * * * *

(b) Any special agent of the National Marine Fisheries Service;

* * * * *

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1).

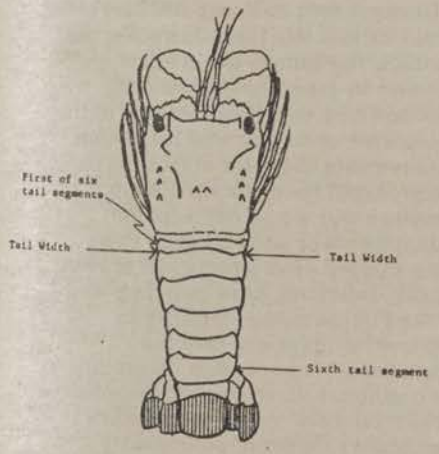
Closed area means an area of the EEZ that is closed to fishing for lobster.

Commercial fishing means fishing with the intent to sell all or part of the catch of lobsters. All lobster fishing in the Northwestern Hawaiian Islands (Permit Area 1) is considered commercial fishing.

* * * * *

Tail width of slipper lobster means the straight line distance across the tail measured as the widest spot between the first and second tail segments. (See Figure 2).

FIGURE 2. TAIL WIDTH OF SLIPPER LOBSTER



Tail width of spiny lobster means the straight line distance across the tail measured at the widest spot between the first and second abdominal spines (see Figure 3).

* * * * *

U.S.-harvested lobster means lobster caught, taken, or harvested by vessels of the United States within the Management Area.

* * * * *

5. In § 681.4, paragraphs (b)(2) (ix) through (xiv) are revised and new paragraphs (b)(2) (xv) through (xxi) are added to read as follows:

§ 681.4 Permits.

* * * * *

(b) * * *

(2) * * *

(ix) Date of purchase of the vessel;

(x) The gross registered tons of the vessel;

(xi) The registered length of the vessel;

(xii) The purchase price of the vessel;

(xiii) The age of the vessel;

(xiv) The vessel hold capacity;

(xv) The refrigeration types and capacity;

(xvi) Fuel capacity;

(xvii) Types and amounts of fishing gear employed;

(xviii) The permit area in which the applicant proposes to fish;

(xix) Whether the application is for a new permit or a renewal;

(xx) The number and expiration date of any prior permit for the vessel issued under this part; and

(xxi) Any other fishery management data requested by the Center Director.

* * * * *

6. In § 681.5, paragraphs (b)(1) (iv) and (v), and (d) are removed; and paragraphs (b)(1) introductory text, (i), (ii) and (iii) and (b)(2) are revised, to read as follows:

§ 681.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) Vessel information—

(i) Name of vessel;

(ii) Permit number of vessel; and

(iii) Size of crew.

(2) Fishing information—

(i) Location of lobster catch by statistical area as depicted in the NMFS Daily Lobster Catch Report form;

(ii) Date and time of trap deployment and number of traps deployed;

(iii) Date and time of trap retrieval and number of traps retrieved;

(iv) Number and species of legal spiny lobsters and number of legal slipper lobsters caught per trap deployment;

(v) Number and species of sublegal spiny lobsters and number of sublegal slipper lobsters caught per trap deployment;

(vi) Number and species of berried female spiny lobsters and number of berried female slipper lobsters caught per trap deployment;

(vii) Number of Kona crabs per trap deployment;

(viii) Number of octopus and other species per trap deployment;

(ix) Transshipment and sales data; and

(x) Any other fishery management data requested by the Center Director.

* * * * *

7. Section 681.21 is revised to read as follows:

§ 681.21 Size restrictions.

Only spiny lobsters with a tail width of 5.0 cm or greater and slipper lobsters with a tail width of 5.6 cm or greater may be retained.

8. In § 681.24, new paragraphs (c) and (d) are added to read as follows:

§ 681.24 Gear restrictions.

* * * * *

(c) All lobster traps must have a minimum of two escape vent panels meeting the following requirements:

(1) Panels must have at least four circular holes no smaller than 67 millimeters (mm) in diameter with centers at least 82 mm apart.

(2) The lowest part of any opening in an escape vent panel must not be more than 85 mm above the floor of the trap.

(d) It is unlawful to have on board a vessel fishing for or in possession of lobster, any trap that does not meet the requirements of paragraphs (a), (b), and (c) of this section.

§§ 681.4, 681.20, 681.23, 681.25, and 681.30 [Amended]

9. In addition to the amendments set forth above, the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places: §§ 681.4(k); 681.20; 681.23(b); 681.25; and 681.30.

§§ 681.4, 681.5, 681.7, 681.10, 681.20, 681.22, 681.24, 681.25, 681.26, 681.27, 681.28, 681.30, 681.32, 681.34, and 681.35 [Amended]

10. In addition to the amendments set forth above, the word "spiny" is removed wherever it appears in the following places: §§ 681.4(a)(1), 681.4(k), 681.5(a), 681.5(a)(1), 681.5(a)(2), 681.5(a)(4), 681.5(b), 681.5(c), 681.7(a)(1), 681.7(a)(7), 681.7(a)(12), 681.7(b)(1), 681.7(b)(2), 681.7(b)(3), 681.7(b)(4), 681.7(c)(1), 681.7(c)(2), 681.7(c)(3), 681.7(c)(4), 681.10(b), 681.20, 681.22, 681.24(a), 681.24(b), 681.25, 681.26(a), 681.27(a), 681.27(b), 681.27(d), 681.28(a), 681.30, 681.32, 681.34, and 681.35.

[FR Doc. 87-28770 Filed 12-10-87; 5:07 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 240
Tuesday, December 15, 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 AGRICULTURE

7 CFR Part 966

Tomatoes Grown in Florida and Tomatoes Imported Into the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would extend the effective period of the handling regulation from June 15 to June 30, increase the minimum grade for fresh market shipments of 6×7 size (small) tomatoes outside the regulated area from U.S. No. 3 to U.S. No. 2, and establish a minimum grade requirement for 6×7 size tomatoes of U.S. No. 2 for shipments within the regulated area. The changes would apply to both domestic shipments of tomatoes under the marketing order and to imported tomatoes. This action is intended to prevent tomatoes of undesirable size and quality from being distributed in fresh market channels.

DATE: Comments due January 4, 1988.

ADDRESS: Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. Comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephne (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 966 (7 CFR Part 966), as amended, regulating the handling of tomatoes grown in Florida. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on 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 Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 103 handlers of tomatoes subject to regulation under the Florida Tomato Marketing Order, and approximately 180 tomato producers in Florida.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Florida tomatoes may be classified as small entities.

The 1986–87 annual report of the Florida Tomato Committee indicated that total shipments for the 1986–87 season were 56,366,486 25-lb. equivalents, compared to 52,421,792 for the 1985–86 season and 52,471,073 for 1984–85. The average yield was approximately 1,107 25-lb. equivalents per acre compared to 1,150 the previous season and 1,173 in 1984–85. The total acres harvested were 5,387 more than the 45,530 acres harvested last season, and shipments were up 3,944,694 packages. Available forecasts predict that adequate tomato supplies will be available in the fall, winter, and spring of the 1987–88 season. Tomato production in the Florida marketing order area is expected to be at least equal to the 56.4 million 25-lb. equivalents shipped in 1986–87.

For mature green and vince ripe 6×7 size tomatoes grading U.S. No. 3 total shipments for 1986–87 were 1,787,153 million 25–lb. equivalents or approximately three percent of the total shipments of 52,366,486 25-lb. equivalents for all sizes and grades. Mature green and vine ripe 6×7 size tomatoes grading U.S. No. 3 were valued at $6,022,910.25 or 1.4 percent of the total sales dollars of $410,124,645 for all tomato grades and sizes shipped.

The proposed rule would change the handling regulation specified at 7 CFR in 966.323 (49 FR 47189 December 3, 1984; 51 FR 41074 November 13, 1986; 52 FR 46345 December 7, 1987) to extend the handling regulation effective period, increase the minimum grade for fresh market shipments of 6×7 size tomatoes outside the regulated area, and establish a minimum grade for shipments of 6×7 size tomatoes within ther egulated area.

Changes would be made in the introductory text and in §§ 966.323(a)(1) and 966.323(f) to help maintain the quality of Florida tomato shipments and tomato imports by extending the handling regulation effective period and increasing and extending the coverage of the minimum grade requirement. This proposal is being issued pursuant to § 966.52 of the order.

Growers are producing and harvesting tomatoes into late June. Currently, the handling regulations are in effect October 10–June 15. After June 15, handlers may ship tomatoes free of the grade, size, container, and inspection requirements under the marketing order. According to the committee, many tomatoes that would not meet the requirements of the marketing order were shipped after June 15 last season. Quality standards have been imposed on the Florida tomato industry to improve its image and give the consumer a better product. According to the committee, to stop regulations before all harvesting is complete and allow significant supplies of poor quality tomatoes to be shipped to fresh market channels at the end of a season defates the purpose of the regulations. Members of the committee believe extending the effective period to June 30 is needed to maintain the quality of late season shipments of tomatoes by requiring the tomatoes to meet the applicable grade,

size, and quality requirements established under the order.

Marketing Order No. 966 defines the "regulated area" to include most of the State of Florida. Tomatoes shipped to points outside the regulated area are currently required to be at least U.S. No. 3 grade and 2$\frac{8}{32}$ inches in diameter, and be sized and packed in accordance with three classifications. The smallest of the three designated sizes is the 6×7, which includes tomatoes ranging from 2$\frac{8}{32}$ to 2$\frac{15}{32}$ inches in diameter. The committee has recommended that the minimum grade for the 6×7 size be increased to U.S. No. 2.

It has also been recommended that this requirement be made applicable to fresh market shipments within the regulated area. Such shipments are now subject to size and inspection requirements.

This revision in the grade requirements is expected to prevent small, low-quality tomatoes from reaching the marketplace. This action is intended to improve the overall quality of tomatoes in fresh marketing channels.

Tomatoes grading U.S. No. 3 must be well developed, may be misshapen, and cannot be seriously damaged by sunscald. Tomatoes grading U.S. No. 2 have to be well developed, reasonably well-formed, and free from sunscald. Sunscald is an injury which usually occurs on the sides or upper half of the tomato, but may occur wherever the rays of the sun strike most directly. The first symptom is a whitish, shiny, blistered area. The affected tissue gradually collapses, forming a slight sunken area that may become a pale yellow color and will often wrinkle or shrivel as the tomato ripens. This detracts from the overall appearance and quality of the tomato.

The difference between tomatoes grading U.S. No. 3 and U.S. No. 2 with regard to development, shape, and sunscald is especially noticeable in smaller sized tomatoes.

Preliminary findings of a research study being conducted by Dr. John VanSickle, Marketing Economist, Food & Resources Economics Department, College of Agriculture, University of Florida, indicate that 6×7 U.S. No. 3 grade tomatoes are generally of very poor quality and are not desired by the consumer. Moreover, the data shows that when tomatoes of this quality are offered for sale to consumers they have an adverse affect on the demand and sale of other Florida tomatoes.

While this regulation would extend the effective period of the handling regulations, and increase and extend the applicability of the minimum grade requirement, exemptions to the handling regulation would continue to be available. For example, several varieties or types of tomatoes are completely exempt and handlers may ship up to 60 pounds of tomatoes per day without regard to the requirements of the handling regulation. Shipments of tomatoes for canning, experimental purposes, relief, charity, or export are also exempt. Importers could also ship to 60 pounds of tomatoes per day exempt from the import regulation.

Quality assurance is very important to the Florida tomato industry both within and outside of the State. Providing the public with acceptable quality produce which is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. To the extent that this action increases the quality of tomatoes in the marketplace, it would also be of benefit to both Florida tomato growers and handlers.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Because this proposal would extend the effective period of the handling regulation, and establish a higher minimum grade requirement for domestic tomato shipments, this change would be applicable to imported tomatoes during the period that the domestic handling requirements are in effect.

Florida tomatoes must be packed in accordance with three specified size designations, and tomatoes falling into different size classifications may not be commingled in a single container. These pack restrictions do not apply to imported tomatoes. Imported tomatoes are generally sized in accordance with the U.S. Standards for Grades of Tomatoes (§§ 51.1855–51.1877). Under these standards, there are specific diameter ranges for different size classifications, e.g., medium size tomatoes are classified as tomatoes which range from 2$\frac{9}{32}$ to 2$\frac{17}{32}$ inches in diameter and large size tomatoes are classified as tomatoes which range from 2$\frac{17}{32}$ to 2$\frac{28}{32}$ (§ 51.1859 of the standards). In addition, different sizes of imported tomatoes (e.g., medium and large) may be commingled in the same container. In this instance, a lot of imported tomatoes may range from the smallest size of medium tomatoes to the largest size of large tomatoes, i.e., 2$\frac{9}{32}$ to 2$\frac{28}{32}$ inches in diameter. Under these circumstances, it would be impracticable to require imported tomatoes to meet the same quality requirements proposed for Florida 6×7 size tomatoes which range from 2$\frac{8}{32}$ inches to 2$\frac{15}{32}$ inches in diameter because of the variation in the way imported tomatoes are sized. Thus, a comparable quality requirement is being proposed for imported tomatoes. The upper range of a medium tomato in the U.S. Standards for tomatoes is 2$\frac{17}{32}$ inches in diameter. Since most imported tomatoes are sized in accordance with such standards and medium tomatoes under the standards are comparable to Florida 6×7 tomatoes, it is proposed that imported tomatoes with a minimum diameter of 2$\frac{17}{32}$ inches or larger be required to grade at least U.S. No. 3. All other imported tomatoes (those ranging from 2$\frac{8}{32}$ inches to 2$\frac{15}{32}$ inches in diameter) would be required to be U.S. No. 2 or better. Moreover, the current undersize tolerance would remain in effect. That would mean any lot with more than 10 percent of its tomatoes less than 2$\frac{17}{32}$ inches in diameter would have to grade at least U.S. No. 2. A conforming change to § 966.323(f) *Applicability to imports* will be made to reflect the proposed change in the effective period of the import regulation and the increase in the minimum grade requirement. No change is needed in the import regulation for tomatoes which appears in Part 980 (7 CFR 980.212; 42 FR 55192, October 4, 1977).

A 20-day comment period is deemed appropriate because the harvest and shipment of 1987–88 season Florida tomatoes has begun. If any change is adopted as a result of this rulemaking, a final rule would become effective as soon as practicable. Until such time, the existing handling requirements that appear in § 966.323 will remain in effect. All written comments timely received in response to this request for comments will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes, Florida.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 966 be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 966, Tomatoes Grown in Florida continues to read as follows:

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

2. Section 966.323 is amended by revising the introductory text, paragraphs (a)(1) and (f) to read as follows:

§ 966.323 Handling regulation.

During the effective date of this rule, through June 30, 1988, for the 1987–88 season and from October 10 through June 30 each season thereafter, except as provided in paragraphs (b) and (d) of this section, no person shall handle any lot of tomatoes for shipment outside the regulated area unless it meets the requirements of paragraph (a) of this section and no person shall handle any lot of tomatoes for shipment within the regulated area unless it meets the requirements of paragraphs (a)(1), (a)(2)(i), and (a)(4) of this section.

(a) *Grade, size, container, and inspection requirements.*—(1) *Grade.* Tomatoes shipped outside the regulated area shall be graded and meet the requirements for U.S. No. 1, U.S. Combination, U.S. No. 2, or U.S. No. 3 of the U.S. Standards for Grades of Fresh Tomatoes, except that all shipments of size 6×7 tomatoes must grade at least U.S. No. 2 or better. * * *

* * * * *

(f) *Applicability to imports.* Under section 8e of the Act and § 980.212 "Import regulations" (7 CFR 980.212) tomatoes imported during the effective date of this rule, through June 30, 1988, during the 1987–88 season and from October 10 through June 30 each season thereafter shall be at least 2$^{8}/_{32}$ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter. All lots with a minimum diameter of 2$^{17}/_{32}$ inches and larger shall be at least U.S. No. 3 grade. All other tomatoes shall be at least U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2$^{17}/_{32}$ inches in diameter shall grade at least U.S. No. 2.

Dated: December 9, 1987.

Robert C. Keeney,

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

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 62

Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing a rule to establish procedures and criteria for fulfilling its responsibilities associated with acting on requests by low-level radioactive waste (LLW) generators, or State officials on behalf of those generators, for emergency access to operating, non-Federal or regional, low-level radioactive waste disposal facilities under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985. Grants of emergency access may be necessary if a generator of low-level radioactive waste is denied access to operating low-level radioactive waste disposal facilities, and the lack of access results in a serious and immediate threat to the public health and safety or the common defense and security.

DATES: Comments should be submitted on or before February 12, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

ADDRESS: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received and the regulatory analysis may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Janet Lambert, Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443–7783.

SUPPLEMENTARY INFORMATION:

I. Background

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99–240, January 15, 1986), "the Act" directs the States to develop their own LLW disposal facilities or to form Compacts and cooperate in the development of regional LLW disposal facilities so that the new facilities will be available by January 1, 1993.

The Act establishes procedures and milestones for the selection and development of the LLW disposal facilities. The Act also establishes a system of incentives for meeting the milestones, and penalties for failing to meet them, which is intended to assure steady progress toward new facility development.

The major incentive offered by the Act is that the States and regional Compacts which meet the milestones will be allowed to continue to use the existing disposal facilities until their own facilities are available, no later than January 1, 1993. If unsited States or Compact regions fail to meet key milestones in the Act, the States or Compact Commissions with operating non-Federal or regional LLW disposal facilities are authorized to demand additional fees for wastes accepted for disposal, and ultimately to deny the LLW generators in the delinquent State or Compact region further access to their facilities.

Section 6 of the Act provides that the Nuclear Regulatory Commission (NRC) can grant a generator "emergency access" to non-Federal or regional low-level radioactive waste (LLW) disposal facilities if access to those facilities has been denied and access is necessary in order to eliminate an immediate and serious threat to the public health and safety or the common defense and security. The Act also requires that a determination be made as to whether the threat can be mitigated by any alternative consistent with the public health and safety, including ceasing the activities that generate the waste. NRC must be able, with the information provided by the requestor, to make both determinations prior to granting emergency access. The purpose of this proposed regulation is to set forth the procedures and criteria that will be used by the Commission to determine if emergency access to a LLW disposal facility should be granted.

II. Legislative Requirements

In addition to directing the NRC to grant emergency access as discussed in the Background section, the Act further directs NRC to designate the operating LLW disposal facility or facilities where the waste will be sent for disposal if NRC determines that the circumstances warrant a grant of emergency access. NRC is required to notify the Governor (or chief executive officer) of the State in which the waste was generated that emergency access has been granted, and to notify the State and Compact which will be receiving the waste that emergency access to their LLW disposal facility is required. The Act limits NRC to 45 days from the time a request is received to determine whether emergency access will be granted and to designate the receiving facility.

The Act provides that NRC can grant emergency access for a period not to exceed 180 days per request. To ensure that emergency access is not abused, the Act allows that only one extension of emergency access, not to exceed 180 days, is to be granted per request. An extension can be approved only if the LLW generator who was originally granted emergency access and the State in which the LLW was generated have diligently though unsuccessfully attempted during the period of the initial grant to eliminate the need for emergency access.

The Act also provides that requests for emergency access shall contain all information and certifications that NRC requires to make its determination.

"Temporary emergency access" to non-Federal or regional LLW disposal facilities may be granted at the Commission's discretion because of a serious and immediate threat to the public health and safety or the common defense and security pending a Commission determination as to whether the threat could be mitigated by suitable alternatives. The grant of temporary emergency access expires 45 days after it is granted.

Although the Act does not require NRC to develop a rule to carry out its section 6 responsibilities, NRC is proposing this rule to establish the procedures and criteria that will be used in making the required emergency access determinations. Since the requisite condition that must be met in order for a requestor to be eligible for emergency access consideration is that the requestor has already been denied access to the LLW disposal sites by the States or Compacts with operating disposal facilities, implicit in any decision to grant emergency access is the fact that such a decision will override the sited States' and/or Compacts' expressed desire not to accept waste from that particular State or generator. Although Congress provided NRC the statutory responsibility for implementing section 6 of the Act and gave the Commission authority to decide whether or not access will be provided, emergency access decisions are likely to be controversial. By setting out the procedures and criteria for making emergency access decisions in a rule which reflects public comment, NRC intends to provide an opportunity for input from potentially affected individuals and organizations, add predictability to the decisionmaking process, and to help ensure that the NRC will be able to make its decisions on emergency access requests within the time allowed by the Act.

III. Legislative History

The legislative history of the Act emphasizes the Congressional intent that emergency access be used only in very limited and rare circumstances and that it was not intended to be used to circumvent other provisions of the Act. Congress believed it was important for the successful implementation of the Act that emergency access not be viewed by the unsited States as an alternative to the pursuit of the development of new LLW disposal capacity. The legislative history indicates that Congress believed that with the various management options available to LLW generators, including, for example, storage or ceasing to generate the waste, the instances where there was no alternative to emergency access would be unlikely. Congress expected that responsible action from the generators and the States/Compacts should resolve most access problems thus precluding the necessity for involving the Federal sector in granting emergency access. Section 6 was included to provide a mechanism for Federal involvement as a vehicle of last resort.

In developing the emergency access rule, NRC has tried to be consistent both with the actual text of section 6 of the Act and with the intent expressed by Congress regarding decisions made pursuant to section 6. The proposed rule sets strict requirements for granting emergency access and serves to encourage potential requestors to seek other means for resolving the problems created by denial of access to LLW disposal facilities. The proposed rule places the burden on the party requesting emergency access to demonstrate that the criteria in the rule have been met and emergency access is needed. Applicants for emergency access will have to provide clear and convincing evidence that they have exhausted all other options for managing their waste. By establishing strict requirements for approving requests for emergency access, NRC intends to reinforce the idea that problems with LLW disposal are to be worked out to the extent practical among the States, and that emergency access to existing LLW facilities will not automatically be available as an alternative to developing that capacity. NRC believes this interpretation is consistent with a plain reading of the Act and the supporting legislative history.

Section 6(g) of the Act requires the NRC to notify the Compact Commission for the region in which the disposal facility is located of any NRC grant of access "for such approval as may be required under the terms of its compact." The Compact Commission "shall act to approve emergency access not later than fifteen days after receiving notification" from the NRC. The purpose of this provision is to—

- Ensure that the Compact Commission is aware of the NRC's grant of emergency access and the terms of the grant,
- Allow the Compact Commission to implement any administrative procedures necessary to carry out the grant of access, and
- Ensure that the limitations on emergency access set forth in section 6(h) of the Act have not been exceeded.

However, it is clear from the legislative history of the Act that section 6(g) should not be construed as providing the Compact Commission with a veto over the NRC's grant of emergency access. The basic purpose of the section 6 emergency access provision is to ensure that sites that would normally be closed under the Act will be available in emergency situations. A Compact Commission veto would frustrate the purpose of the emergency access provision and would be generally contrary to the legislative framework established in the Act. As emphasized in the House Committee on Interior and Insular Affairs Report on the Act, ratification of a Compact should be conditioned on the Compact's acting in accord with the provisions of the Act. If the Compact refuses to provide, under its own authorities, emergency access under Section 6, Congressional ratification of that Compact would be null and void. H.R. REP. No. 314, 99th Cong., 1st Sess., pt. 1, at 2997 (1985).

IV. NRC Approach

In developing the proposed rule, the NRC's approach was to:

1. Assure that all of the principal provisions of Section 6 of the Act are addressed in the regulation.

2. Identify the information and certifications that will have to be submitted with any request for emergency access in order for NRC to make the necessary determinations.

3. Assure that the procedures and criteria that are established in 10 CFR Part 62 can be implemented within the 45-day period specified in the Act.

4. Establish procedures and criteria for designating a site to receive the waste which are fair and equitable and which are consistent with the other provisions of the Act including the limits on the amount of waste that can be disposed of at each operating facility.

5. Establish requirements for granting emergency access that are stringent enough to discourage the unsited States and regions from viewing emergency access as an alternative to diligent pursuit of their own disposal capability, and yet flexible enough to allow NRC to respond appropriately in situations where emergency access is genuinely needed to protect the public health and safety or the common defense and security.

V. Assumptions

In developing the rule NRC made several assumptions. These assumptions are discussed below.

NRC staff are assuming that the wastes requiring disposal under the emergency access provision will be the result of unusual circumstances. The nature of routine LLW management is such that it is difficult to conceive of situations where denial of access to disposal would create a serious and immediate threat to the public health and safety or the national security. In most cases generators should be able to safely store routinely generated LLW or employ other options for managing the waste without requiring emergency access. Thus, if all the LLW generators in a State were denied access to LLW disposal facilities, NRC staff would not expect to receive a blanket request for emergency access for all of the LLW generated in that State, or for all of the LLW generated by a particular kind of generator since the need for emergency access would be different in each case.

In preparing the rule, NRC has also assumed that requests for emergency access will not be made for wastes which would otherwise qualify for disposal by the Department of Energy (DOE) under the unusual volumes provision of the Act [section 5(c)(5)]. This means that NRC does not intend to consider requests for emergency access for wastes generated by commercial nuclear power stations as a result of unusual or unexpected operating, maintenance, repair or safety activities. Section 5(c)(5) of the Act specifically sets aside 800,000 cu. ft. of disposal capacity above the regular reactor allocations through 1992 to be used for those wastes With this space reserved for wastes qualifying for the "unusual volumes allocation," NRC believes emergency access should be reserved for other LLW, until the 800,000 cu. ft. allocation is exceeded.

NRC considered basing its decisions for granting emergency access solely on quantitative criteria, but decided against that approach. While NRC has identified some of the wastes and the scenarios which would create a need for emergency access, it is unlikely that all possibilities can be predicted or anticipated. Largely because of the uncertainty associated with identifying all of the circumstances under which emergency access may be required, NRC has avoided establishing criteria with absolute thresholds. Instead, the rule as proposed contains a combination of qualitative and quantitative criteria with generic applicability. NRC believes this combination provides NRC maximum flexibility in considering requests for emergency access on a case-by-case basis.

VI. The Proposed Action

The proposed rule contains three Subparts, A, B, and C. These subparts set out the requirements and procedures to be followed in requesting emergency access and in determining whether or not requests should be granted. Each subpart is summarized and discussed here.

Subpart A—General Provisions

Subpart A contains the purpose and scope of the rule, definitions, instructions for communications with the Commission, and provisions relating to interpretations of the rule. Subpart A states that the rule applies to all persons as defined by this regulation who have been denied access to existing commercial LLW disposal facilities and who submit a request to the Commission for an emergency access determination under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985.

Subpart B—Request for a Commission Determination

Subpart B specifies the information that must be submitted and the procedures that must be followed by a person seeking a Commission determination on emergency access.

Specifically, Subpart B requires the submission of information on the need for access to LLW disposal sites, the quantity and type of material requiring disposal, impacts on health and safety or common defense and security if emergency access were not granted, and consideration of available alternatives to emergency access. This information will enable the Commission to determine:

(a) Whether a serious and immediate threat to the public health and safety or the common defense and security might exist,

(b) Whether alternatives exist that could mitigate the threat, and

(c) Which non-Federal disposal facility or facilities should provide the disposal required.

In addition to the above, Subpart B also sets forth procedures for the filing and distribution of a request for a Commission determination. It provides for publication in the **Federal Register** of a notice of receipt of a request for emergency access to inform the public that Commission action on the request is pending. Even though comment is not required by the Act or the Administrative Procedure Act, Subpart B provides for a 10-day public comment period on the request for emergency access.

In the event that the case for requesting emergency access is to be based totally or in part on the threat posed to the common defense and security, Subpart B requires that a statement of support from the Department of Energy (DOE) or the Department of Defense (DOD) (as appropriate) be submitted as part of the initial request for emergency access. If the request is based entirely on common defense and security concerns, NRC will not proceed with the emergency access evaluation until the statement of support is submitted.

Subpart C—Issuance of a Commission Determination

For the NRC to grant emergency access, the Commission must first conclude that there is a serious and immediate threat to the public health and safety or the common defense and security, and second that there are no available mitigating alternatives. Subpart C sets out the procedures to be followed by the Commission in considering requests for emergency access, for granting extensions of emergency access, and for granting temporary emergency access;

establishes the criteria and standards to be used by the Commission in making those determinations; and specifies the procedures to be followed in issuing them.

Subpart C provides that NRC, in making the determination that there is a serious and immediate threat to the public health and safety, will consider: (1) The nature and extent of the radiation hazard that would result from the denial of access including consideration of the standards for radiation protection contained in 10 CFR Part 20, any standards governing the release of radioactive materials to the general environment that are applicable to the facility that generated the low-level waste, and any other Commission requirements specifically applicable to the facility or activity which is the subject of the emergency access request and, (2) the extent to which essential services such as medical, therapeutic, diagnostic, or research activities will be disrupted by the denial of emergency access.

In making the determination that there is a serious and immediate threat to the common defense and security, Subpart C provides that the Commission will consider whether the activity generating the LLW is necessary to the protection of the common defense and security and whether the lack of access to a disposal site would result in a significant disruption in that activity that would seriously threaten the common defense and security. Subpart C also specifies that the Commission will consider DOD and DOE viewpoints in a statement of support to be filed with the request for emergency access.

Under Subpart C, if the Commission makes either of the above determinations in the affirmative, then the Commission will consider whether alternatives to emergency access are available to the requestor. The Commission will consider whether the person submitting the request has identified and evaluated the alternatives available which could potentially mitigate the need for emergency access. The Commission will consider whether the person requesting emergency access has considered all factors in the evaluation of alternatives including state-of-the-art technology and the impacts of the alternatives on the public health and safety. For each alternative, the Commission will also consider whether the requestor has demonstrated that the implementation of the alternative is unreasonable because of adverse effects on the public health and safety or the common defense and security, because it is technically or economically beyond the capability of the requestor, or because the alternative could not be implemented in a timely manner.

Of particular concern to Congress was the possibility that ceasing the activity responsible for generating the waste could lead to the cessation or curtailment of essential medical services. In the proposed rule, the Commission considers the impact on medical services from ceasing the activity in making its determination that there is a serious and immediate threat to the public health and safety under § 62.25. However, the Commission is also concerned as to whether the implementation of other alternatives may have a disruptive effect on essential medical services. The Commission specifically requests information on these impacts in § 62.12 so they can be considered in its overall determination about reasonable alternatives.

According to the procedures set out in Subpart C, the Commission will only make an affirmative determination on granting emergency access if the available alternatives are found to be unreasonable. If an alternative is determined by NRC to be reasonable, then the request for emergency access will be denied.

If the Commission determines that there is a serious and immediate threat to the public health and safety or the common defense and security which cannot be mitigated by any alternative then the Commission will decide which operating non-Federal LLW disposal facility should receive the LLW approved for emergency access disposal.

Subpart C sets out that in designating a disposal facility or facilities to provide emergency access disposal, the Commission will first consider whether a facility should be excluded from consideration because: (1) The LLW does not meet the license criteria for the site; (2) the disposal facility meets or exceeds its capacity limitations as set out in the Act; (3) granting emergency access would delay the planned closing of the facility; or (4) the volume of the waste requiring disposal exceeds 20 percent of the total volume of the LLW accepted for disposal at the site in the previous calendar year. If the designation cannot be made on these factors alone, then the Commission will consider the type of waste, previous disposal practices, transportation requirements, radiological effects, site capability for handling the waste, and any other information the Commission deems necessary.

In making a determination regarding a request for an extension of emergency access, Subpart C provides that the Commission will consider whether the circumstances still warrant emergency access and whether the person making the request has diligently acted during the period of the initial grant to eliminate the need for emergency access.

In making a determination that temporary emergency access is necessary, the Commission will have to consider whether the emergency access situation falls within the criteria and examples in the Commission's policy statement on abnormal occurrences, but will not have to reach a determination regarding mitigating alternatives.

VII. Rationale for Criteria

The proposed rule establishes the criteria for making the emergency access determinations required by the Act. The rationale for these decisions is discussed below:

(a) Determination That a Serious and Immediate Threat Exists

Establishing the criteria to be used in determining that a serious and immediate threat exist to the public health and safety or the common defense and security is key to NRC's decisions to grant emergency access. Neither the Act nor its legislative history provide elaboration regarding Congressional intent for what would constitute "a serious and immediate threat."

(1) To the Public health and safety—

The criteria in the proposed rule for determining whether a serious and immediate threat to the public health and safety exists address three situations. Section 62.25(b)(i) addresses the situation where the lack of access would result in a radiation hazard at the facility that is generating the LLW. Section 62.25(b)(ii) addresses the situation where the threat to public health and safety would result from disruption of the activity that generates the waste, for example, an essential medical service. Section 62.25(c) addresses the criteria for granting temporary emergency access.

The criteria in the proposed rule for determining whether a serious and immediate threat to the public health and safety exists is qualitative in nature in order to provide the Commission with the flexibility necessary to consider a wide range of potential factual situations. However, in making this qualitative determination, the criteria require the Commission to consider several existing quantitative standards.

These consist of the Commission's standards for radiation protection in 10 CFR Part 20, any standards on the release of radioactive materials to the general environment that are applicable to the facility that generated the low level waste, and any other Commission requirements specifically applicable to the facility or activity which is the subject of the emergency access request. This latter category would include license provisions, orders, and similar requirements.

The Congressional concern in enacting section 6 of the Act was to ensure that a serious and immediate threat to the public health and safety did not result from a denial of access. In addressing this concern, the Commission will evaluate the request for emergency access, in its entirety, i.e., the threat to public health and safety and the alternatives to emergency access that may be available to mitigate that threat. In other words, in determining what constitutes a serious and immediate threat to public health and safety, the Commission must consider what threat would be unacceptable assuming that no alternatives are available. In the Commission's judgment, any situation that would result in exceeding the occupational dose limits or basic limits of public exposure upon which certain requirements in 10 CFR Part 20 are founded would be an unacceptable threat to the public health and safety, and should be considered for emergency access.

The legislative history of section 6 of the Act does not provide any illustrations of a situation where a serious and immediate threat to the public health and safety would be created at the facility at which the waste is stored, although it is clear that Congress was concerned over the potential radiation hazard that might result at a particular facility that was denied access to LLW disposal. The Commission does not anticipate any situation where the lack of access would create a serious and immediate threat to the public health and safety. However, in order to be able to respond to the unlikely, but still possible, situation where a serious threat to the public health and safety might result, the proposed rule establishes criteria to address this possibility. Under its normal regulatory responsibilities and authority, the Commission would act immediately to prevent or mitigate any threat to the public health and safety, including shutting down the facility. However, there may be circumstances where a potential safety problem would still exist, after the facility was shut down or the activity stopped, if the low level waste could not be disposed of because of denial of access. In this situation, emergency access may be needed. The Commission would emphasize first, that it is extremely unlikely that a serious and immediate threat to the public health and safety will ever result at the generator's facility from the lack of access to a disposal facility, and second, if such a situation does exist, the Commission will move immediately to eliminate the threat.

If the Commission does receive a request for emergency access based on the above circumstances, the Commission will evaluate the nature and extent of the radiation hazard. If there is no violation of the Commission's generic or facility-specific radiation protection standards, no serious and immediate threat would exist from the waste itself. This is separate from a finding that a serious and immediate threat to the public health and safety would exist if the activity were forced to shut down. Section 6(d) of the Act allows the Commission to grant temporary emergency access for a period not to exceed 45 days, solely upon a finding of a serious and immediate threat to the public health and safety. In order to grant temporary emergency access, the Commission is not required to evaluate the availability of alternatives to emergency access that would mitigate the threat. The Commission believes that grants of temporary emergency access should be reserved for the most serious threat to public health and safety, and has accordingly established criteria for granting temporary emergency access that require the consideration of more serious events. For purposes of granting temporary emergency access under § 62.23, the Commission will consider the criteria and examples contained in the Commission's Policy Statement for determining whether an event at a facility or activity licensed or otherwise regulated by the Commission is an abnormal occurrence within the purview of section 208 of the Energy Reorganization Act of 1974. (45 FR 10950, February 24, 1977.) This provision requires the Commission to keep Congress and the public informed of unscheduled incidents or events which the Commission considers significant from the standpoint of public health and safety. Under the criteria established in the Commission's policy statement, an event will be considered an abnormal occurrence if it involves a major reduction in the degree of protection provided to public health and safety. Such an event could include—

1. Moderate exposure to, or release of, radioactive material;

2. Major degradation of safety related equipment; or

3. Major deficiencies in design, construction, use of, or management controls for licensed facilities or activities.

In deciding whether to grant temporary emergency access, the Commission will evaluate whether the emergency access situation falls within the criteria in the Commission's policy statement on abnormal occurrences.

(2) To the common defense and security—

Although NRC is required by the Act to determine that there is either a serious and immediate threat "to the public health and safety," or to "the common defense and security," realistically NRC cannot make the latter judgment without some information from DOD and DOE which will assist NRC in identifying those situations involving the denial of access to LLW disposal which constitute a serious and immediate threat to the national defense and security, or the importance of a particular LLW generator's activities in maintaining those objectives. While NRC has the Congressional mandate for this determination, NRC staff believe it necessary to consider DOD and DOE information as part of the decision making process.

NRC considered several approaches for involving DOD and DOE in the process of determining whether requests for emergency access should be granted on the basis of a serious and immediate threat to the common defense and security. It appears that the best way to provide such interaction would be to require that requests filed with NRC for emergency access which are made entirely, or in significant part, on the basis of a serious and immediate threat to the common defense and security, should include appropriate certification from DOE or DOD substantiating the requestor's claim that such a threat will result if emergency access is not granted. The necessary certification in the form of a statement of support should be acquired by the requestor prior to applying to NRC for emergency access so the certification can be a part of the actual petition.

Congress deliberately gave the NRC the responsibility for making the common defense and security determination rather than leaving the determination with DOD or DOE. So while the Commission intends to give the DOD and DOE certifications and

recommendations full consideration in evaluating requests for emergency access, the Commission will not treat them as conclusive.

(b) Determination on Mitigating Alternatives

As directed by Section 6 of the Act, even if a situation exists which poses a serious and immediate threat to the public health and safety or the common defense and security, emergency access is not to be granted if alternatives are available to mitigate the threat in a manner consistent with the public health and safety. As proposed in the rule, requestors for emergency access will have to demonstrate that they have explored the alternatives available and that the only course of action remaining is emergency access. Only after this has been demonstrated to NRC will the Agency proceed with a grant of emergency access.

Alternatives which, at a minimum, a requestor will have to evaluate are set out in section 6(c)(1)(B) of the Act. They include (1) storage of LLW at the site of generation or in a storage facility, (2) obtaining access to a disposal facility by voluntary agreement, (3) purchasing disposal capacity available for assignment pursuant to section 5(c) of the Act, and (4) ceasing the activities that generate the LLW

While 6(c)(1)(B) of the Act sets these out as possible alternatives which a generator must consider before requesting emergency access, NRC has identified other possible alternatives to emergency access which should be considered, as appropriate, in any requests for emergency access. These additional alternatives are discussed below.

Section 5(c)(5) of the Act, "Unusual Volumes," provides owners and operators of commercial nuclear reactors with special access to disposal in the event that unusual or unexpected operating, maintenance, repair or safety activities produce quantities of waste which cannot be otherwise managed or disposed of under the Act. NRC does not consider that Congress intended that disposal under the emergency access provision was to apply to the section 5(c)(5) wastes unless the capacity required for disposals under the unusual volume provision would exceed the 800,000 cubic feet allocated for those purposes. Thus, NRC has taken the position in the proposed rule that as long as unusual volumes disposal capacity is available for LLW which qualifies for such disposal, emergency access should not be requested. Applications for emergency access for wastes which NRC determines would otherwise be eligible for, disposal under the unusual volumes provision, will be denied.

Another alternative applies only to Federal or defense related generators of LLW. NRC will expect that generators of LLW falling into either of these categories will attempt to arrange for disposal at a Federal LLW disposal facility prior to requesting access to non-Federal facilities under the emergency access provision.

For all the alternatives that are considered, NRC is requiring detailed information from the generator regarding the decision process leading to a request for emergency access. The requestor will be expected to demonstrate that he has considered all pertinent alternatives and to provide a detailed analysis comparing all of the alternatives considered The requestor will be expected to demonstrate that he has considered combining alternatives in some way or in some sequence either to avoid the need for emergency access, or to resolve the threat, even on a temporary basis, until other arrangements can be made. The requestor will be expected to evaluate the costs, economic feasibility, and benefits to the public health and safety of the potential alternatives, and to incorporate the results into the request.

(c) Designation of Site

In deciding which of the operating, non-Federal or regional LLW disposal facilities will receive the LLW requiring emergency access, NRC will determine which of the disposal facilities would qualify under the limitations set out in section 6(h) of the Act. According to those limitations, a site would be excluded from receiving access waste if (1) the LLW does not meet the license criteria for the site; (2) the disposal facility meets or exceeds its capacity limitations as set out in the Act; (3) granting emergency access would delay the planned closing of the facility; or (4) the volume of the waste requiring disposal exceeds 20 percent of the total volume of the LLW accepted for disposal at the site in the previous calendar year.

If NRC cannot designate a site using the limitations in the Act alone, the Commission will consider other factors including the type of waste, previous disposal practices, transportation requirements, radiological effects of the waste, the capability for handling the waste at each site, and any other information that would be necessary in order to come to a site designation decision.

Within the requirements of the above criteria, the NRC will, to the extent practical, attempt to distribute the waste as equitably as possible among the available operating, non-Federal or regional LLW disposal facilities. To the extent practicable, NRC intends to rotate the designation of the receiving site, and, for the three currently operating facilities, to allocate emergency access disposal in proportion to the volume limitations established in the Act. In most cases, NRC would expect that the designation of a single site will minimize handling of and exposure to the waste and best serve the interest of protecting the public health and safety. However, if the volume of waste requiring emergency access disposal is large, or if there are other unusual or extenuating circumstances, NRC will evaluate the advantages and disadvantages of designating more than one site to receive waste from the same requestor.

In addition to the above, NRC will also consider how much waste has been designated for emergency access disposal to each site to date (both for the year and overall), and whether the serious and immediate threat posed could best be mitigated by designating one site or more to receive the waste.

In order for NRC to make the most equitable site designation decisions, the Agency will have to be well informed regarding the status of disposal capacity for each of the commercially operating waste disposal facilities. NRC intends to arrange to obtain this information on a continuous basis.

It should be noted that in setting out the site designation provision for section 6, Congress assumed there would always be a site deemed appropriate to receive the emergency access waste. However, this may not be the case if all sites are eliminated by application of the limitations provision set forth in the Act. It is not clear what options are available to NRC if all sites are deemed inappropriate to receive the LLW. This may have to be addressed by Congress at some time in the future.

(d) Volume Reduction Determination

Section 6(i) of the Act requires that any LLW delivered for disposal as a result of NRC's decision to grant emergency access "should be reduced in volume to the maximum extent practicable." NRC will evaluate the extent to which volume reduction methods or techniques will be or have been applied to the wastes granted emergency access in order to arrive at a finding in regards to this provision.

NRC may receive a request for emergency access where the application of volume reduction techniques may be

sufficient to mitigate the threat posed to the public health and safety. As a result, NRC plans to evaluate the extent to which waste has been reduced in volume as a part of its mandated evaluation of the alternatives considered by the generator. From that evaluation, the NRC could reach a finding on whether the waste has been reduced in a manner consistent with section 6(i).

As is so for the other determinations NRC will have to make pursuant to section 6, volume reduction determinations will be made on a case-by-case basis. The optimal level of volume reduction will vary with the waste, the conditions under which it is being processed or stored, the administrative options available, and whether volume reduction processing creates new wastes requiring treatment or disposal. In evaluating whether the wastes proposed for emergency access have been reduced in volume to the maximum extent practicable, NRC will consider the characteristics of the wastes (including: Physical properties, chemical properties, radioactivity, pathogenicity, infectiousness, and toxicity, pyrophoricity, and explosive potential); condition of current container; potential for contaminating the disposal site; the technologies or combination of technologies available for treatment of the waste (including incinerators; evaporators-crystallizers; fluidized bed dryers; thin-film evaporators; extruders evaporators; and Compactors); the suitability of volume reduction equipment to the circumstances (specific activity considerations, actual volume reduction factors, generation of secondary wastes, equipment contamination, effluent releases, worker exposure, and equipment availability); and the administrative controls which could be applied.

VIII. Specific Request for Comments

NRC is interested in receiving comments on those parts of the proposed rule where NRC applied its discretion in order to implement the section 6 provisions. NRC specifically requests comments on the following: (1) What scenarios are envisioned where emergency access would be required? (2) What are the potential problems with NRC's approach to determining an immediate and serious threat to the public health and safety? (3) What are the potential problems with the arrangement proposed for making the determination of serious and immediate threat to the common defense and security? (4) What are the potential difficulties with the proposed approach for designating the receiving site? and (5) What should NRC do if no site is found to be suitable for waste requiring emergency access?

NRC is interested in facts and recommendations on specific ways to be responsive to these issues. While NRC will consider all comments on the proposed rule, it will be better able to respond to those comments that recommend specific solutions to any problem raised by the commenters

IX. Requests for Emergency Access Made Prior to the Effective Date of the Rule

In setting the schedule for this rule, the Commission has tried to anticipate when the first request might be made so the final rule would be in place before that time. However, it may be necessary for a generator or State to submit a request for a Commission emergency access determination prior to the effective date of this rule. Commission determinations made on requests received before the final rule is in place will be guided by the criteria and procedures provided in this proposed rule.

X. Finding of No Significant Environmental

Impact: Availability

If adopted, the proposed rule would establish criteria and procedures for a Commission determination under section 6 of the Act that emergency access to an operating non-Federal LLW disposal facility is necessary to avert a serious and immediate threat to the public health and safety or the common defense and security. For the most part, the proposed rule is an administrative action which serves to codify the criteria and procedures in the Act. The adoption of such implementing procedures and criteria by promulgation of a final rule does not have an environmental effect.

Therefore, the Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The environmental assessment forming the basis for this determination is contained in the draft regulatory analysis prepared for this proposed regulation. The availability of the draft regulatory analysis is noted below.

XI. Paperwork Reduction Act Statement

This proposed rule adds information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted for review and approval of the paperwork requirements.

XII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis of the proposed regulations. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection, copying for a fee, at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

XIII. Regulatory Flexibility Certification

NRC is using this proposed rule to implement the statutory requirements for granting emergency access to non-Federal or regional LLW disposal facilities under section 6 of the Act. Based upon the information available and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, if promulgated, this rule will not have a significant economic impact upon a substantial number of small entities.

The proposed rule has the potential to affect any generator of LLW as well as any existing LLW disposal facility. None of the LLW disposal facilities would be considered to be a small entity. The generators of LLW are nuclear power plants, medical and academic facilities, industrial licensees, research and development facilities, radiopharmaceutical manufacturers, fuel fabrication facilities and government licensees. Of these categories, all but the power plants, fuel fabrication facilities, and government licensees could potentially include small entities.

Although these categories may contain a "substantial number of small entities," the Commission does not believe there will be a significant economic impact to these generators because the Commission does not anticipate that many generators will be affected by the proposed rule. In order for the requirements of the rule to be imposed on a generator, the generator himself must initiate the action by requesting a grant of emergency access from NRC. This would occur only because the generator has been denied access to LLW disposal.

The Commission is required to make emergency access determinations by statute. Since a grant of emergency access is intended to correct the problems LLW generators may encounter because of lack of access to

LLW disposal, the provision of emergency access will benefit any generator of LLW including small entities.

Establishing criteria and procedures for requesting and granting emergency access through a rule will also benefit small and large generators. The proposed rule provides guidance to the generator on what information will be required for making requests for emergency access and provides an orderly framework for making those requests. Also, the proposed rule will enable generators to better plan to avoid LLW disposal access problems, thus providing the certainty required for economic growth and development.

The impact of the recordkeeping requirements on any affected licensees should be minimal since the information that must be provided if a generator requests emergency access would most likely be collected and assembled as part of any process to decide a course of action if necessary access to LLW disposal was not going to be available.

The NRC is seeking public comment on the initial regulatory flexibility analysis. The NRC is particularly seeking comment from small entities (i.e., small businesses, small organizations, and small jurisdictions, under the Regulatory Flexibility Act) as to how the regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Those small entities which offer comments on how the regulation could be modified to take into account the differing needs of small entities should specifically discuss the following items:

(a) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to larger organizations in the same business community.

(b) How the proposed regulations could be modified to take into account their differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups.

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

List of Subjects in 10 CFR Part 62

Administrative practice and procedure, Low-level radioactive waste, Nuclear materials, LLW treatment and disposal, Emergency access to low-level waste disposal, Low-level radioactive waste policy amendments act of 1985.

Denial of Access

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the Low-Level Radioactive Waste Policy Amendments Act of 1985, notice is hereby given that adoption of a new 10 CFR Part 62 is contemplated.

1. A new Part 62 is proposed to be added to 10 CFR to read as follows:

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

Subpart A—General Provisions

Sec.

Subpart B—Request for a Commission Determination

Subpart C—Issuance of a Commission Determination

Authority: Secs. 81, 161, as amended, 68 Stat. 935, 948, 949, 950, 951, as amended, (42 U.S.C. 2111, 2201); secs. 201, 209, as amended 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 3, 4, 5, 6, 99 Stat. 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857 (42 U.S.C. 2021c, 2021d, 2021e, 2021f).

Subpart A—General Provisions

§ 62.1 Purpose and scope.

(a) The regulations in this part establish for specific low-level radioactive waste,

(1) Procedures and criteria for granting emergency access under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021) to any non-Federal or regional low-level radioactive waste (LLW) disposal facility or to any non-Federal disposal facility within a State that is not a member of a Compact, and

(2) The terms and conditions upon which the Commission will grant this emergency access.

(b) The regulations in this part apply to all persons as defined by this regulation, who have been denied access to existing regional or non-Federal low-level radioactive waste disposal facilities and who submit a request to the Commission for a determination pursuant to this part.

§ 62.2 Definitions.

As used this part:

"Act" means the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99–240).

"Agreement State" means a State that—

(A) Has entered into an agreement with the Nuclear Regulatory Commission under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021); and

(B) Has authority to regulate the disposal of low-level radioactive waste under such agreement.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Compact" means a Compact entered into by two or more States pursuant to the Low-Level Radioactive Waste Policy Amendments Act of 1985.

"Compact Commission" means the regional commission, committee, or board established in a Compact to administer such Compact.

"Emergency Access" means access to an operating non-Federal or regional low-level radioactive waste disposal facility or facilities for a period not to exceed 180 days, which is granted by NRC to a generator of low-level radioactive waste who has been denied the use of those facilities.

"Extension of Emergency Access" means an extension of the access that

had been previously granted by NRC to an operating non-Federal or regional low-level radioactive waste disposal facility or facilities for a period not to exceed 180 days.

"Low-Level Radioactive Waste" (LLW) means radioactive material that (A) is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in section 11e(2) of the Atomic Energy Act of 1954 [U.S.C. 2014(e)(2)]; and (B) the NRC, consistent with existing law and in accordance with paragraph (A), classifies as low-level radioactive waste.

"Non-Federal Disposal Facility" means a low-level radioactive waste disposal facility which is commercially operated or is operated by a State.

"Person" means any individual, corporation, partnership, firm, association, trust, State, public or private institution, group or agency who is an NRC or NRC Agreement State licensed generator of low-level radioactive waste; any Governor (or for any "State" without a Governor, the chief executive officer of the "State") on behalf of any generator or generators of low-level radioactive waste located in his or her "State"; or their duly authorized representative, legal successor or agent.

"Regional Disposal Facility" means a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently established and operated under a Compact.

"State" means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"Temporary Emergency Access" means access that is granted at NRC's discretion upon determining that access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security. Such access expires 45 days after the granting.

§ 62.3 Communications.

Except where otherwise specified, each communication and report concerning the regulations in this part should be addressed to the Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be delivered in person to the Commission's offices at 1717 H Street NW., Washington, DC, or 7915 Eastern Avenue, Silver Spring, Maryland.

§ 62.4 Interpretations

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be considered binding on the Commission.

§ 62.5 Information collection requirements.

This proposed rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for review and approval of the paperwork requirements.

§ 62.6 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant an exemption from the requirements of the regulations in this part that it determines is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Subpart B—Request for a Commission Determination

§ 62.11 Filing and distribution of a determination request.

(a) The person submitting a request for a Commission determination must file a signed original and nine copies of the request with the Commission at the address specified in § 62.3, with a copy also provided to the appropriate Regional Administrator at the address specified in Appendix D to Part 20 of this chapter. The request must be signed by the person requesting the determination or the person's authorized representative under oath or affirmation.

(b) Upon receipt of a request for a determination, the Secretary of the Commission will cause to be published in the **Federal Register** a notice acknowledging receipt of the request and asking that public comments on the request be submitted within 10 days of the date of the notice. A copy of the request will be made available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and in the Local Public Document Room of the facility submitting the request. The Secretary of the Commission will also transmit a copy of the request to the U.S. Department of Energy, to the Governor of the State where the waste is generated, to the States with operating non-Federal low-level radioactive waste disposal facilities, and to the Compact Commissions with operating regional low-level radioactive waste disposal facilities.

(c) Fees applicable to a request for a Commission determination under this part will be determined in accordance with the procedures set forth for special projects under category 12 of § 170.31 of this chapter.

(d) In the event that the allocations or limitations established in sections 5(b) or 6(h) of the Act are met at all operating non-Federal or regional LLW disposal facilities, the Commission may suspend the processing or acceptance of requests for emergency access determinations until additional LLW disposal capacity is authorized by Congress.

§ 62.12 Contents of a request for emergency access: General information.

A request for a Commission determination under this part must include the following information for each generator to which the request applies:

(a) Name and address of the person making the request;

(b) Name and address of the person(s) or company(ies) generating the low-level radioactive waste for which the determination is sought;

(c) The low-level waste generation facility(ies) producing the waste for which the request is being made;

(d) A description of the activity that generated the waste;

(e) Name of the disposal facility or facilities which had been receiving the waste stream of concern before the generator was denied access;

(f) A description of the low-level radioactive waste for which emergency access is requested, including:

(1) The characteristics and composition of the waste, including, but not limited to—

(i) Type of waste (e.g. solidified oil, scintillation fluid, failed equipment);

(ii) Principal chemical composition;

(iii) Physical State (solid, liquid, gas);

(iv) Type of solidification media; and

(v) Concentrations and percentages of any hazardous or toxic chemicals, chelating agents, infectious or biological agents associated with the waste;

(2) The radiological characteristics of the waste such as—

(i) The classification of the waste in accordance with § 61.55;

(ii) A list of the radionuclides present or potentially present in the waste, their concentration or contamination levels, and total quantity;

(iii) Distribution of the radionuclides within the waste (surface or volume distribution);

(iv) Amount of transuranics (nanocuries/gram);

(3) The minimum volume of the waste requiring emergency access to alleviate the threat to the public health and safety or the common defense and security;

(4) The time duration for which emergency access is requested (not to exceed 180 days);

(5) Type of disposal container or packaging (55 gallon drum, box, liner, etc.); and

(6) Description of the volume reduction and waste minimization techniques applied to the waste which assure that it is reduced to the maximum extent practicable, and the actual reduction in volume that occurred;

(g) Basis for requesting the determination set out in this part, including:

(1) The circumstances which led to the denial of access to existing low-level radioactive waste disposal facilities;

(2) A description of the situation which is responsible for creating the serious and immediate threat to the public health and safety or the common defense and security, including the date when the need for emergency access was identified;

(3) A chronology and description of the actions taken by the person requesting emergency access to prevent the need for making such a request, including consideration of all alternatives set forth in § 62.13, and any supporting documentation as appropriate;

(4) An explanation of the impacts of the waste on the public health and safety or the common defense and security if emergency access is not granted, and the basis for concluding that these impacts constitute a serious and immediate threat to the public health and safety or the common defense and security. The impacts to the public health and safety or the common defense and security if the generator's services, including research activities, were to be curtailed, either for a limited period of time or indefinitely, should also be addressed;

(5) Other consequences if emergency access is not granted;

(h) Steps taken by the person requesting emergency access to correct the situation requiring emergency access and the person's plan to eliminate the need for additional or future emergency access requests;

(i) Documentation certifying that access has been denied;

(j) Documentation that the waste for which emergency access is requested could not otherwise qualify for disposal pursuant to the Unusual Volumes provision (section 5(c)(5) of the Act) or is not simultaneously under consideration by the Department of Energy (DOE) for access through the unusual volumes allocation;

(k) Where the request is made wholly or in significant part on the basis of a serious and immediate threat to the common defense and security, a Statement of support from DOE or DOD certifying that access to disposal is necessary to mitigate the threat to the common defense and security;

(l) Date by which access is required; and

(m) Any other information which the Commission should consider in making its determination.

§ 62.13 Contents of a request for emergency access: Alternatives.

(a) A request for emergency access under this part must include information on alternatives to emergency access. The request should include a discussion of the consideration given to all alternatives, including, but not limited to, the following:

(1) Storage of low-level radioactive waste at the site of generation;

(2) Storage of low-level radioactive waste in a licensed storage facility;

(3) Obtaining access to a disposal facility by voluntary agreement;

(4) Purchasing disposal capacity available for assignment pursuant to the Act;

(5) Requesting disposal at a Federal low-level radioactive waste disposal facility in the case of a Federal or defense related generator of LLW;

(6) Reducing the volume of the waste;

(7) Ceasing activities that generate low-level radioactive waste; and

(8) Other alternatives identified under paragraph (b) of this section.

(b) The request must identify all of the alternatives to emergency access considered and include a description of the process used to identify them, including any not specified in paragraph (a) of this section. The request should also include a description of the factors that were considered in identifying and evaluating alternatives, a chronology of actions taken to identify and implement alternatives during the process, and a discussion of any actions that were considered, but not implemented.

(c) The evaluation of each alternative must consider:

(1) Its potential for mitigating the serious and immediate threat to public health and safety or the common defense and security posed by lack of access to disposal;

(2) The adverse effects on public health and safety and the common defense and security, if any, of implementing each alternative, including the curtailment or cessation of any essential services affecting the public health and safety or the common defense and security;

(3) The technical and economic feasibility of each alternative including the person's financial capability to implement the alternatives;

(4) Any other pertinent societal costs and benefits;

(5) Impacts to the environment;

(6) Any legal impediments to implementation of each alternative including whether the alternatives will comply with applicable NRC regulatory requirements; and

(7) The time required to develop and implement each alternative.

(d) The request must include the basis for:

(1) Rejecting each alternative; and

(2) Concluding that no alternative is available.

§ 62.14 Contents of a request for an extension of emergency access.

A request for an extension of emergency access must include:

(a) Updates of the information required in § 62.12 and § 62.13; and

(b) Documentation that the generator of the low-level radioactive waste granted emergency access and the State in which the low-level radioactive waste was generated have diligently, though unsuccessfully, acted during the period of the initial grant to eliminate the need for emergency access. Documentation must include:

(1) An identification of additional alternatives that have been evaluated during the period of the initial grant, and

(2) A discussion of any reevaluation of previously considered alternatives, including verification of continued attempts to gain access to a disposal facility by voluntary agreement.

§ 62.15 Additional information.

(a) The Commission may require additional information from a person making a request for a Commission determination under this part concerning any portion of the request.

(b) The Commission shall deny a request for a Commission determination under this part if the person making the request fails to respond to a request for additional information under paragraph (a) of this section within ten (10) days from the date of the request for additional information, or any other time as the Commission may specify. This denial will not prejudice the right of the person making the request to file another request for a Commission determination under this part.

§ 62.16 Withdrawal of a determination request.

(a) A person may withdraw a request for a Commission determination under this part without prejudice at any time prior to the issuance of an initial determination under § 62.21.

(b) The Secretary of the Commission will cause to be published in the **Federal Register** a notice of the withdrawal of a request for a Commission determination under this part.

§ 62.17 Elimination of repetition.

In any request under this part, the person making the request may incorporate by reference information contained in a previous application, Statement, or report filed with the Commission provided that these references are updated, clear and specific.

§ 62.18 Denial of request.

If a request for a determination is based on circumstances that are too remote and speculative to allow an informed determination, the Commission may deny the request

Subpart C—Issuance of a Commission Determination

§ 62.21 Determination for granting emergency access.

(a) Not later than (45) days after the receipt of a request for a Commission determination under this part from any generator of low-level radioactive waste, or any Governor on behalf of any generator or generators located in his or her State, the Commission shall make a determination that—

(1) Emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a Compact for specific low-level radioactive waste is necessary because of an immediate and serious threat

(i) To the public health and safety or

(ii) The common defense and security; and

(2) The threat cannot be mitigated by any alternative consistent with the public health and safety, including those identified in § 62.13.

(b) In making a determination under this section, the Commission shall be guided by the criteria set forth in § 62.25.

(c) A determination under this section must be in writing and contain a full explanation of the facts upon which the determination is based and the reasons for granting or denying the request. An affirmative determination must designate an appropriate non-Federal or regional LLW disposal facility or facilities for the disposal of wastes, specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to alleviate the immediate threat to public health and safety or the common defense and security. It may also contain conditions upon which the determination is dependent

§ 62.22 Notice of issuance of a determination.

(a) Upon the issuance of a Commission determination the Secretary of the Commission will make notification of the final determination in writing, to the person making the request, the Governor of the State in which the low-level radioactive waste requiring emergency access was generated, and the Governor of the State in which the designated disposal facility is located, and if pertinent, the appropriate Compact Commission, of the final determination. For the Governor of the State in which the designated disposal facility is located and for the appropriate Compact Commission, the notification must set forth the reasons that emergency access was granted and specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to alleviate the immediate and serious threat to public health and safety or the common defense and security. For the Governor of the State in which the low-level waste was generated, the notification must indicate that no extension of emergency access will be granted under § 62.24 absent diligent State and generator action during the period of the initial grant.

(b) The Secretary of the Commission will cause to be published in the **Federal Register** a notice of the issuance of the determination.

(c) The Secretary of the Commission will make a copy of the final determination available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

§ 62.23 Determination for granting temporary emergency access.

(a) The Commission may grant temporary emergency access to an appropriate non-Federal disposal facility or facilities provided that the determination required under § 62.21(a)(1) is made;

(b) The notification procedures under § 62.22 are complied with; and

(c) The temporary emergency access duration will not exceed forty-five (45) days.

§ 62.24 Extension of emergency access.

(a) After the receipt of a request from any generator of low-level waste, or any Governor on behalf of any generator or generators in his or her State, for an extension of emergency access that was initially granted under § 62.21, the Commission shall make an initial determination of whether—

(1) Emergency access continues to be necessary because of an immediate and serious threat to the public health and safety or the common defense and security;

(2) The threat cannot be mitigated by any alternative that is consistent with public health and safety; and

(3) The generator of low-level waste and the State have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access.

(b) After making a determination pursuant to paragraph (a) of this section, the requirements specified in §§ 62.21 (c) and (d) and 62.22, must be followed.

§ 62.25 Criteria for a Commission determination.

(a) In making the determination required by § 62.21(a) of this part, the Commission will determine whether the circumstances described in the request for emergency access create a serious and immediate threat to the public health and safety or the common defense and security.

(b) In making the determination that a serious and immediate threat exists to the public health and safety, the Commission will consider, notwithstanding the availability of any alternative identified in § 62.13 of this part:

(1) The nature and extent of the radiation hazard that would result from the denial of emergency access, including consideration of,

(i) The standards for radiation protection contained in Part 20 of this Chapter;

(ii) Any standards governing the release of radioactive materials to the general environment that are applicable to the facility that generated the low-level waste; and

(iii) Any other Commission requirements specifically applicable to the facility or activity which is the subject of the emergency access request;

(2) The extent to which essential service affecting the public health and safety (such as medical, therapeutic, diagnostic, or research activities) will be

disrupted by the denial of emergency access.

(c) For purposes of granting temporary emergency access under § 62.23 of this part, the Commission will consider the criteria contained in the Commission's Policy Statement for determining whether an event at a facility or activity licensed or otherwise regulated by the Commission is an abnormal occurrence within the purview of section 208 of the Energy Reorganization Act of 1974. (45 FR 10950, February 24, 1977.)

(d) In making the determination that a serious and immediate threat to the common defense and security exists, the Commission will consider, notwithstanding the availability of any alternative identified in § 62.13 of this part:

(1) Whether the activity generating the wastes is necessary to the protection of the common defense and security,

(2) Whether the lack of access to a disposal site would result in a significant disruption in that activity that would seriously threaten the common defense and security.

The Commission will consider the views of the Department of Defense (DOD) and the Department of Energy (DOE) in the Statement of support as submitted by the person requesting emergency access, in evaluating requests based all, or in part, on a serious and immediate threat to the common defense and security.

(e) In making the determination required by § 62.21(a)(2), the Commission will consider whether the person submitting the request:

(1) Has demonstrated that a good faith effort was made to identify and evaluate alternatives that could mitigate the need for emergency access;

(2) Has considered all pertinent factors in its evaluation of alternatives including state-of-the-art technology and impacts on public health and safety.

(f) In making the determination required by § 62.21(a)(2), the Commission will consider implementation of an alternative to be unreasonable if

(1) It adversely affects public health and safety, the environment, or the common defense and security; or

(2) It results in a significant curtailment or cessation of essential services affecting public health and safety or the common defense and security; or

(3) It is beyond the technical and economic capabilities of the person requesting emergency access; or

(4) Implementation of the alternative would conflict with applicable State or local laws or Federal laws and regulations; or

(5) It cannot be implemented in a timely manner.

(g) The Commission shall make an affirmative determination under § 62.21(a) only if all of the alternatives that were considered are found to be unreasonable.

(h) In making a determination regarding temporary emergency access under § 62.23, the criteria in paragraphs (a) and (b) of that section must apply.

(i) In making a determination regarding an extension of emergency access under § 62.24, the Commission shall consider whether the person making the request has diligently acted during the period of the initial grant to eliminate the need for emergency access.

(j) The Commission shall consider whether any waste delivered for disposal under this part has been reduced in volume to the maximum extent practicable using available technology.

§ 62.26 Criteria for designating a disposal facility.

(a) The Commission shall designate an appropriate non-Federal or regional disposal facility or facilities if an affirmative determination is made pursuant to § 62.21.

(b) The Commission will exclude from consideration a request for emergency access to a disposal facility if:

(1) The low-level radioactive wastes of the generator do not meet the criteria established by the license or the license agreement of the facility; or

(2) The disposal facility is in excess of its approved capacity; or

(3) Granting emergency access would delay the closing of the disposal facility pursuant to plans established before the receipt of the request for emergency access; or

(4) The volume of waste requiring emergency access exceeds 20 percent of the total volume of low-level radioactive waste accepted for disposal at the facility during the previous calendar year.

(c) If, after applying the exclusionary criteria in paragraph (b) of this section, more than one disposal facility is identified as appropriate for designation, the Commission will then consider additional factors in designating a facility or facilities including:

(1) Type of waste,

(2) Previous disposal practices,

(3) Transportation,

(4) Radiological effects,

(5) Site capability for handling waste, and

(6) Any other considerations deemed appropriate by the Commission.

(d) The Commission, in making its designation, will also consider any information submitted by the operating non-Federal or regional LLW disposal sites, or any information submitted by the public in response to a **Federal Register** notice requesting comment, as provided in paragraph (b) of § 62.11.

Dated at Washington DC, this 9th day of December, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-28651 Filed 12-14-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; EC-1]

Equal Credit Opportunity; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The proposed revisions address issues concerning consideration of age in evaluating creditworthiness, signature requirements, record retention and collection of monitoring information.

DATE: Comments must be received on or before February 12, 1988.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the 20th Street courtyard entrance (20th Street between C Street and Constitution Avenue NW., Washington, DC) between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to EC-1. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Brueger or Leonard N. Chanin, Staff Attorneys, or Adrienne D. Hurt, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or 452-3667; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf

at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 *et seq.*) makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR Part 202).

On November 20, 1985, an official staff commentary was published to interpret the regulations, along with a final rule revising Regulation B (50 FR 48018). The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise. The previous update was published in April 1987 (52 FR 10732). This notice contains the proposed second update. It is expected that it will be adopted in final form in March 1988.

(2) Proposed Revisions

The following is a brief description of the proposed revisions to the commentary:

Section 202.6—Rules Concerning Evaluation of Applications

6(b) Specific Rules Concerning Use of Information

Paragraph 6(b)(2). Comment 6(b)(2)–1 would be amended to clarify that while § 202.6(b)(2)(iv) permits favoring persons age 62 and older, that paragraph does not permit favoring a larger age group (such as persons age 55 and older). To offer a program favoring a larger age group, the creditor must rely on the special purpose credit provisions of section 202.8.

Comment 6(b)(2)–3 would be amended to clarify that age or age-related information about an applicant cannot be the sole factor in determining creditworthiness or in formulating credit terms and conditions.

Section 202.7—Rules Concerning Extensions of Credit

7(d) Signature of Spouse or Other Person

Paragraph 7(d)(5). Comment 7(d)(5)–2 would be revised in light of *United States v. ITT Consumer Financial Corp.*, 816 F.2d 487 (9th Cir. 1987) to clarify the rules on when a creditor may require additional signatures on a credit obligation. In the ITT case, the U.S. Court of Appeals for the Ninth Circuit held that the future earnings of a spouse are not community property. Therefore, when an applicant relies on the spouse's future earnings to establish creditworthiness, a creditor may condition the extension of credit on the nonapplicant spouse's signing the credit obligation.

Whether an applicant is relying on the future earnings of a nonapplicant spouse is for the creditor to determine. Because § 202.5(c)(2)(iv) permits a creditor routinely to request information about a nonapplicant spouse, the mere fact that the nonapplicant spouse's income is listed on an application form is insufficient to show that the applicant is relying on the spouse's income.

A third sentence would be added to comment 7(d)(5)–2 to incorporate the holding of *ITT*. Some creditors have asked whether, given the *ITT* ruling, they are required to obtain the signature of the applicant's spouse whose future earnings are relied on for an extension of credit. Creditors have also asked whether they may differentiate on the basis of marital status when future earnings are relied on—that is, whether a creditor may follow the practice of not requiring the signature of a *spouse* whose earnings are relied on if it is the creditor's policy to require the signature of a *person not married to the applicant* whose future earnings are relied on. (In the case of a spouse, the creditor would be assuming that, under community property state law, the spouse's future earnings—unlike the future earnings of a nonspouse—will become community property.) Additional language has been added to make clear that such a practice is permissible, referencing § 202.6(c)—which allows the consideration of state property laws.

Section 202.12—Record Retention

12(b) Preservation of Records

Comment 12(b)–1 would be revised to clarify the rules for record retention of documents (for example, notifications of action taken) in computerized systems.

Section 202.13—Information for Monitoring Purposes

13(a) Information to Be Requested

Comment 13(a)–5 would be revised to clarify the monitoring information rules regarding open-end lines of credit.

List of Subjects in 12 CFR Part 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Religious discrimination, Sex discrimination, Women.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

(3) Text of Proposed Revisions

Pursuant to authority granted in section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board proposes to amend the official staff commentary to Regulation B (12 CFR Part 202 Supp. I) as follows:

PART 202—[AMENDED]

1. The authority citation for Part 202 continues to read:

Authority: 15 U.S.C. 1691 *et seq.*

2. The proposed revisions amend the commentary (12 CFR Part 202, Supp. I) by revising comments 6(b)(2)–1, 6(b)(2)–3, 7(d)(5)–2, 12(b)–1 and 13(a)–5 and read as follows:

Supplement I—Official Staff Commentary

* * * * *

Section 202.6—Rules Concerning Evaluation of Applications

* * * * *

6(b) *Specific rules concerning use of information.*

* * * * *

Paragraph 6(b)(2)

1. *Favoring the elderly.* Any system of evaluating credit-worthiness may favor a credit applicant who is age 62 or older. ►A credit program offering more favorable credit terms to applicants at an age lower than 62 is permissible, however, only if the program meets the special-purpose credit requirements of § 202.8.◄

* * * * *

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in § 202.2(t), a creditor may not take age directly into account in any aspect of the credit transaction. For example, the creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. For example:

- A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.
- A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. (An elderly applicant might not

qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.)

• A creditor may consider the applicant's age to assess the significance of the length of the applicant's employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

►As the examples above illustrate, the evaluation must be made in an individualized, case-by-case manner; and it is impermissible for a creditor, in deciding whether to extend credit or in setting the terms and conditions, to consider age-related information solely. Age-related information may be considered only in evaluating other "pertinent elements of creditworthiness" that are drawn from the particular facts and circumstances concerning the application in question.◄

* * * * *

Section 202.7—Rules Concerning Extensions of Credit

* * * * *

7(d) *Signature of spouse or other person.*

* * * * *

Paragraph 7(d)(5)

* * * * *

2. ►*Reliance on*◄ *income of another person* ►*—individual credit*◄. An applicant who requests individual credit relying on the income of another person ([such as] ►including◄ a spouse ►in a noncommunity property state◄) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature ►of a spouse◄ may be required if the applicant relies on the ►spouse's◄ separate income ►.◄ [of another person, i.e., income] ►If the applicant relies on the spouse's future earnings◄ that as a matter of state law ►are◄ [is] not community property [.] ►, the creditor may but need not require the spouse's signature. The option of not requiring the spouse's signature is permissible regardless of whether the creditor requires the signature of a nonspouse whose future earnings are relied on by the applicant. (See § 202.6(c) on consideration of state property laws.)◄

* * * * *

Section 202.12—Record Retention

* * * * *

12(b) Preservation of records.

1. *Copies.* A copy of the original record includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. ►A creditor who uses a computerized or mechanized system need not keep a written copy of a document (for example, an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.◄

* * * * *

Section 202.13—Information for Monitoring Purposes

13(a) Information to be requested.

* * * * *

5. *Transactions not covered.* The information-collection requirements of § 202.13(a) apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, [applications for home-equity lines and other] applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements of § 202.13(a). ►An application for an open-end home equity line of credit is not subject to § 202.13 unless it is readily apparent to the creditor during the application process (for example, by the documentation involved) that the purpose of the line is for the purchase or refinancing of a principal dwelling.◄

Board of Governors of the Federal Reserve System. December 9, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-28698 Filed 12-14-87; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 205

[Reg. E; EFT-2]

Electronic Fund Transfer; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed changes to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The proposed revisions address questions that have arisen about the regulation, including amendments adopted by the Board in August 1987 dealing with POS/ACH services. The proposed revisions deal, for example, with the responsibilities of a service-providing institution concerning periodic statements, card issuance, and error resolution.

DATE: Comments must be received on or before February 12, 1988.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the 20th Street courtyard entrance (between C Street and Constitution Avenue NW.), Washington, DC between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to EFT-2. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Brueger, Staff Attorney, or Gerald P. Hurst or John C. Wood, Senior Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412. For the hearing-impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205).

Effective September 24, 1981, an official staff commentary (EFT-2, Supp. II to 12 CFR Part 205) was published to interpret the regulation. The commentary is designed to provide guidance to financial institutions in applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. This notice contains the proposed sixth update. It is expected that the update will be adopted in final form in March 1988. The previous updates were published on April 6, 1983 (48 FR 14880), October 18, 1984 (49 FR 40794), April 3, 1985 (50 FR 13180), April 21, 1986 (51 FR 13484), and April 3, 1987 (52 FR 10734).

(2) Proposed Revisions

Following is a brief description of the proposed revisions to the commentary:

Section 205.3—Exemptions

Question 3-6. Question 3-6 would be revised to make clear that section 913 of the EFT Act does not require an employer to give its employees the choice of receiving their salary by check as an alternative to direct deposit. Instead, an employer may comply with section 913 by allowing each employee to choose the institution to receive the direct deposits.

Section 205.14—Services Offered by Financial Institutions Not Holding Consumer's Account

Question 14–4. Question 14–4 would be revised to make clear that if the service provider complies with the conditions set forth in the August 1987 amendments to the regulation (52 FR 30904), it need not provide a periodic statement. The question as currently written could be viewed as requiring a service-providing institution to provide a periodic statement to consumers in all cases.

Question 14–5. This question is a new question. It would clarify that in any POS/ACH program where the service provider does not issue debit cards that will actually be used to initiate transfers through the system, the service provider must provide periodic statements to consumers.

Question 14–6. This question is also new. It deals with the responsibility of a service provider with regard to error resolution. It would clarify that the service provider must reimburse the consumer for any fees or charges incurred as a result of the error.

Question 14–7. This question would be added to the commentary to address an issue concerning the periodic statement provided by the account-holding institution. Specifically, the question would make clear that the statement need not show, with respect to POS/ACH transactions, information other than the transaction description set forth in § 205.9(b)(1).

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

Certain conventions have been used to highlight the revisions. New language is shown inside bold-faced arrows, while language to be removed is set off with brackets.

(3) Text of Proposed Revisions

Pursuant to authority granted in section 904 of the Electronic Fund Transfer Act, 15 U.S.C. 1693b, the Board proposes to amend the official staff commentary to Regulation E (12 CFR Part 205, Supp. II) as follows:

PART 205—[AMENDED]

1. The authority citation for Part 205 continues to read:

Authority: Pub. L. 95–630, 92 Stat. 3730 (15 U.S.C. 1693b).

2. The proposed revisions amend the official staff commentary on Regulation E (EFT–2, Supp. II to 12 CFR Part 205) by revising questions 3–6 and 14–4 and by adding questions 14–5, 14–6, and 14–7, and read as follows:

Supplement II—Official Staff Interpretations

* * * * *

Section 205.3—Exemptions

* * * * *

Q 3–6: *Compulsory use—salary payments.* Preauthorized transfers from a financial institution to a consumer's account at the same institution are exempt from the act and regulation generally but are subject to the statutory prohibition against requiring an employee (as a condition of employment) to receive payroll deposits by electronic means at a particular institution. Does this prohibition apply to a financial institution as an employer?

A: Yes. The prohibition applies to all employers, including financial institutions. To comply with the law, an employer could [, for example,] give its employees a choice of ►institutions to receive directly deposited payments, or a choice of◄ the method of receiving payment—such as having their pay deposited at a particular institution, or receiving payment by check or cash.

As in the case of preauthorized loan payments, the compulsory-use prohibition does not require an employer to offer alternative means of payment to employees who agreed to electronic deposits at a particular financial institution before May 10, 1980. However, if an employee asks to terminate this arrangement, the employer should honor the request. (§ 205.3(d)(2), section 913)

* * * * *

Section 205.14—Services Offered by Financial Institutions Not Holding Consumer's Account

* * * * *

Q 14–4: *Periodic statement—service-providing institution.* Does the service-providing institution have to provide to the consumer a periodic statement showing transfers other than electronic fund transfers made with the service provider's access device?

A: No. ►And if the service provider complies with the conditions set forth in the regulation, it need not provide any periodic statement.◄ (§ 205.14(a)(2)►(i)–(v)◄)

►Q 14–5: *Issuance of card by service-providing institution.* May a service provider provide a POS/ACH service without sending periodic statements, if it issues its own card but then allows the consumer to use another card (such as a bank-issued debit or credit card) to initiate transfers through the POS/ACH system?

A: No. In order to take advantage of the exception, the debit card for initiating transfers through the system must be the one issued by the service provider. Similarly, a service provider that does not issue debit cards remains subject to the requirement to send periodic statements. (§ 205.14(a)(2)(i))◄

►Q 14–6: *Error resolution—responsibility of service-providing institution.* In a POS/ACH transaction, the consumer properly notifies the service-providing institution of an alleged error. What is the service provider's responsibility?

A: The service provider must investigate and resolve the error as set forth in the regulation. If an error in fact occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider. (§§ 205.11 and 205.14(a)(3)–(a)(6))◄

►Q 14–7: *Content of periodic statement.* For POS/ACH transactions, is the account-holding institution required to disclose all the items specified in § 205.9(b) on its periodic statement?

A: No. The periodic statement need contain only the transaction descriptive information specified in § 205.9(b)(1). (§ 205.14(b)(1))◄

* * * * *

Board of Governors of the Federal Reserve System, December 9, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–28699 Filed 12–14–87; 8:45 am]

BILLING CODE 6210–01–M

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12 CFR Part 226

[Reg. Z; TIL–1]

Truth in Lending; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations of the regulation. The proposed revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material. The proposed changes address, for example, disclosure questions raised by the emergence of conversion features in adjustable-rate mortgages, as well as the imposition of fees that are considered finance charges at the time a credit card plan is renewed. Proposed commentary also is included which interprets the Board's recent rule implementing the requirement of the Competitive Equality Banking Act that adjustable-rate mortgages contain a maximum interest rate.

DATE: Comments must be received on or before February 12, 1988.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve

System, Washington, DC 20551, or delivered to the 20th Street courtyard entrance (20th Street, between C Street and Constitution Avenue, NW., Washington, DC) between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to TIL–1. Comments may be inspected in Room B–1122 between 8:45 and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412:

Subparts A and B—Kathleen S. Brueger, Gerald P. Hurst, John C. Wood
Subpart C—Michael S. Bylsma, Leonard N. Chanin, Thomas J. Noto
Subpart D—Adrienne D. Hurt, Sharon T. Bowman

For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR Part 226). Effective October 13, 1981, an official staff commentary (TIL–1, Supp. I to 12 CFR Part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. There have been six general updates so far—the first in September 1982 (47 FR 41338), the second in April 1983 (48 FR 14882), the third in April 1984 (49 FR 13482), the fourth in April 1985 (50 FR 13181), the fifth in April 1986 (51 FR 11422), and the sixth in April 1987 (52 FR 10875). There was also a limited update concerning fees for the use of automated teller machines, which was adopted in October 1984 (49 FR 40560). This notice contains the proposed seventh general update. It is expected that it will be adopted in final form in March 1988 with optional compliance until the uniform effective date of October 1 for mandatory compliance.

(2) Proposed Revisions

The following is a brief description of the proposed revisions to the commentary:

Subpart A—General

Section 226.4—Finance Charge—4(c) Charges Excluded from the Finance Charge—Paragraph 4(c)(4). A cross-reference would be added to comment 4(c)(4)–2—participation fees. The cross-reference is to the commentary to § 226.14(c), computation of the annual percentage rate on periodic statements. Comment 14(c)–7 discusses those situations when finance charges need not be included in the annual percentage rate computed for the periodic statement. Comment 14(c)–7 currently deals with fees related to the opening of the account. In this update, the Board proposes to also exclude certain account renewal fees from the computation of the annual percentage rate on periodic statements.

Subpart B—Open-end Credit

Section 226.6—Initial Disclosure Statement—6(a) Finance Charge—Paragraph 6(a)(2). Comment 6(a)(2)–7 would be revised to include a reference to new § 226.30 and the commentary to that section. Section 226.30 requires creditors to include a provision setting a maximum interest rate in their dwelling-secured credit contracts that provide for changes in the interest rate.

Section 226.7—Periodic Statement—7(h) Other Charges. Comment 7(h)–1 would be revised to clarify the treatment of taxes and filing or notary fees that are excluded from the finance charge under § 226.4(e). Even though the § 226.4(e) items are not required to be disclosed as "other charges" under § 226.6(b), creditors may include such charges in a disclosure of "other charges" on the initial disclosures. Similarly, these charges may be included in the amount shown as "closing costs" or "settlement costs" on the periodic statement, if the charges were itemized and disclosed as part of the closing or settlement costs on the initial disclosure statement. The revised comment clarifies this point.

Section 226.14—Determination of Annual Percentage Rate—14(c) Annual Percentage Rate for Periodic Statements. Comment 14(c)–7 currently discusses the exclusion of charges related to opening an account from inclusion in the annual percentage rate computation. This comment would be revised to also exclude fees that are imposed for renewal of an account, provided the fees are not imposed as a result of specific transactions or specific account activity. This proposal is based on the idea that charges related to the renewal of an account, when they are not related to specific transactions or specific activity, result in the same problems already identified in this comment with respect to fees related to the opening of an account. Including the fees, such as charges that are only imposed on customers that do not charge a certain amount on their credit card annually, in the computation of the annual percentage rate would, in many cases, result in significant distortions of the annual percentage rate and the delivery of possibly misleading information to consumers.

Subpart C—Closed-end Credit

Section 226.18—Content of Disclosures—18(b) Amount Financed—Paragraph 18(b)(3). Comment 18(b)(3)–1, addressing the treatment of prepaid finance charges in calculations of the amount financed, would be deleted and a new comment 18(b)(3)–1 substituted in its place. The new comment clarifies and more fully explains the treatment of prepaid finance charges, which has been the source of considerable confusion. The new comment is not intended to change the existing rules under § 226.18(b), but merely to clarify when creditors have an option to treat certain fees as prepaid finance charges and what the implications of that choice are under § 226.18(b).

18(c) Itemization of Amount Financed—Paragraph 18(c)(1)(iv). Comment 18(c)(1)(iv)–1, addressing the itemization of prepaid finance charges, would be supplemented by a new sentence at the beginning which clarifies that only those finance charges deducted from the principal loan amount under § 226.18(b)(3) should be itemized as prepaid finance charges under § 226.18(c)(1)(iv). The revision is made in conjunction with the clarification to comment 18(b)(3)–1 and is not intended to change the substance of existing rules.

18(f) Variable Rate. Comment 18(f)–9 would be added to discuss the disclosure requirements under this section for variable-rate transactions containing an option permitting consumers to convert to a fixed rate. The conversion option is a variable-rate feature that must be disclosed. The comment explains how the disclosures should be given. Consistent with the revision being made to comment 18(f)(4)–1, described below, it clarifies that only one hypothetical example should be disclosed, such as an example of payment terms resulting from changes in the index.

This comment is similar to the paragraph on conversion options proposed in the fifth commentary update in December 1985. That proposal was not adopted then because it was expected to be incorporated into a uniform ajustable-rate mortgage disclosure regulation. This regulation was proposed by the Board in November, 1986. In the likely event the

uniform disclosure regulation is adopted in the near future, comment 18(f)–9 would apply only to transactions not covered by the new requirements.

Paragraph 18(f)(2). Comment 18(f)(2)–1 would be revised by adding a cross-reference to the requirement in new § 226.30 that a maximum interest rate limitation be included in certain variable-rate transactions.

Paragraph 18(f)(4). Comment 18(f)(4)–1 would be revised to clarify that section 18(f)(4) requires only one example of the effects of a rate increase on payment terms. The comment states that in transactions with more than one variable-rate feature, only one hypothetical example may be included in the segregated disclosures.

Subpart D—Miscellaneous

Section 226.28—Effect on State Laws—28(a) Inconsistent Disclosure Requirements. Comment 28(a)–13 would be added to reflect the Board's 1985 determination of the effect of the Truth in Lending Act on a provision of the consumer credit law of Arizona. On September 4, 1987, the Board also published for public comment a proposed determination of the Federal law's effect on a provision of the consumer credit law of Indiana (52 FR 33596), and will likely make a final determination on this proposal later this year. That determination is expected to be incorporated into the final commentary update.

Section 226.30—Limitations on Rates. On November 9, 1987, the Board published a final rule amending Regulation Z to incorporate the substance of section 1204 of the Competitive Equality Banking Act (CEBA) into the regulation (52 FR 43178; technical corrections to original notice at 52 FR 45611 (1987). The rule requires creditors who offer dwelling-secured loans with an adjustable interest rate to include a maximum rate ceiling in their credit agreements entered into on or after December 9, 1987. The following comments would be included as part of the commentary to § 226.30.

Comments 30–1 through 30–5 would explain the scope of the rule's coverage, including examples of what types of obligations are covered and not covered. Generally stated, the rule is that any post-effective date credit obligation is subject to the interest rate ceiling requirement if it: (1) Is secured by a dwelling, (2) contractually allows for interest rate increases, and (3) requires initial Truth in Lending Act (TILA) disclosures. A credit obligation subject to the TILA may also become subject to § 226.30 in two other instances: (1) If a security interest in a dwelling is added to an obligation that allows for interest rate increases, or (2) a variable rate feature is added to a dwelling-secured credit obligation.

The scope of the substantive law requirement of section 1204 of CEBA is limited to obligations subject to the TILA and Regulation Z. Comment 30–6 generally explains that the other provisions of the regulation relating to TILA disclosures and their corresponding commentaries apply to § 226.30 where appropriate (such as definitions and exemptions), unless otherwise specified in the commentary to § 226.30. For example, for purposes of *coverage,* the refinancing and assumption rules of § 226.20 (a) and (b) apply. On the other hand, for purposes of *increasing a maximum interest rate* originally imposed under § 226.30 only the refinancing and assumption rules in proposed comments 11 and 12 to this section would apply.

Comments 30–7 through 30–9 explain the requirement to specify the interest rate ceiling in credit contracts, including how the rate may be stated and that multiple rates may be set.

Comment 30–10 would be included to explain that the maximum rate ceiling must be applicable to increases after default. This comment applies only in situations in which a post-default agreement is still considered part of the original obligation subject to Regulation Z.

Comments 30–11 and 30–12 explain when the maximum interest rate ceiling originally set on an obligation may be increased.

Comment 30–13 further explains the relief provided in footnote 50 to § 226.30.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in lending.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

(3) Text of Proposed Revisions

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended) and section 1204 of the Competitive Equality Banking Act, Pub. L. 100–86, 101 Stat. 552, the Board proposes to amend the official staff commentary to Regulation Z (12 CFR Part 226 Supp. I) as follows:

1. The authority citation for Part 226 continues to read:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96–221, 94 Stat. 170 (15 U.S.C. 1604 *et seq.*); sec. 1204(c), Competitive Equality Banking Act, Pub. L. 100–86, 101 Stat. 552.

2. The proposed revisions amend the commentary (TIL–1, 12 CFR Part 226 Supp. I) by revising comments 4(c)(4)–2; amending comment 6(a)(2)–7 by adding two sentences after the second sentence; revising comment 7(h)–1, 14(c)–7, 18(b)(3)–1; amending comment 18(c)(1)(iv)–1 by adding a new first sentence; adding comment 18(f)–9; revising comments 18(f)(2)–1 and 18(f)(4)–1; and adding comments 28(a)–13 and 30–1 through 30–13 to read as follows:

Subpart A—General

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Section 226.4—Finance Charge

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4(c) Charges Excluded from the Finance Charge

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Paragraph 4(c)(4)

* * * * *

2. *Participation fees—exclusions.* * * * (See the commentary to § 226.4(b)(2). ►Also, see comment 14(c)–7 for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.◄)

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Subpart B—Open-end Credit

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Section 226.6 Initial Disclosure Statement

* * * * *

6(a) Finance Charge

* * * * *

Paragraph 6(a)(2)

* * * * *

7. *Variable-rate plan—limitations on increase.* In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. ►(A maximum interest rate must be included in dwelling-secured open-end credit plans under which the interest rate may be changed. See § 226.30 and the commentary to that section.)◄ Legal limits such as usury or rate ceilings * * *

* * * * *

Section 226.7—Periodic Statement

* * * * *

7(h) Other Charges

1. *Identification.* In identifying any "other charges" actually imposed during the billing cycle, the type is adequately described as "late charge" or "membership fee," for example. Similarly, "closing costs" or "settlement costs," for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under

§ 226.4(c)(7), if the same term (such as "closing costs") was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. ►Even though the taxes and filing or notary fees excluded from the finance charge under § 226.4(e) are not required to be disclosed as "other charges" under § 226.6(b), these charges may be included in the amount shown as "closing costs" or "settlement costs" on the periodic statement, if the charges were itemized and disclosed as part of the "closing costs" or "settlement costs" on the initial disclosure statement.◄ (See comment 6(b)–1 for examples of "other charges.")

* * * * *

Section 226.14—Determination of Annual Percentage Rate

* * * * *

14(c) Annual Percentage Rate for Periodic Statements

* * * * *

7. *Charges related to opening* ►or renewing◄ *account.* Footnote 33 is applicable to § 226.14(c)(2) and (c)(3). The charges involved here do not relate to a specific transaction or to ►specific◄ activity on the account, but relate solely to the opening ►or renewing◄ of the account. ►As a result, a fee that is charged annually to renew a credit card account if the customer has not met certain account usage criteria—and thus may not be excluded from the finance charge under § 226.4(c)(4) (see comment 4(c)(4)–2)—would not be included in the calculation of the annual percentage rate.◄ Inclusion of these charges in the annual percentage rate calculation results in significant distortions of the annual percentage rate and delivery of a possibly misleading disclosure to consumers. The rule in footnote 33 applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

* * * * *

Subpart C—Closed-end Credit

* * * * *

Section 226.18—Content of Disclosures

* * * * *

18(b) Amount Financed

* * * * *

Paragraph 18(b)(3)

1. *Prepaid finance charges.* ►Prepaid finance charges that are paid separately in cash or by check should be deducted under § 226.18(b)(3) in calculating the amount financed. To illustrate:

• A consumer applies for a loan of $2,500 with a $40 loan fee. The face amount of the note is $2,500 and the consumer pays the loan fee separately by cash or check at closing. The principal loan amount for purposes of § 226.18(b)(1) is $2,500 and $40 should be deducted under § 226.18(b)(3), thereby yielding an amount financed of $2,460.

In some instances, as when loan fees are financed by the creditor, finance charges are incorporated in the face amount of the obligation. Creditors have the option, when the charges are not add-on or discount charges, of either including or not including the finance charges in the principal loan amount that they determine under § 226.18(b)(1). When the finance charges are included in the principal loan amount, they should be deducted as prepaid finance charges under § 226.18(b)(3).

When the finance charges are not included in the principal loan amount, they should not be deducted under § 226.18(b)(3). The following examples illustrate the application of § 226.18(b) to this type of transaction. Each example assumes a loan request of $2,500 with a loan fee of $40; the creditor assesses the loan fee by increasing the face amount of the note to $2,540.

• If the creditor determines the principal loan amount under § 226.18(b)(1) to be $2,540, it has included the loan fee in the principal loan amount and should deduct $40 as a prepaid finance charge under § 226.18(b)(3), thereby obtaining an amount financed of $2,500.

• If the creditor determines the principal loan amount under § 226.18(b)(1) to be $2,500, it has not included the loan fee in the principal loan amount and should not deduct any amount under § 226.18(b)(3), thereby obtaining an amount financed of $2,500.◄

* * * * *

18(c) Itemization of Amount Financed

* * * * *

Paragraph 18(c)(1)(iv)

1. *Prepaid finance charge.* ►Prepaid finance charges that are deducted under § 226.18(b)(3) must be disclosed under this section◄ * * *

* * * * *

18(f) Variable Rate

* * * * *

►9. *Conversion feature.* In variable-rate transactions with an option permitting consumers to convert to a fixed-rate loan, the conversion option is a variable-rate feature that should be disclosed. In making disclosures under § 226.18(f), creditors should disclose the fact that the rate may increase upon conversion and identify the index used to set the fixed rate, any limitations on the increase resulting from conversion, and the effect of an increase. Because § 226.18(f)(4) permits only one hypothetical example in the segregated disclosures (such as an example of the effect on payments resulting from changes in the index), a second hypothetical example would not be given.◄

* * * * *

Paragraph 18(f)(2)

1. *Limitations.* This includes any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. When there are no limitations, the creditor may, but need not, disclose that fact. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations. ►(See § 226.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.)◄

* * * * *

Paragraph 18(f)(4)

1. *Hypothetical example.* The example may, at the creditor's option, appear apart from the other disclosure. The creditor may provide either a standard example that illustrates the terms and conditions of that type of credit offered by that creditor or an example that directly reflects the terms and conditions of the particular transaction. ►In transactions with more than one variable-rate feature, only one hypothetical example should be provided in the segregated disclosures.◄

* * * * *

Subpart D—Miscellaneous

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Section 226.28—Effect on State Laws

28(a) Inconsistent Disclosure Requirements

* * * * *

►13. *Preemption determination—Arizona.* Effective October 1, 1986, the Board has determined that the following provision in the state law of Arizona is preempted by the federal law:

• Section 6–621A.2—Use of the term "the total sum of $ ____" in certain notices provided to borrowers. This term describes the same item that is disclosed under federal law as the "total of payments." Since the state law requires the use of a different term than federal law to describe the same item, the state-required term is preempted. The notice itself is not preempted.►

* * * * *

► *Section 226.30—Limitation on Rates*

1. *Scope of coverage.* The requirement of this section applies to dwelling-secured consumer credit obligations—both open-end and closed-end credit—entered into on or after December 9, 1987 that are subject to the Truth in Lending Act and Regulation Z, in which the annual percentage rate may increase after consummation (or during the term of the plan, in the case of open-end credit) as a result of an increase in the interest rate component of the finance charge—whether those increases are tied to an index or formula or are within a creditor's discretion. The section applies to credit sales as well as loans. Examples of obligations subject to this section include:

• Dwelling-secured credit obligations that require variable rate disclosures under the regulation because the interest rate may increase during the term of the obligation. (See the commentaries to sections §§ 226.6(a)(2)n.12 and 226.18(f).)

• Dwelling-secured open-end credit plans that do not require variable rate disclosures under the regulation but where the creditor reserves the contractual right to increase the interest rate—periodic rate and corresponding annual percentage rate—during the term of the plan.

In contrast, the following obligations are not subject to this section, because there is

no contractual right to increase the interest rate during the term of the obligation.

• "Shared-equity" or "shared-appreciation" mortgages as described in comment 18(f)–6.

• Fixed-rate closed-end balloon payment mortgage loans and fixed-rate open-end plans with a stated term that the creditor may, but does not have a contractual legal obligation to, renew at maturity.

2. *Refinanced obligations.* On or after December 9, 1987, when a credit obligation is refinanced, as defined in § 226.20(a) the new obligation is subject to the requirement of this section if it is dwelling-secured and allows for increases in the interest rate.

3. *Assumptions.* On or after December 9, 1987, when a credit obligation is assumed, as defined in § 226.20(b), the obligation becomes subject to the requirement of this section if it is dwelling-secured and allows for increases in the interest rate.

4. *Modifications of obligations.* Modifications of agreements entered into prior to December 9, 1987 are generally not covered by this section. For example, increasing the credit limit on a dwelling-secured, open-end plan with a variable interest rate entered into before the effective date of the rule does not make the obligation subject to the requirement of this section. If, however, a security interest in a dwelling is added on or after December 9, 1987 to a pre-existing credit obligation that allows for interest rate changes, the obligation becomes subject to the requirement of this section. Similarly, if on or after December 9, 1987, a variable interest rate feature is added to a pre-existing dwelling-secured credit obligation, the obligation becomes subject to the requirement of this section.

5. *Land trusts.* In some states, a land trust is used in residential real estate transactions. (See discussion in comment 3(a)–8).) If a consumer-purpose loan that allows for interest rate changes is secured by an assignment of a beneficial interest in a land trust that holds title to a consumer's dwelling, that loan is subject to the requirement of this section.

6. *Relationship to other sections.* Unless otherwise provided for in the commentary to this section, other provisions of the regulations such as definitions, exemptions, rules and interpretations also apply to this section where appropriate. To illustrate:

• An adjustable interest rate business-purpose loan is not subject to this section even if the loan is secured by a dwelling because such credit extensions are not subject to the regulation. (See generally § 226.3(a))

• Creditors subject to the requirement of this section are only those that fall within the definition of a creditor in §226.2(a)(17).

7. *Consumer credit contract.* Creditors are required to specify a lifetime maximum interest rate ceiling in their credit contracts—the instrument that creates personal liability and generally contains the terms and conditions of the agreement (for example, a promissory note or home-equity line of credit agreement). This requirement is subject to the general "clear and conspicuous" standard of the regulation, but no specific rule is prescribed regarding the format of the requirement. In some states, the signing of a commitment letter may create a binding obligation, for example, constituting "consummation" as defined in § 226.2(a)(13). The maximum interest rate ceiling must be included in the credit contract, but a creditor has the option of including the rate ceiling in the commitment instrument as well.

8. *Manner of stating the rate ceiling.* The maximum interest rate must be stated either as a specified amount or in any other manner that would allow the consumer to easily ascertain, at the time of entering into the obligation, what the lifetime interest rate ceiling will be over the term of the obligation. For example, the following statements would be sufficiently specific:

• The maximum interest rate will not exceed X%.

• The interest rate will never be higher than X percentage points above the initial rate of Y%.

• The interest rate will not exceed X%, or X percentage points above [a rate to be determined at some future point in time], whichever is less.

• The maximum interest rate will not exceed X% or the state usury ceiling, whichever is less.

The following statements would not comply with this section:

• The interest rate will never be higher than X percentage points over the going market rate.

• The interest rate will never be higher than X percentage points above [a rate to be determined at some future point in time].

• The interest rate will not exceed the state usury ceiling which is currently X%.

A creditor may state the maximum rate in terms of a maximum annual percentage rate that may be imposed. Under an open-end credit plan, this would be the corresponding annual percentage rate. (See generally § 226.6(a)(2).)

9. *Multiple interest rate ceilings.* Creditors are not prohibited from setting multiple interest rate ceilings. For example, on loans with multiple variable rate features, creditors may establish a maximum interest rate for each feature. To illustrate, in a variable rate loan that has an option to convert to a fixed rate, a creditor may set one maximum interest rate for the initially imposed index-based variable rate feature and another for the conversion option. Of course, a creditor may establish one maximum interest rate applicable to all features.

10. *Interest rate charged after default.* State law may allow an interest rate after default higher than the contract rate in effect at the time of default; however, the interest rate after default must be subject to a maximum interest rate set forth in a credit obligation that is otherwise subject to the requirement of this section. This rule applies only in stituations in which a post-default agreement is still considered part of the original obligation.

11. *Increasing the interest rate ceiling—general rule.* Generally, a creditor may not increase the maximum interest rate originally set on a credit obligation unless the consumer and the creditor enter into a new obligation. Therefore, under an open-end plan subject to this section, a creditor may not increase the maximum rate ceiling imposed merely because there is an increase in the credit limit. If an open-end plan is closed and another opened, a new rate ceiling may be imposed. Furthermore, where an open-end plan subject to this section has a fixed maturity and a creditor renews the plan at maturity, or converts the plan to closed-end credit, without having a legal obligation to renew or convert, a new maximum interest rate may be set at that time. If under the initial agreement, the creditor is obligated to renew or convert the plan, the maximum interest rate originally imposed cannot be increased upon renewal or conversion. For a closed-end credit transaction, a new interest rate ceiling may be set only if the transaction is satisfied and replaced by a new obligation that is dwelling-secured and allows for increases in the interest rate. (The exceptions to the general on refinancings in § 226.20(a)(1)-(5) do not apply with respect to increases in the rate ceiling.)

12. *Increasing the interest rate ceiling—assumption of an obligation.* If an obligation subject to this section is assumed by a new obligor and the original is released from liability, the maximum interest rate set on the obligation may be increased as part of the assumption agreement. (This rule applies whether or not the transaction constitutes an assumption as defined in § 226.20(b).)

13. *Transition rules.* Under footnote 50, if creditors properly include the maximum rate ceiling in their credit contracts, creditors need not revise their Truth in Lending disclosure statement forms to add the disclosures about limitations on an increase required by §§ 226.6(a)(2) n.12 and 226.18(f)(2) until October 1, 1988. After that date, creditors are required to state the limitations on a increase as part of their Truth in Lending disclosures as well as stating the maximum interest rate ceiling in their credit contracts.

References

Statute: Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552.

Other sections: Sections 226.6(a)(2) n.12 and 226.18(f)(2).

Previous regulation: None.

1387 changes: This section implements section 1204 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552 which provides that, effective December 9, 1987, adjustable rate mortgages must include a limitation on the interest rate that may apply during the term of the mortgage loan. An adjustable rate mortgage loan is defined in section 1204 as "any loan secured by a lien on a one-to-four family dwelling unit, including a condominium unit, cooperative housing unit, or mobile home, where the loan is made pursuant to an agreement under which the creditor may, from time to time adjust the rate of interest." The rule in this section incorporates section 1204 into Regulation Z and limits the scope of section 1204 to dwelling-secured consumer credit subject to the Truth in Lending Act, in which a creditor has the contractual right to increase the interest rate during the term of the credit obligation.◄

Board of Governors of the Federal Reserve System, December 9, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-28700 Filed 12-14-87; 8:45 am]

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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 18

[Docket No. 70622-7122]

Implementation of the Equal Access to Justice Act

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to revise its interim rules implementing the Equal Access to Justice Act (the "EAJA"). These proposed amendments reflect recent amendments to the EAJA enacted by Congress, change the list of covered proceedings conducted under statutes administered by the National Oceanic and Atmospheric Administration and make procedural and clarifying changes.

DATE: Comments must be received on or before January 14, 1988.

ADDRESS: Written comments should be submitted to the Office of the Assistant General Counsel for Administration, Room 5882, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Andrew W. McCready, 202-377-5391, or at the address set forth above.

SUPPLEMENTARY INFORMATION: 1. The proposed rules set forth herein are based on interim rules issued by the Department (47 FR 13510, March 31, 1982), and are designed to implement amendments to the Equal Access to Justice Act (EAJA), Pub. L. 99-80, 99 Stat. 183, 5 U.S.C. 504. The EAJA provides for the award of attorney fees and other expenses to qualified parties who prevail over the Federal Government in certain administrative and court proceedings. The EAJA requires that each agency establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. The EAJA, which had expired on September 30, 1984, was reauthorized by Pub. L. 99-80, which made several substantial changes to the EAJA. These rules reflect those changes and largely follow the model rules recommended by the Administrative Conference of the United States. See 51 FR 16659 (May 6, 1986).

2. In reauthorizing the EAJA, Congress made the following amendments relevant to the Department:

1. The Act is applicable to cases commenced after October 1, 1984.

2. Net worth ceilings for eligible parties have been raised to $2,000,000 for individuals and $7,000,000 for partnerships, corporations and certain other entities.

3. Units of local government that fall under the ceilings for net worth and number of employees have been made eligible for fee awards.

4. The position of the agency that must be substantially justified has been specifically defined to include the underlying action or failure to act on which the relevant proceeding is based as well as the agency's position in litigation.

5. Whether or not the position of the agency was substantially justified is to be determined based on the administrative record of the proceeding as a whole adduced during the course of the adjudication for which fees and other expenses are sought.

6. Appeals of decisions made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before agency boards of contract appeals are included within the definition of "adversary adjudications," and thus are explicitly covered by the Act.

Further, the most significant of the additional changes the Department proposes to make in the rules are as follows:

1. To substitute a broad definition of proceedings covered under the National Oceanic and Atmospheric Administration for the list of covered proceedings used in the interim rules.

2. To revise the settlement procedure for claims under the Act to provide that settlement by the applicant and agency counsel is to be in accordance with the component agency's standard settlement procedure.

3. To specify more detailed procedures for agency review of the adjudicative officer's decision regarding award of attorney fees.

4. To make clear that the General Services Administration Board of Contract Appeals (Board) is responsible for making determinations regarding the award of fees and other expenses on claims under the Act relating to appeals to the Board from decisions of contracting officers of the Department.

Executive Order 12291

The Department of Commerce has determined that these regulations are not major rules as defined by Executive Order 12291 because they are not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or (3) significant adverse effects on competition, employment, investment, productivity or innovation.

Regulatory Flexibility Analysis

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we hereby certify that these rules will not have a significant economic impact upon a substantial number of small entities. The EAJA itself may provide economic benefits, because it allows individuals and businesses to recover attorney fees in connection with proceedings conducted against the Government. The rules, however, simply implement the EAJA, carrying out congressional intention, and do not, by themselves, impose significant economic burdens or benefits. This certification shall be provided to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act of 1980

This rule is exempt from the requirements of the Paperwork Reduction Act of 1980 by virtue of 44 U.S.C. 3518(c)(1)(B), which provides that the Paperwork Reduction Act does not apply to the collection of information during the conduct of an administrative action involving an agency against specific individuals or entities.

List of Subjects in 15 CFR Part 18

Equal access to justice.

For the reasons stated in the preamble, it is proposed that 15 CFR Part 18 be amended as follows:

PART 18—[AMENDED]

1. The authority citation for Part 18 is revised to read as follows:

Authority: 5 U.S.C. 504(c)(1).

2. Section 18.3 is revised to read as follows:

§ 18.3 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Department on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in §§ 18.11-18.14 of these rules, has been filed with the Department within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an

application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

3. Section 18.4 is amended by inserting an "s" at the end of "Proceeding" in the heading, and by revising the introductory text of paragraph (a) and (a)(2) to read as follows:

§ 18.4 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Department and to appeals of decisions of contracting officers of the Department made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before agency boards of contract appeals as provided in section 8 of that Act (41 U.S.C. 607). Adversary adjudications conducted by the Department are adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Pursuant to section 8(c) of the Contract Disputes Act (41 U.S.C. 607(c)), the Department has arranged for appeals from decisions by contracting officers of the Department to be decided by the General Services Administration Board of Contract Appeals. This Board, in accordance with its own procedures, shall be responsible for making determinations on applications pursuant to the Act relating to appeals to the Board from decisions of contracting officers of the Department. Such determinations are final, subject to appeal under § 18.23. Any proceeding in which the Department may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." The Department proceedings covered are:

* * * * *

(2) National Oceanic and Atmospheric Administration ("NOAA")

(i) Proceedings concerning suspension, revocation, or modification of a permit or license issued by NOAA.

(ii) Proceedings to assess civil penalties under any of the statutes administered by NOAA.

4. Section 18.5 is amended by revising paragraphs (b)(1), (b)(2), (b)(5) and (g) to read as follows:

§ 18.5 Eligibility of applicants.

* * * * *

(b) * * *

(1) An individual with a net worth of not more than $2 million.

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

* * * * *

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

* * * * *

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

5. Section 18.6 is amended by revising paragraph (a) to read as follows:

§ 18.6 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceedings, unless the position of the Department over which the applicant has prevailed was substantially justified. The position of the Department includes, in addition to the position taken by the Department in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the Department's position was substantially justified is on the agency counsel.

* * * * *

6. Section 18.7 is amended by revising paragraph (b) to read as follows:

§ 18.7 Allowable fees and expenses.

* * * * *

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

* * * * *

7. Section 18.11 is amended by correcting the spelling of the word "statement" in paragraph (b)(1) and by revising the first sentence of the introductory text of paragraph (b) to read as follows:

§ 18.11 Contents of application.

* * * * *

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates).

* * *

* * * * *

§ 18.12 [Amended]

8. Section 18.12 is amended by striking "§ 18.4(f)" in the first sentence of paragraph (a) and inserting "§ 18.5(f)" in lieu thereof, by striking the comma after "labeled" in the second sentence of paragraph (b) and by striking the "s" in "exhibits" in the last sentence of paragraph (b).

9. Section 18.14 is amended by revising paragraphs (b) and (c) to read as follows:

§ 18.14 When an application may be filed.

* * * * *

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

§ 18.16 [Amended]

10. Section 18.16 is amended by striking "the Department's" in the first sentence of paragraph (c) and inserting "agency counsel's" in lieu thereof.

§ 18.18 [Amended]

11. Section 18.18 is amended by striking "the Department" in the first sentence and inserting "agency counsel" in lieu thereof.

12. Section 18.19 is amended by striking the final "s" in the heading and by revising the first sentence to read as follows:

§ 18.19 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the component agency's standard settlement procedure.

13. Section 18.20 is amended by revising paragraph (a) to read as follows:

§ 18.20 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

§ 18.21 [Amended]

14. Section 18.21 is amended by inserting "calendar" between "30" and "days" in the first sentence of the paragraph.

15. Section 18.22 is revised to read as follows:

§ 18.22 Agency review.

Either the applicant or agency counsel may file a petition for review of the initial decision on the fee application, or the Department may decide to review the decision on its own initiative. The petition must be filed with the General Counsel, Office of the Assistant General Counsel for Administration, Rm. 5882, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, not later than 30 calendar days after the initial decision is issued. For purposes of this section, a document will be considered filed with the General Counsel as of the date of the postmark (or for government penalty mail, as shown by a certificate of mailing), if mailed, or if not mailed, as of the date actually delivered to the Office of General Counsel. A petition for review must be accompanied by a full written statement in support thereof, including a precise statement of why the petitioner believes the initial decision should be reversed or modified, and proof of service upon all parties. A response to the petition may be filed by another party to the proceeding and must be filed with the General Counsel at the above address not more than 30 calendar days after the date of service of the petition for review. The General Counsel may request any further submissions deemed helpful in resolving the petition for review. If neither the applicant nor agency counsel seeks review and the Department does not take review on its own initiative, the initial decision on the application shall become a final decision of the Department 30 calendar days after it is issued. Whether to review a decision is a matter within the discretion of the General Counsel. If review is taken, the General Counsel will issue the Department's final decision on the application or remand the application to the adjudicative officer for further proceedings. The standard of review exercised by the General Counsel shall be that which was required for the highest level of Departmental review which could have been exercised on the underlying covered proceeding.

§ 18.24 [Amended]

16. Section 18.24 is amended by striking "statement" in the first sentence and inserting "certification" in lieu thereof and by inserting "calendar" between "60" and "days" in the last sentence of the paragraph.

Date: December 8, 1987.

Robert H. Brumley,

Deputy General Counsel.

[FR Doc. 87-28567 Filed 12-14-87; 8:45 am]

BILLING CODE 3510-BW-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1016

Policies and Procedures For Information Disclosure and Employee Testimony in Private Litigation

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed amendments.

SUMMARY: The Commission has regulations concerning its providing of documents and witnesses in legal proceedings that do not involve the Commission. Under amendments being proposed to these regulations, documents would continue to be provided for use in such proceedings to the fullest extent possible. However, in order to (a) avoid an undue burden on the Commission's resources and (b) maintain the effectiveness of Commission employees as witnesses in Commission cases, the testimony of employees in such proceedings would be generally prohibited.

DATES: Public comments on the proposed amendments should be submitted no later than January 29, 1988, but late comments will be considered to the extent practicable. The amendments are proposed to become effective 30 days after they are published in final form in the **Federal Register.**

ADDRESSES: Comments should be submitted preferably with four copies to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC, 20207. Received comments may be seen in the Office of the Secretary, during normal working hours, in room 528, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Alan Shakin, Acting Assistant General Counsel for Enforcement and Information, Consumer Product Safety Commission, Washington, DC 20207.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission often receives requests from attorneys who want Commission employees to testify in product liability lawsuits (and sometimes in other lawsuits to which the Commission is not a party). These requests take different forms, including:

(1) Requests for an employee to authenticate, for evidentiary purposes, a Commission document such as an in-depth investigation report prepared by a field investigator; a laboratory report by a Commission technician; or an engineering, epidemiological, or other technical report written by a headquarters staff member.

(2) Requests for the testimony of a Commission employee who has some knowledge that bears on an issue of fact in a lawsuit.

(3) Requests for a Commission employee to testify as an expert witness.

Under the existing regulations, such requests may be granted if the General Counsel finds that they satisfy at least one of the three criteria specified at 16 CFR 1016.5(b)(2): "the party seeking testimony has made a showing (1) that the evidence or the facts adduced by him or her is not reasonably available by any other method, (2) that the results

of the litigation will have significant implications for future Commission actions or policies, or (3) that Commission actions are material issues in the lawsuits * * *." However, these criteria fail to address the most important consideration: the fact that any testimony by a Commission employee in private (non-Commission) litigation uses up resources that the Commission cannot spare from its own work. The employee who is testifying and a Commission lawyer both devote time to preparation for the testimony and the testimony itself. If the testimony is at a trial, particularly one not near the employee's work location, travel time is also involved.

Another important consideration is that the effectiveness of the employee as a witness in Commission litigation could be adversely affected by his or her testimony in private litigation. For example, a staff engineer might testify for the plaintiff in a product liability case involving a consumer product. If the Commission later brought an action involving the same product, the engineer's impartiality as a witness could be questioned on the basis of his or her earlier testimony.

II. Proposed Amendments

The Commission believes that the three criteria in the employee testimony regulations should be eliminated. Based on the letters and telephone calls received from lawyers, the criteria apparently give the impression that many requests for testimony satisfy at least one criterion and are, therefore, routinely granted. This is misleading because most requests meet none of the criteria and are denied.

In place of the criteria, the Commission is proposing to adopt a practical and straightforward approach toward employee testimony in private litigation. Such testimony would be generally prohibited (§ 1016.4(a) below). The General Counsel would have discretionary authority to make an exception, but the Commission would expect such discretion to be exercised only in the rare circumstances when (1) the testimony would directly further a Commission interest and (2) no resource or partiality issues were present (§ 1016.4(c) below). Absent such a situation, the General Counsel would take steps (through the Department of Justice) to quash any validly-served subpoena seeking the testimony of a Commission employee (§ 1016.4(b) below). If the subpoena were not quashed, the employee would be directed to appear but not to testify.

Providing documents for use in private litigation does not present the same problems for the Commission as employee testimony. Under the existing regulations, the Commission provides documents to the fullest extent permitted under the Freedom of Information Act, section 6 of the Consumer Product Safety Act, and implementing regulations. In addition, the authenticity of documents is certified upon request.

The Commission knows of no reason to change this approach. Therefore, the proposed amendments would make only editorial changes to the existing provisions on documents (§ 1016.3 below).

The Commission proposes to make the amendments effective 30 days after they are issued in the **Federal Register** in final form. Please note that the proposals are not Commission action within the categories listed at 16 CFR 1021.5(b) having a potential for producing environmental effects. Therefore, neither an environmental assessment nor an environmental impact statement is required. In addition, because the number of employees testifying in private litigation and the number of documents provided for use in private litigation are unlikely to change, the Commission certifies that the proposed amendments, if issued in final form, would not have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act. 5 U.S.C. 603(3).

Accordingly, pursuant to provisions of the Consumer Product Safety Act (15 U.S.C. 2051–2081), the Federal Hazardous Substances Act (15 U.S.C. 1261–1274), the Flammable Fabrics Act (15 U.S.C. 1191–1204), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–1476), the Refrigerator Safety Act (15 U.S.C. 1211–1214), the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act of 1974 (5 U.S.C. 552a), the Commission proposes to amend Title 16 of the Code of Federal Regulations, Chapter II, Subchapter A by revising Part 1016 to read as follows:

PART 1016—POLICIES AND PROCEDURES FOR INFORMATION DISCLOSURE AND COMMISSION EMPLOYEE TESTIMONY IN PRIVATE LITIGATION

Sec.

Authority: Consumer Product Safety Act (15 U.S.C. 2051–81), the Federal Hazardous Substances Act (15 U.S.C. 1261–1274), the Flammable Fabrics Act (15 U.S.C. 1191–1204), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–76), the Refrigerator Safety Act (15 U.S.C. 1211–14), the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act of 1974 (5 U.S.C. 552a).

§1016.1 Purpose and policy.

(a) The Commission's policy is to make official records available to private litigants, to the fullest extent possible.

(b) The Commission's policy and responsibility is to conserve the time of its employees for work on Commission projects and activities. Participation of Commission employees in private litigation, in their official capacities, is generally contrary to this policy and responsibility. In addition, such participation could impair the effectiveness of Commission employees as witnesses in litigation in which the commission is directly involved.

§1016.2 Definition.

"Private litigation" refers to any legal proceeding which does not involve the United States government, or any department or agency of the U.S. government, as a party.

§1016.3 Disclosure and certification of information and records.

(a) Identifiable information and records in the Commission's possession will be made available to private litigants in accordance with the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR Part 1015), the Freedom of Information Act (5 U.S.C. 2055 and 552), sections 6 and 25(c) of the Consumer Product Safety Act (15 U.S.C. 2055 and 2074), and any other applicable statutes or regulations.

(b) The Secretary of the Commission shall certify the authenticity of copies of Commission records. Requests must be in writing and must include the records to be certified. Requests should be sent to: Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(c) Any subpoena duces tecum served on a Commission employee will be handled by the Office of the Secretary in conjunction with the Office of the General Counsel. Whenever necessary to prevent the improper disclosure of documents, the General Counsel will take steps, in conjunction with the Department of Justice, to quash such subpoenas or seek protective orders.

§1016.4 Testimony of Commission employees in private litigation.

(a) No Commission employee shall testify in his or her official capacity in

any private litigation, without express authorization from the Commission's General Counsel. The Commission may in its discretion, review a decision by the General Counsel to authorize such employee testimony. The General Counsel shall in such instances, where time permits, advise the Commission, on a no objection basis, of the authorization of such employee testimony.

(b) If any Commission employee is served with a subpoena seeking testimony in private litigation, he or she must immediately notify the Office of the General Counsel. The Office of the General Counsel, in conjunction with the Department of Justice, will take steps to quash the subpoena or direct the employee to appear in response to the subpoena but refuse to testify on the ground that it is prohibited by this section.

(c) If the General Counsel becomes aware of private litigation in which testimony by a Commission employee would be in the interests of the Commission, he or she may authorize such testimony nothwithstanding paragraph (b) of this section. The Commission may in its discretion, review a decision by the General Counsel to authorize such employee testimony. The General Counsel shall in such instances, where time permits, advise the Commission, on a no objection basis, of the authorization of such employee testimony. Any such testimony must be provided in a way that minimizes the use of Commission resources as much as possible.

Dated: December 9, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 87-28743 Filed 12-14-87; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

19 CFR Part 177

Customs Service

Tariff Classification of Annular, Corrugated Flexible Metal Hose; Extension of Time for Comments

AGENCY: Customs Service, Treasury.

ACTION: Extension of time for comments.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning the tariff classification of annular, corrugated flexible metal hose. A notice inviting the public to comment on the Customs Service's reconsideration of its position regarding tariff classification of this merchandise was published in the **Federal Register** on October 23, 1987 (52 FR 39662), and comments were to have been received on or before November 23, 1987. A request has been received to extend the period of time for comments an additional 30 days. In view of the complexity of the issues involved, the request is being granted.

DATE: Comments will now be accepted if received on or before December 23, 1987.

ADDRESS: Comments should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, Room 2324 U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202-566-8181).

Dated: December 10, 1987

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 87-28889 Filed 12-14-87; 8:45 am]

BILLING CODE 4820-02-M

RAILROAD RETIREMENT BOARD

20 CFR Part 365

Enforcement of Nondiscrimination on the Basis of Handicap in Railroad Retirement Board Programs

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Railroad Retirement Board. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal executive agencies.

DATE: To be assured of consideration, comments must be in writing and must be received on or before February 16, 1988. Comments should refer to specific sections of the regulation.

ADDRESSES: Comments should be sent to: Steven A. Bartholow, Deputy General Counsel, United States Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

Comments received will be available for public inspection in Room 832, 844 Rush Street, Chicago, Illinois, from 9:00 a.m. to 3:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, 844 Rush Street, Chicago, Illinois 60611. (312) 751-4929, TDD (312) 751-4650. Copies of this notice will be made available on tape for persons with impaired vision who request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Railroad Retirement Board administers two major programs: It pays retirement and disability benefits under the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) and unemployment and sickness benefits under the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*) The former replaces the social security system with respect to employees in the railroad industry. The latter replaces various state unemployment compensation laws with respect to employees in the railroad industry. The Board also administers or has administered a number of smaller benefit programs with regard to displaced workers of various bankrupt railroads. The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Railroad Retirement Board. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after*

the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794) (1978 amendment italicized.)

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this proposed rule and Federal government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F. 2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 for federally assisted programs are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" (*id.* at 301 n. 21) (emphasis added).

Incorporation of these changes, therefore, makes this section 504 federally conducted regulation consistent with the Federal government's section 504 federally assisted regulations as interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the judicial interpretations of *Davis*, subsequent lower court cases interpreting *Davis*, and *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agency believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not impose any requirements for information collections within the meaning of the Paperwork Reduction Act.

The Railroad Retirement Board is not an "agency" within the meaning of the Regulatory Flexibility Act and, accordingly, the requirements of that Act are not applicable to the Board.

Section-by-Section Analysis

Section 365.101 Purpose.

Section 365.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 365.102 Application.

This proposed regulation applies to all programs or activities conducted by the agency. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits.

Section 365.103 Definitions.

"Agency." For purposes of this regulation "agency" means the Railroad Retirement Board.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 365.160(a)(1), they may also be necessary to meet other requirements.

"Board." Board means the three-member governing body of the agency. See §§ 365.170(i) and 365.170(j), 45 U.S.C. 231f(a).

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary because the 120 day period for the agency's investigation (see § 365.170(g)) begins when it receives a complete complaint.

"Executive Director." The Executive Director is the chief operating officer of the agency.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by

the agency. The term "facility" is used in §§ 365.149, 365.150, and 365.170(f).

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" follows the definition of "qualified handicapped person" with respect to services that appears in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Under this definition a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits under a program or activity administered by the Board.

Paragraph (2) of this definition explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 365.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 365.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 365.111 Notice.

Section 365.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of the rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 365.130 General prohibitions against discrimination.

Section 365.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 365.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also have violated one of the general prohibitions found in § 365.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its programs simply because the person is handicapped. The agency must pay benefits under the entitlement programs it administers to any individual who meets the statutory requirements for those programs. The agency may not afford an individual with handicaps access to assistance in obtaining benefits under any program which it administers that is not equal to the access afforded to others.

Paragraph (b)(1)(iii) requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 365.149–365.151) and communications (§ 365.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to take the necessary actions to obtain benefits under the programs administered by the agency.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 365.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (4)(b) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with

handicaps to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to Federal Statute or Executive Order that are designed to benefit only individuals with handicaps, or a given class of individuals with handicaps, or a given class of individuals with handicaps, may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

Section 365.140 Employment.

Section 365.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F. 2d 1217, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F. 2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F. 2d 292, 302–04 (5th Cir. 1981). Contra, *McGuiness* v. *United States Postal Service*, 744 F. 2d 1318, 1320–21 (7th Cir. 1984) *Boyd* v. *United States Postal Service*, 752 F. 2d. 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F. 2d at 262; *Prewitt*, 662 F. 2d at 304. Accordingly, § 365.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section § 365.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Responsibility for coordinating enforcement of Federal Laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 365.149 Program accessibily: Discrimination prohibited.

Section 365.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 365.150 and 365.151.

Section 365.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–41.58), with certain modifications. Thus, § 365.150 requires that the services and assistance which the agency provides to those individuals seeking benefits under programs administered by the agency, when viewed in their entirety, be readily accessible to and usable by individuals with handicaps.

Although all facilities, except for the Board's headquarters building in Chicago, in which the agency operates are either owned or leased by and under the control of the General Services Administration (GSA), the agency recognizes its obligation to request the GSA to make any structural changes which the agency determines are necessary to insure program accessibility. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 365.150(a)(1)). However, § 365.150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 365.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take, or request the GSA to take, any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 356.160(c). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification should to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (ATPA)*, 655 F. 2d 1272 (D.C. Cir. 1981). This interpretation is also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation (*id.* at 299).

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers" (*id.* at 301) and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." (*Id.*, n. 21) (emphasis added). However, section 504 does not require "'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program'" (*id.*, n. 20) (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier lower court decisions, that in some situations, certain accommodations for a handicapped person may alter an agency's program impact on handicapped people.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take or request the GSA to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative

burdens, it nevertheless must take or request the GSA to take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 365.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 365.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the Executive Director and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Executive Director's decision or failure to make a decision may file an appeal under the compliance procedures established in § 365.170(h).

Paragraph (b) indicates that in general the agency will comply with the requirements of § 365.150 by making home visits. Paragraph (b) also sets forth a number of other means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make or, where applicable, request the GSA to make, any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, the agency will develop or, where applicable, request the GSA to develop a transition plan within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 365.151 Program accessibility: New constructon and alterations.

Overlapping coverage exists with respect to new construction under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 365.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Section 365.160 Communications.

Section 365.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 365.160(a)(1) to afford an individual with handicaps and equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 365.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 365.160(c). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see, supra*, preamble § 365.150(a)(2)). Unless not required by §365.160(c), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

It is our view that compliance with §356.160 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administration burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 365.160 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the Executive Director and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Executive Director's decision or failure to make a decision may file an appeal under the compliance procedures established in § 365.170(h).

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 365.160(a)(1)(ii)). For example, the agency need not provide eye glasses

or hearing aids to applicants or participants in its program. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to take appropriate steps to provide information to individuals with handicaps concerning accessible services, activities, and facilities and to ensure that information regarding section 504 rights and protections that is supplied to employees, applicants, participants beneficiaries, and other interested persons under § 365.111 is effectively communicated to individuals with handicaps.

Section 365.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 365.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 365.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 365.170(g)). One appeal within the agency shall be provided (§ 365.170(i). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 365.170(i)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. Under this paragraph the agency may have any required investigation performed by a non-government investigator under contract with the agency. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 20 CFR Part 365

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, handicapped, Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, Chapter II, Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

Part 365 is added to read as follows:

PART 365—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE RAILROAD RETIREMENT BOARD

Authority: 29 U.S.C. 794.

§ 365.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 365.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 365.103 Definitions.

For purposes of this part, the term—

"Agency" means Railroad Retirement Board.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf person (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Board" means the three-member board, appointed pursuant to 45 U.S.C. 231f, which heads the agency.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Executive Director" means the executive director of the Railroad Retirement Board. This individual is the chief operating officer of the agency.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs: cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning

disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) An individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, a program or activity.

(2) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 365.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 365.104–365.109 [Reserved]

§ 365.110 Self-evaluation.

(a) The agency shall, by one year after the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until at least three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 365.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 365.112–365.129 [Reserved]

§ 365.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or service to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others.

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving benefits under any programs administered by the Board.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap;

(ii) Deny qualified individuals with handicaps assistance in obtaining benefits under any program administered by the agency; or

(iii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of non-handicapped persons from the benefits of a program limited by Federal statute or Executive

Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 365.131–365.139 [Reserved]

§ 365.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 365.141–365.148 [Reserved]

§ 365.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in section 365.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 365.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity when viewed in its entirety is readily accessible to and usable by individuals with handicaps. Although all facilities in which the agency operates, except for the headquarters building, are either owned or leased by and under the general control of the General Services Administration (GSA), the agency recognizes its obligations to request the GSA to make space reassignments or any structural changes which the agency determines are necessary to ensure program accessibility. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require the agency to take or to recommend to the GSA any action that the agency can demonstrate would result in a fundamental alteration in the nature of a program or activity or result in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 365.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Executive Director after considering all agency resources available for us in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* In general the agency will comply with this section by making home visits. The agency may also comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make or request the GSA to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making or requesting space reassignments or alterations to existing buildings, shall ensure that accessibility requirements, to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it are met. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, the agency will make such changes or, where applicable, request the GSA to make such changes within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop or, where applicable, request the GSA to develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 365.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 365.152–365.159 [Reserved]

§ 365.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of,

a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall take appropriate steps to provide individuals with handicaps with information as to the existence and location of accessible services, activities, and facilities and information regarding their section 504 rights under the agency's programs or activities.

(c) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 365.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Executive Director after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maxium extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 365.161-365.169 [Reserved]

§ 365.170 Compliance procedures

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency;

(b) The agency shall process complaints alleging violations of section 504 with respect to the employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Except with respect to complaints arising under § 365.170(b), responsibility for implementation and operation of this section shall be vested in the Executive Director.

(d) The Executive Director shall accept and investigate all complete complaints for which he or she has jurisdiction. All complete complaints must be filed within 90 days of the alleged act of discrimination. The Executive Director may extend this time period for good cause.

(e) If the Executive Director receives a complaint over which the agency does not have jurisdiction, he or she shall promptly notify the complainant and shall make reasonable efforts to refer the complain to the appropriate government entity.

(f) The Executive Director shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility used by the agency that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals which handicaps.

(g) Within 120 days of the receipt of a complete complaint under § 365.170(d) for which the agency has jurisdiction, the Executive Director shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 45 days of receipt from the Executive Director of the letter required by § 365.170(g). The Executive Director may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Board;

(j) the Board shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Board determines that it needs additional information from the complainant, it shall have 30 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Agency may delegate its authority for conducting complaint investigations to other Federal agencies except that the authority for making the final determination may not be delegated to another agency.

§§ 365.171-365.999 [Reserved]

Dated: December 8, 1987.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 87-28709 Filed 12-14-87; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL-313-87]

Consent Dividends

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the consent dividend provisions of section 565 of the Internal Revenue Code of 1986. The text of the temporary regulations is the comment document for this notice of proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed by February 16, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, 1111 Constitution Ave. NW., Washington, DC 20024. Attention: CC:LR:T. (INTL)-313-87).

FOR FURTHER INFORMATION CONTACT: David Bergkuist of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:LR:T (INTL-313-87)) (202-566-6457, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations under the consent dividend provisions of section 565 of the Internal Revenue Code of 1986. The final regulations, which this document proposes to be based on those

temporary regulations, would amend § 1.565 of Part I of Title 26 of the Code of Federal Regulations. For the text of the temporary regulations see FR DOC. 87-28635 [TD 8166] published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulations explains the changes to the Income Tax Regulations.

The proposed regulations provide needed guidance regarding policy changes prompted by a reconsideration of certain provisions of the regulations under section 565.

Non-Applicability of Executive Order 12291

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, it has been determined that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, this proposed regulation does not constitute a regulation subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6.)

Drafting Information

The principal authors of these proposed regulations are David Bergkuist of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel and Susan Thompson Baker of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations both on matters of substance and style.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.** The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments to OMB also send copies of the comments to the Service.

List of Subjects

26 CFR 1.561-1 through 1.565-6

Income taxes, Deduction for dividends paid.

26 CFR Part 602

Reporting and recordkeeping requirements.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-28636 Filed 12-11-87; 9:13 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3302-6]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

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

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the Reynolds Metal Company in Pickaway County, Ohio. This revision would allow the Reynolds Metal Company (RMC) to meet the emission limit specified by Ohio Administrative Code (OAC) Rule 3745-21-09(U)(1)(a)(iii) on a monthly average, in lieu of the daily average specified by OAC 3745-21-09(B). USEPA's action is based upon a November 7, 1985, revision request that was submitted by the State.

EFFECTIVE DATE: Comments on this revision and on the proposed USEPA action must be received by January 14, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and five copies, if possible) Gary Gulezian, Chief, Regulatory Analysis Section, Region V, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio (312) 886-6088.

SUPPLEMENTARY INFORMATION: On November 7, 1985, the Ohio Environmental Protection Agency (OEPA) submitted, as a revision to its ozone SIP, a request for monthly averaging for the Reynolds Metal Company in Pickaway County, Ohio.

RMC applies paint coatings to architectural aluminum extrusions. It operates one coating line by which it applies a wide variety of coatings (14 in the first quarter of 1985) to aluminum extrusion products. This line is subject to the requirements of OAC Rule 3745-21-09(U)(1)(a)(iii) for surface coating of miscellaneous metal parts and products, which limits the volatile organic compound (VOC) content of any coating used on the line to 3.5 pounds of VOC per gallon of coating, excluding water. Additionally, OAC Rule 3745-21-09(B) requires that this limit be met as a daily volume-weighted average. USEPA approved these rules as meeting the reasonably available control technology (RACT) [1] requirement of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

OEPA proposes to specify the following allowable VOC emission limitation for the coating line, in lieu of the requirements of OAC Rules 3745-21-09(U)(1)(a)(iii) and 3745-21-09(B):

(a) The VOC content of the coatings employed in this coating line shall not exceed 3.5 pounds of VOC per gallon of coating applied, excluding water, on a monthly volume-weighted average basis.

(b) The VOC content of any high performance architectural aluminum coating [2] employed in this coating line shall

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

[2] High performance architectural aluminum coating means a coating that is applied to aluminum used on architectural subsections and that meets the requirements of the Architectural Aluminum Manufacturer's Association publication number AAMA 605.2-1985.

not exceed 6.31 pounds of VOC per gallon of coating, excluding water. The usage of such coatings shall not exceed 2,000 gallons in any year.

Guidance for evaluating requests for extended averaging time to determine compliance is contained in a January 20, 1984, memorandum on "Averaging Times for Compliance with VOC Emission Limits—SIP Revision Policy". This policy memorandum states that long-term averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined or where the application of RACT is not economically or technically feasible on a daily basis. Although this revision request does not meet the specific requirements of this memorandum (see technical support document dated November 18, 1986, which is available at the Region V office), it can be approved as a relaxation from RACT emission levels. Although RACT VOC regulations are required by Part D in all ozone nonattainment areas, Ohio's rules are applicable to both attainment and nonattainment areas. Therefore, USEPA is proposing to approve this revision request for RMC because it is located in an area that would always have been an attainment area under the current standard (Pickaway County); the relaxation from RACT will not jeopardize continued attainment since the source is minor; and RACT-level control is not a separate requirement of the Clean Air Act in this area. The current accomodative SIP by Pickaway County will be relaxed as a result of this approval.

Air Quality

Pickawy County was originally designated as nonattainment for the ozone National Ambient Air Quality Standard (NAAQS). This was based on the assumption that nonattainment of the 0.08 parts per million (ppm) ozone standard (the level of the standard prior to 1979) was widespread around major urban areas. As requested by OEPA, USEPA designated Pickaway County as nonattainment although no in-county monitoring data were available. After the ozone standard was changed to 0.12 ppm, OEPA recognized that the assumption of widespread ozone nonattainment was no longer valid and initiated the redesignation of Pickway County to attainment of the ozone standard. USEPA approved this redesignation on June 12, 1984 (49 FR 24124).

Review of ozone monitoring data for Ohio, as recorded in the National Aerometric Data Bank, shows that no current monitoring data exists in Pickaway County. Even though no monitoring data exists for the area, certain logical assumptions can be made concerning its ozone air quality. Pickaway County is a rural county located immediately south of Columbus, Ohio. No other major urban areas are located near Pickaway County. Because prevailing summertime winds in Ohio are from the quadrant bounded by South and West, one can assume Pickaway County is generally upwind of Columbus and, thus, is not significantly impacted by the urban plume from Columbus.

Additionally, USEPA is not aware of significant levels of VOC and oxides of nitrogen (NO_x) emissions from Pickaway County. It is assumed that this area is not a significant source area of ozone percursors, and is not internally generating high ozone concentrations. Based on this information, USEPA believes that Pickaway County is not currently experiencing an ozone standard violation.

As noted earlier, because Pickaway County is classified as attainment for ozone, USEPA can approve a relaxation from RACT for sources in that area, so long as it can be demonstrated that such relaxation will not jeopardize continued attainment. This SIP revision will result in only a 6.31 tons per year increase in actual VOC emissions; therefore, USEPA believes it will not interfere with continued attainment and maintenance of the ozone standard. Because this rulemaking relaxes a stationary source reasonably available control technology (RACT) emission limitation in an area that is designated as attainment/unclassifiable for ozone, approval of this revision would eliminate the accommodative ozone SIP for Pickaway County. The original principal of this accommodative ozone SIP for areas classified as attainment/unclassifiable was to require RACT-level controls on existing sources in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required of new major sources in attainment/unclassifiable areas under USEPA's Prevention of Significant Deterioration (PSD) Regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas. Therefore, this action, when promulgated, will cancel the accommodative SIP for Pickaway County. This means that all new major VOC sources and major modifications in this county must comply with all the PSD monitoring requirements. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas and sources wishing to locate in nonattainment areas must comply with the State's federally approved Part D new source review program.

USEPA is proposing to approve this SIP revision for the following reasons:

(1) RMC is located in Pickaway County which is a rural attainment area for ozone; and

(2) Approval of this proposed SIP revision will not interfere with the maintenance of the ozone NAAQS.

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

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

Authority: 42 U.S.C. 7401–7642.

Dated: December 31, 1986.

Editorial Note: This document was received at the Office of the Federal Register December 10, 1987.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87–28754 Filed 12–14–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6922]

Proposed Flood Elevation Determinations; Arizona, et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100–year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a

newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Navajo County (Unincorporated areas)	Rainbow Lake	South of Rainbow Lake Road to mouth of Gulch Creek.	*None	*6713
Maps are available for inspection at the Navajo County Engineering Department, 100 E. Carter Drive (S. Highway 77), Holbrook, Arizona.					
Send comments to Mr. Peter D. Shumway, Chairman, Navajo County Board of Supervisors, P.O. Box 668, Holbrook, Arizona 86025.					
Arizona	Town of Pinetop-Lakeside, Navajo County.	Rainbow Lake	South of Rainbow Lake Road to mouth of Gulch Creek.	None	*6713
Maps are available for inspection at the Town of Pinetop-Lakeside Planning and Zoning Department, corner of State Route 260 and Stephens Drive, Pinetop-Lakeside, Arizona 85929.					
Send comments to The Honorable Richard J. Mullins, Mayor, Town of Pinetop-Lakeside, P.O. Drawer 1459, Pinetop, Arizona 85935.					
Arkansas	Rogers, City, Benton County	Osage/Turtle Creek	At the most downstream corporate limits	None	*1,163
			Upstream side of most downstream crossing of U.S. Highway 71.	None	*1,216
			2.2 miles downstream crossing of 2nd upstream crossing of U.S. Highway 71.	None	*1,254
			At Turtle Creek Road	*1,277	*1,278
			At 29th Street (extended)	*1,287	*1,287
Maps are available for inspection at the City Administration Building, 300 West Poplar, Rogers, Arkansas.					
Send comments to The Honorable John W. Sampier, Jr., Mayor of the City of Rogers, Benton County, 300 West Poplar Street, Rogers, Arkansas 72756.					
California	City of Mountain View, Santa Clara County.	San Francisco Bay	Intersection of Largenta Avenue and Stierlin Road	*7	*8
			Intersection of Garcia Avenue and Marine Way	*7	*8
			Approximately 1000 feet east of Stevens Creek at Crittenden Lane.	*7	*8
Maps are available for inspection at the Public Works Department, 444 Castro Street, Mountain View, California.					
Send comments to The Honorable Clarence Heppler, Mayor City of Mountain View, P.O. Box 7540, Mountain View, California 94039.					
Califoria	City of Escondido, San Diego County.	Reidy Creek	Just upstream of Lincoln Avenue	*653	(1)
			Approximately 500 feet downstream of Nutmeg Street	*674	(1)
			Just downstream of Nutmeg Street	*675	#1
			Approximately 80 feet upstream of El Norte Parkway	*680	
			Just downstream of State Highway 395	*683	#3
			Just upstream of State Highway 395	*689	*689
Maps are available for inspection at the Department of Public Works, 620 N. Ash, Escondido, California.					
Send comments to The Honorable James M. Rady, Mayor, City of Escondido, 100 Valley Boulevard, Escondido, California 92025.					
Georgia	Unincorporated Areas of DeKalb County.	Henderson Mill Creek	At mouth	*888	*888
			About 950 feet upstream of Henderson Creek Road	*897	*905
		Peachtree Branch	At mouth	*885	*885
			About 0.95 mile upstream of Interstate 285	*920	*927

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
	Maps are available for inspection at the Planning Department, Decatur, Georgia.				
	Send comments to The Honorable Manuel J. Maloof, Chief Executive Officer, DeKalb County, DeKalb County Administration Building, 1300 Commerce Drive, 6th Floor, Decatur, Georgia 30030.				
Illinois	Village of Deerfield, Lake and Cook Counties.	West Fork North Branch Chicago River.	About 1180 feet downstream of Lake Cook Road	*653	*653
			About 1120 feet upstream of Lake Cook Road	*None	*654
			About 2750 feet upstream of Lake Cook Road	*655	*655
	Maps are available for inspection at the Village Hall, 850 Waukegan Road, Deerfield, Illinois.				
	Send comments to The Honorable Bernard Forrest, Mayor, Village of Deerfield, Village Hall, 850 Waukegan Road, Deerfield, Illinois 60015.				
Illinois	Village of Lake Barrington, Lake County.	Lake Barrington Drain	just upstream of Kelsey Road	None	*760
			About 1900 feet upstream of Kelsey Road	None	*778
		East Tributary Flint Creek	At mouth	None	*755
			About 2450 feet upstream of mouth	None	*756
		Tower Lake Creek	At mouth	None	*737
			About 2650 feet upstream of River Road	None	*737
	Maps are available for inspection at the Lake Barrington Planning Commission, Barrington, Illinois.				
	Send comments to The Honorable Nancy K. Smith, Village President, Village of Lake Barrington, 23555 North Old Barrington Road, Barrington, Illinois 60010.				
Nebraska	City of Lincoln, Lancaster County.	Antelope Creek	Just upstream of Holmes Lake Dam	*1,246	*1,255
			About 2,100 feet upstearm of 70th Street	*1,255	*1,255
	Maps are available for inspection at the Planning Department, County-City Building, Lincoln, Nebraska.				
	Send comments to the Honorable Bill Harris, Mayor, City of Lincoln, County-City Building, 555 South 10th Steet, Lincoln, Nebraska 68508.				
Nevada	City of Reno, Washoe County.	Steamboat Creek	Just downstream of Pembroke Drive	*4,391	*4,391
			Approximately 1,200 feet upstream of Pembroke Drive	*4,393	*4,391
			Approximately 5,520 feet upstream of Pembroke Drive	*4,393	*4,391
			Approximately 8,460 feet upstream of Pembroke Drive	*4,393	*4,392
			Approximately 9,280 feet upstream of Pembroke Drive	*4,395	*4,395
	Maps are available for inspection at the Engineering Division, City of Reno, 450 St. Clair Street, Reno Nevada 89502.				
	Send comments to Mayor Peter J. Sferrazza, City of Reno, P.O. Box 1900 Reno, Nevada 89505.				
Nevada	Washoe County (Unincorporated Areas).	Steamboat Creek	Just downstream of Pembroke Drive	*4,391	*4,391
			Approximately 1,200 feet upstream of Pembroke Drive	*4,393	*4,391
			Approximately 5,520 feet upstream of Pembroke Drive	*4,393	*4,391
			Approximately 9,280 feet upstream of Pembroke Drive	*4,395	*4,395
	Maps are available for inspection at the County Engineer's Office, 1205 Mill Street, Reno, Nevada 89520.				
	Send comments to the Honorable Belie Williams Chairman, Washoe County Board of Commissioners, P.O. Box 11130, Reno, Nevada 89520.				
New York	Union, Town, Broome County	Nanticoke Creek	Approximately 1,950 feet (.37 mile) upstream of Route 26 Bridge.	*832	*833
			Approximately 5,000 feet (0.95 mile) upstream of Route 26 Bridge.	*833	*834
	Maps are available for inspection at the Town Clerk's Office, 3111 E. Main Street, Endwell, New York.				
	Send Comments to The Honorable John R. Bertoni, Supervisor of the Town of Union, Broome County, 3111 E. Main Street, Endwell, New York 13760.				
Oklahoma	City of Oklahoma City, Oklahoma County.	Twin Creek	Downstream side of Agnew Avenue	*1,203	*1,202
			Approximately 1,350 feet upstream of Agnew Avenue	*1,206	*1,205
			Approximately 100 feet downstream of St. Louis-San Francisco Railway.	*1,208	*1,209
			Approximately 175 feet upstream of St. Louis-San Francisco Railway.	*1,210	*1,211
			Approximately 500 feet downstream of S.W. 25th Street.	*1,213	*1,212
			Approximately 100 feet upstream of S.W. 25th Street	*1,215	*1,218
			Approximately 50 feet downstream of May Avenue	*1,221	*1,222
	Maps are available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.				
	Send comments to The Honorable Andrew Coats, Mayor of the City of Oklahoma City, Oklahoma County, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.				
Oregon	City of Pendleton, Umatilla County.	Patawa Creek	Approximately 500 feet below confluence with Tutuilla Creek.	*1,083	*1,083
			At confluence with Tutuilla Creek	*1,084	*1,085
			Approximately 120 feet above confluence with Tutuilla Creek.	*1,086	*1,087
			Approximately 858 feet above confluence with Tutuilla Creek.	*1,092	*1,094
			Approximately 1,523 feet above confluence with Tutuilla Creek.	*1,098	*1,101
			At corporate limits, approximately 2,320 feet above confluence with Tutuilla Creek.	*1,102	*1,104
	Maps are available for inspection at City Hall, Planning Department, 34 SE. Dorion Avenue, Pendleton, Oregon.				
	Send comments to Mayor Joseph C. McLaughlin, P.O. Box 190, Pendleton, Oregon 97801.				
Oregon	Umatilla County (Unincorporated Areas).	Patawa Creek	At corporate limits for the City of Pendleton, approximately 2,300 feet above confluence with Tutuilla Creek.	*1,102	*1,*04

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2,900 feet above confluence with Tutuilla Creek.	*1,107	*1,109
			Approximately 3,900 feet above confluence with Tutuilla Creek.	*1,120	*1,121
			Approximately 4,900 feet above confluence with Tutuilla Creek.	*1,125	*1,127
			Approximately 5,750 feet above confluence with Tutuilla Creek.	*1,134	*1,136
			Approximately 6,450 feet above confluence with Tutuilla Creek.	*1,141	*1,142
			Approximately 7,100 feet above confluence with Tutuilla Creek.	*1,147	*1,149
			Approximately 7,950 feet above confluence with Tutuilla Creek.	*1,153	*1,155
			At limit of detailed study approximately 8,550 feet above confluence with Tutuilla Creek.	*1,160	*1,161

Maps are available for inspection at the Umatilla County Planning Department, 216 Southeast Fourth Street, Pendleton, Oregon.

Send comments to the Honorable Glenn Youngman, Chairman, Umatilla County Board of Commissioners, 216 Southeast Fourth Street, Pendleton, Oregon 97801.

Texas	Flower Mound, Town, Denton County.	McKamy Creek	Approximately 1,000 feet downstream of confluence of Tributary 1 to McKamy Creek.	None	*564
			Approximately 50 feet downstream of Flower Mound Road.	None	*595
		Tributary 1 to McKamy Creek	At confluence with McKamy Creek	None	*567
			Approximately 1,500 feet upstream of confluence with McKamy Creek.	None	*596

Maps are available for inspection at the Town Engineer's Office, 2121 Cross Timbers Road, Flower Mound, Texas.

Send comments to The Honorable George Coker, Mayor of the Town of Flower Mound, Denton County, 2121 Cross Timbers Road, Flower Mound, Texas 75028.

Texas	Garland, City, Dallas County	Long Branch	At Loop 635	*559	*558
			Approximately .26 mile upstream of Groves Road	*563	*562

Maps are available for inspection at 200 North 5th, City Hall Building, 3rd Floor, Engineering Department, Garland, Texas.

Send comments to The Honorable Bill Tomlinson, Mayor of the City of Garland, Dallas County, P.O. Box 469002, Garland, Texas 75046-9002.

Texas	City of Irving, Dallas County	West Fork of Trinity River	Confluence with Trinity River	*423	*424
		Elm Fork of Trinity River	Confluence with Trinity River	*423	*424
			At State Highway 482	*424	*426
			Approximately 400 feet upstream of State Highway 348.	*427	*430
			At confluence of Grapevine Creek	*437	*439
			At Belltine Road	*438	*442
		Hackberry Creek	Confluence with Elm Fork of Trinity River	*428	*431
		Cottonwood Branch	Confluence with Hackberry Creek	*428	*431
		Grapevine Creek	Confluence with Elm Fork of Trinity River	*437	*439
			Approximately 1,700 feet downstream of MacArthur Boulevard.	*439	*440

Maps are available for inspection at the Department of Public Works, 825 West Irving Boulevard, Irving, Texas.

Send comments to The Honorable Bob Pierce, Mayor of the City of Irving, Dallas County, 825 West Irving Boulevard, Irving, Texas 75060.

Texas	Waco, City, McLennan County	Brazos River	Approximately 5,600 feet downstream of Lake Brazos Dam.	*385	*383
			At Lake Shore Drive	*398	*395
			Upstream corporate limits	*404	*403
		Bosque River	Confluence with Brazos River	*394	*392
			Approximately 500 feet upstream of F.M. 1637	*398	*402
		Bosque River Tributary	Confluence with Bosque River	*394	*399
			Approximately 3,100 feet upstream of confluence with Bosque River.	*398	*399
		Wilson Creek	Confluence with Brazos River	*393	*390
			Approximately 2,025 feet upstream of confluence with Brazos River.	*393	*392
		Delano Avenue Ditch	Confluence with Brazos River	*392	*390
			Approximately 1,300 feet upstream of confluence with Brazos River.	*394	*393
		Barron's Branch	Confluence with Brazos River	*390	*389
		Marlin's Branch	Confluence with Brazos River	*388	*387
		Waco Creek	Confluence with Brazos River	*388	*387
		Diversion Ditch	Confluence with Brazos River	*397	*394
			Approximately 400 feet upstream of confluence with Brazos River.	*397	*396

Maps are available for inspection at the Waco City Hall, Engineering Department Office, Third and Austin, Waco, Texas.

Send comments to The Honorable David L. Sibley, Mayor of the City of Waco, McLennan County, City Hall, P.O. Box 2570, Waco, Texas 76702-2570.

[1] Zone A contained in channel.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: November 30, 1987.

[FR Doc. 87-28721 Filed 12-14-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[General Docket 87-389]

Operation of Radio Frequency Devices Without an Individual License

AGENCY: Federal Communications Commission.

SUMMARY: This action extends the time for filing comments and reply comments to the Notice of Proposed Rulemaking (NPRM) in General Docket 87-389, Revision of Part 15 of the Commission's Rules regarding the operation of radio frequency devices without an individual license. (Published in the **Federal Register** October 13, 1987, 52 FR 37988.) This action is in response to Motions for Extensions of Time filed by American Radio Relay League and ten other parties. They requested additional time to determine the impact of proposed regulations on existing equipment and to prepare carefully analyzed and reasoned replies. The Commission is extending time for Comments for 90 days and Reply Comments will be due 60 days after Comments.

DATES: Comments are due March 7, 1988; reply comments are due May 9, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Reed, telephone (202) 653-7313.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to authority contained in 47 CFR 0.241(d) of the Commission's Rules.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 87-28483 Filed 12-14-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 4 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the amendment and any other documents made available.

DATE: Comments will be accepted until Saturday, February 6, 1988.

ADDRESSES: Send comments to Craig R. O'Connor, Acting Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of Amendment 4, the environmental assessment, and the supplemental regulatory impact review are available from the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen (Regional Plan Coordinator), 813-893-3722.

SUPPLEMENTARY INFORMATION: Amendment 4 to the FMP was prepared under the Magnuson Fishery Conservation and Management Act, which requires the Secretary of Commerce, upon receiving an FMP or amendment, immediately to publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve this amendment.

Amendment 4 proposes measures to prevent overfishing of the white shrimp resources in the exclusive economic zone of the Gulf of Mexico, to rebuild and maintain the stock through protection of undersized white shrimp, and to provide for consistency between State and Federal shrimp management programs. Proposed regulations for this amendment will be published within 15 days.

(16 U.S.C. 1801 *et seq.*)

Dated: December 9, 1987.

Richard H. Schaefer,

Acting Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-28722 Filed 12-10-87; 12:04 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 240
Tuesday, December 15, 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.

ARMS CONTROL AND DISARMAMENT AGENCY

Hubert H. Humphrey Fellowship Competition

The U.S. Arms Control and Disarmament Agency will conduct a competition in 1988 for one-year Hubert H. Humphrey Fellowships in support of unclassified doctoral dissertation research in arms control and disarmament. Law candidates for the Juris Doctor or any higher degree are also eligible if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for Ph.D. candidates will be $5,000 plus applicable tuition and fees up to a maximum of $3,400. Stipends and tuition for law candidates will be prorated according to the credits given for the research paper. Fellows must be citizens or nationals of the United States and degree candidates at a U.S. university. The application deadline for the awards is March 15, 1988. Awards will be for a 12-month period beginning either September 1988 or January 1989. For information and application materials please write: Hubert H. Humphrey Fellowship Program, Office of Public Affairs, U.S. Arms Control and Disarmament Agency, Washington, DC 20451.

Date: December 4, 1987.

Sigmund Cohen, Jr.,

Director of Public Affairs.

[FR Doc. 87-28747 Filed 12-14-87; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No 87-00013]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to the co-applicants Southeastern Fisheries Association, Inc. and Southeastern Fisheries Association, Inc. Export Trade Section. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Mullet, mullet roe, blue runners, thread herring, skipjack (ladyfish), menhaden, keoghfish, Spanish sardines, bonitas (little tuna), black drum, shad, spot, and shrimp by-catch (i.e. fish caught incidential to shrimping).

Related Service

Consulting; international market research; advertising; marketing; insurance; product research and design, exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; financing; foreign exchange; warehousing, including a central storage freezer; quality control inspection; and taking title to Products for export.

Export Markets

All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific Islands).

Members

The following companies are Members of the certificate within the meaning set forth in § 325.2(1) of the Regulations: Aylesworth Seafood, Inc., Bayside Shellfish, Inc., Clark Seafood Co., Inc., J.O. Guthrie Fish Co., Inc., and Raffield Fisheries, Inc.

Export Trade Activities and Methods of Operation

1. SFA-ETS and the Members may meet under the auspices of SFA to:

a. Establish export prices for individual Products on a geographical basis in the Export Markets.

b. Discuss the quality and quantity of Products that the Members will make available for export and geographic availability of fish to fill any actual or potential order;

c. Discuss export sales, marketing efforts, and any sales opportunities in the Export Markets for Products, including but not limited to export prices, selling strategies, past export sales, projected demand, standard terms of sale, financing, insurance, transportation, foreign competition, identification of potential customers, and customers' specifications; and

d. Discuss U.S. and foreign legislation, regulations, and policies affecting export sales.

2. SFA may compile for, collect from, and disseminate to the Members for discussion as a group the export related information set forth in paragraph 1.

3. SFA may respond to export trade inquiries, invitations to bid, and other export sales opportunities on behalf of SFA/ETS and the Members.

4. SFA may contact separately individual suppliers of Products other than the Members and distribute to such suppliers separately information about sales opportunities in the Export Markets, including bid requirements, bidding dates, and other pertinent

information, in order that the individual suppliers can provide separately export quotations to SFA so that SFA may coordinate an SFA/ETS response to sales opportunities.

5. SFA may discuss with each supplier individually the price SFA/ETS will charge in the export markets for the supplier's Products.

6. SFA/ETS and the Members may combine Products for inspection under SFA's quality control program and store such Products for export in a central freezer.

7. SFA, SFA/ETS, and/or the Members may enter into execlusive and non-exclusive agreements with Export Intermediaries for sales in the export markets.

8. The management of the ETS will be under the overall direction of SFA's Executive Director.

9. Membership in SFA/ETS shall be open to any member of SFA interested in exporting that is legally eligible for such membership and that pays an assessment in an amount of not less than $500 nor more than $5000 annually. New members of SFA/ETS may be added upon amendment to the certificate. Any Member of SFA/ETS can withdraw its membership at any time by notifying the Chairman of the Board of Directors of SFA/ETS in writing.

10. The Members will individually procure Products for export and sell such Products through the ETS on a voluntary basis.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: December 8, 1987.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 87-28779 Filed 12-14-87; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Review on Certain Flat-rolled Steel; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products and Article 8 of the U.S.-Brazil Arrangement on Certain Steel Products, with respect to certain hot-rolled bands.

DATE: Comments must be submitted on or before December 28, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products and Article 8 of the U.S.-Brazil Arrangement on Certain Steel Products provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain C1015/C1020 hot-rolled bands conforming to the ASTM A-568M specification, 700 to 1000 pounds per inch of width, in widths ranging from 48 to 60 inches, and thicknesses ranging from 0.074 to 0.220 inch. This material will be used in the manufacture of structural and mechanical tubing.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than December 28, 1987. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

December 9, 1987.

[FR Doc. 87-28780 Filed 12-14-87; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administration Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/ 2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a) (1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than December 31, 1988.

Antidumping duty proceedings and firms	Periods to be reviewed
Chlorine Chloride from Canada:	
Chinook	11/10/87-10/31/87
Titanium Sponge from Japan:	
Osaka/Sumitomo	11/01/86-10/31/87
Showa Titanium	11/01/86-10/31/87
Toho/Mitsui	11/01/86-10/31/87
Dry Cleaning Machinery from West Germany:	
Seco Maschinenbau	11/01/86-10/31/87

Countervailing duty proceeding	Period to be reviewed
Certain Refrigeration Compressors from the Republic of Singapore	01/01/86-03/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: December 8, 1987.

[FR Doc. 87-28776 Filed 12-14-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-701, A-469-701]

Postponement of Preliminary Antidumping Duty Determinations; Certain Granite Products From Italy and Spain

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioners in these investigations to postpone the preliminary determinations, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A).

Based on this request, we are postponing our preliminary determinations as to whether sales of certain granite products from Italy and Spain have occurred at less than fair value until not later than Feburary 3, 1988.

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson (202) 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 August 21, 1987 (52 FR 31649, Italy; and 52 FR 31650, Spain) we published the notices of initiation of antidumping duty investigations to determine whether certain granite products from Italy and Spain are being, or are likely to be, sold in the United States at less than fair value. The notices stated that we would issue our preliminary determinations by January 4, 1988.

On November 18, 1987, counsel for the petitioners requested that the Department extend the period for the preliminary determinations by 30 days, until February 3, 1988, in accordance with section 733(c)(1)(A) of the Act. Section 733(c)(1)(A) of the Act provides that the Department may postpone its preliminary determination concerning sales at less than fair value until not later than 210 days after the date on which a petition is filed if the petitioner makes a timely request for such an extension. Counsel for the petitioners has done so. Accordingly, we are postponing the date of the preliminary determinations until not later than February 3, 1988.

The U.S. International Trade Commission is being advised of these postponements in accordance with section 733(f) of the Act. This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

December 8, 1987.

[FR Doc. 87-28775 Filed 12-14-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-013]

Portland Hydraulic Cement and Cement Clinker From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 3 firms and 2.28 percent *ad valorem* for all other firms during the period January 1, 1985 through December 31, 1985. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 44500) the final results of its last administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico (48 FR 43063, September 21, 1983). In letters of September 25, 26, and 30, six Mexican exporters (Cementos Anahuac, S.A., Cementos Anahuac del Golfo, S.A., Cementos de Chihuahua, S.A., Cementos Mexicanos S.A., Cementos Tolteca, S.A., and Cementos Apasco, S.A.) and two domestic producers (Gifford Hill & Co., Inc. and Kaiser Cement Corporation) requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on October 24, 1986 (51 FR 37770). 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

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 the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Mexican portland hydraulic cement other than white nonstaining. Such merchandise is currently classifiable under TSUSA item numbers 511.1420 and 511.1440. These products are currently classifiable under HS item numbers 2523.10.00—0, 2523.29.00—0, 2523.30.00—0, and 2523.90.00—0. We invite comments from all interested parties on these HS classifications. The review covers the period from January 1, 1985 through December 31, 1985 and 12 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: Pre-export financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export. We found that the annual interest rate that financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 23.70 to 30.60 percent. The annual interest rate for dollar-denominated FOMEX export financing ranged from 6.00 to 6.90 percent during the period of review.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the period of review were obtained between November 1984 and November 1985. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

We have sufficient information to measure effective interest rates for peso-denominated loans and for 1985 dollar-denominated loans. (*See* final results of administrative review on fabricated automotive glass from Mexico (51 FR 44652, December 11, 1986).) To determine the effective interest rate benchmark for peso loans obtained in 1984, we calculated an average annual effective rate from data reported by the Banco de Mexico in its monthly publication, *Indicadores Economicos* ("I.E."). In 1985, the Banco de Mexico stopped publishing data on nominal and effective interest rates. Therefore, we calculated the average spread between the Costo Porcentual Promedio (CPP) rates *i.e.*, the average cost of short-term funds to banks, and the *I.E.* effective rates for the period 1982 through 1984, the only period for which we have *I.E.* rates. The effective interest rate benchmark for 1985 is the sum of this average spread and the average CPP rate for 1985. In this way we calculated a benchmark of 73.78 percent for pre-export peso loans obtain in 1984, and 86.31 percent for pre-export peso loans obtained in 1985. To determine the effective interest rate benchmark for dollar loans, we used the quarterly weighted-average effective interest rates published in the *Federal Reserve Bulletin*, which was 12.85 percent in 1985.

Four of the nine known exporters of this merchandise used this program during the period of review. Because we found that the exporters were able to tie their FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to U.S. shipments. We allocated the FOMEX benefits over U.S. shipments, excluding those firms with zero or *de minimis* aggregate benefits. We preliminarily determine the benefit from FOMEX to be 1.06 percent *ad valorem* during the period of review.

In February 1987, the Banco de Mexico changed the interest rates on FOMEX peso loans to 95.00 percent and on dollar loans to 6.40 percent. To calculate the FOMEX benefit for cash deposit purposes, we followed the same methodology used in calculating assessment rates. For peso loans we used as our benchmark the sum of the most recent available CPP rate, *i.e.*, February 1987, and the average 1982–1984 spread between the CPP and the *I.E.* effective rates. For dollar loans we used as our benchmark the February 1987 weighted-average effective interest rate from the *Federal Reserve Bulletin*. On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 0.22 percent *ad valorem*.

(2) Article 15

On January 14, 1985, the "Ruling Law for Public Service and Banking and Credit" ("the Ruling Law") was enacted. The Ruling Law replaces all previous banking laws, including the General Law of Credit Institutions and Auxiliary Organizations ("the Banking Law"). Article 15 of the Ruling Law supersedes Article 94 of the Banking Law.

Article 15 established that up to seven percent of a bank's total deposits must be funneled as loans into specially designated sectors of economic activity. The Banco de Mexico established eight industrial categories that are eligible to obtain financing under Article 15. One category consists only to exports of manufactured products. Loans granted under Article 15 are obtained at an interest rate of the CPP minus 5 percentage points. The interest on these loans is paid at maturity. Two firms had interest payments due from loans under this program during the period of review.

We consider such financing to constitute an export bounty or grant because it is given a below-market rates only for merchandise destined for export. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans. Since these Article 15 loans are based on exports to all countries, we allocated each firm's benefit over the value of its total exports during the period of review. We then weight-averaged the resulting benefits by each firm's proportion of total exports to the United States during the period of review, excluding exports from firms with zero or *de minimis* aggregate benefits during the period of review. On this basis, we preliminarily determine the benefit from this program to be 0.07 percent *ad valorem* for the period of review.

(3) CEPROFI

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates used to promote the goals of the National Development Plan ("NDP"). They are granted in conjunction with investments in designated industrial activities or geographic regions and can be used to pay a variety of federal tax liabilities. Article 25 of the decree that established the authority for issuing CEPROFI's, published in the *Diario Oficial* on March 6, 1979, requires each recipient to pay a four percent supervision fee. The four percent supervision fee is "paid in order to qualify for, or to receive," the CEPROFI's. Therefore, it is an allowable offset, as defined in section 771(6)(A) of the Tariff Act, from the gross bounty or grant.

Cement firms in Mexico can receive CEPROFI benefits under three provisions: "Category I," which makes CEPROFI certificates available for the manufacture and processing of construction and capital goods; "Category II," which makes CEPROFI certificates available for particular industrial activities; and a third provision, which makes CEPROFI certificates available for the purchase of Mexican-made equipment.

The Department held in the final affirmative countervailing duty determination on bricks from Mexico (49 FR 19564, May 8, 1984) that CEPROFI certificates granted for the purchase of Mexican-made equipment are not countervailable since such certificates are available to any company that purchases Mexican-made equipment. We consider the other two types of CEPROFI certificates to be domestic bounties or grants because they are available only to certain industries. For the eight firms that received tax certificates from the Category I and Category II CEPROFI provisions, we allocated each firm's benefit, less the

four percent supervision fee, over the total value of each firm's sales to all markets during the period of review. We then weight-averaged the resulting benefits by each firm's proportion of total exports to the United States during the review period, excluding those firms with zero or *de minimis* aggregate benefits. We preliminarily determine the benefit from this program to be 0.68 percent *ad valorem* during the period of review.

(4) FONEI

The Fund for Industrial Development ("FONEI"), administered by the Banco do Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the NDP, which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts loan benefits to those enterprises located outside of Zone IIIA. Two firms had variable-rate peso-denominated FONEI loans for plant expansion or modernization outstanding during the period of review.

We treated these variable-rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them to the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefits over each firm's total sales to all markets during the period of review. We then weight-averaged the resulting benefits by each firm's proportion of exports to the United States during the period of review, excluding those firms with zero or *de minimis* aggregate benefits. We preliminarily determine the benefit from this program to be 0.03 percent *ad valorem* during the period of review.

(5) NDP Discounts

Under the NDP, PEMEX, the government-owned oil company, grants discounts to companies located in specific regions or engaged in certain priority activities. During the period of review one firm received a discount of 10 percent on the price of fuel oil, and another firm received a 15 percent discount on the price of natural gas. Because such discounts are provided only to specific enterprises or industries, we consider them to be domestic bounties or grants.

We allocated the total value of discounts received by each firm over its total sales to all markets during the period of review. We then weight-averaged the resulting benefits by each firm's proportion of exports to the United States during the period of review, excluding those firms with zero or *de minimis* aggregate benefits. We preliminarily determine the benefit from this program to be 0.37 percent *ad valorem* for the period of review.

(6) Bancomext Loans

The National Bank of Foreign Trade (Bancomext), which acts as an intermediary for official loan programs such as FOMEX, also makes direct loans with its own resources. One company made interest payments during the period of review on a Bancomext loan obtained at below-market rates. Because the Mexican government has provided no additional information on this loan, we have assumed, as the best information available, that this type of loan is available only to exporters and is therefore an export bounty or grant.

We treated this loan in a manner similar to the FONEI loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them to the preferential interest rates in effect for each Bancomext loan payment made during the period of review. We allocated the benefit over the firm's total export sales to all markets during the period of review. We then weight-averaged the resulting benefit by the firm's proportion of total exports to the United States during the period of review, excluding exports from firms with zero or *de minimis* aggregate benefits. We preliminarily determine the benefit from this loan to be 0.07 percent *ad valorem* for the period of review.

(7) Other Programs

We also examined the following programs and preliminarily find that exporters of portland hydraulic cement and cement clinker did not use them during the review period:

(A) State tax incentives;
(B) CEDI;
(C) FOGAIN;
(D) Delay of payments on loans;
(E) Delay of payments of PEMEX to fuel charges; and
(F) Import duty reductions and exemptions.

Firm Not Receiving Benefits

We preliminarily determine that the following three firms received zero or *de minimis* benefits during the period of review:

(1) Cementos Guadalajara, S.A.
(2) Cementos Maya, S.A.
(3) Cementos Tolteca, S.A.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period January 1, 1985 through December 31, 1985 to be zero or *de minimis* for the three firms listed above and 2.28 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 3 firms listed above and to assess countervailing duties of 2.28 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1985 and on or before December 31, 1985.

The Department intends to instruct the Customs Service to waive such cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the three firms listed above and, due to the change in the FOMEX interest rates, to collect a cash deposit of estimated countervailing duties of 1.44 percent of f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1))

and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Joseph Spetrini,

Acting Assistant Secretary Import Administration.

Date: December 8, 1987.

[FR Doc. 87-28777 filed 12-14-87; 8:45 am]

BILLING CODE 3510-DS-M

Certain Welded Carbon Steel Pipe and Tube Products From Turkey; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain welded carbon steel pipe and tube products from Turkey. We preliminarily determine the net subsidy to be 16.52 percent *ad valorem* for the period October 28, 1985 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Paul McGarr, Office of Compliance, International Trade Administartion, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 7984) a countervailing duty order on certain welded carbon steel pipe and tube products from Turkey. On March 30, 1987, the petitioner, the Standard and Line Pipe Subcommittees of the Committee on Pipe and Tube Imports and their individual pipe and tube producers, and the Government of the Republic of Turkey requested in accordance with 19 CFR 355.10 an administrative review of the order. On March 31, 1987, two respondents, the Borusan Group ("Borusan") and Mannesmann Suemerbank made a similar request. We published the initiation on April 22, 1987 (52 FR 13268). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

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 the United States to the Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of certain Turkish welded carbon steel pipe and tube having an outside diameter of 0.375 inch but not over 6 inches, currently classifiable under TSUSA items 610.3208, 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 620.4925. TSUSA items 610.3208 and 610.3209 are commonly referred to by the industry as line pipe meeting American Petroleum Institute (API) specifications for 5L. TSUSA items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 620.4925 are commonly referred to by the industry as standard pipe or tube or structural tubing. Standard pipe or tube is produced to various American Society for Testing Materials (ASTM) specifications, most notably A-53, A-120 or A-135. Structural tubing is produced to various specifications most notably ASTM specifications A-500 and A-501.

Line pipe and standard pipe and tube are currently classifiable under HS item numbers 7306.10.1010, 7306.10.1050, 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060, 7306.30.5065, 7306.30.5070 and 7306.30.5075. We invite comments from all interested parties on these HS classifications.

The review covers the period October 28, 1985 through December 31, 1986 and 7 programs.

Analysis of Programs

(1) Export Tax Rebate and Supplemental Tax Rebate

The Government of Trukey provided export tax rebates to exporters of pipe and tube products pursuant to Law 261 of July 1963 and Decrees 9/10624 of September 16, 1975, 85/10211 of December 26, 1985, and 86/11237 of November 28, 1986. Exporters were eligible to receive export tax rebates based on the percentage of export receipts converted from a foreign currency into Turkish lira. During the review period, exporters were required to convert at least 80 percent of their export receipts into Turkish lira in order to qualify for export tax rebates.

On February 25, 1985, Turkey became a signatory to the Agreement on Interpretation and Application of Articles IV, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). The Government of Turkey also entered into a bilateral commitment with the United States, agreeing to eliminate specific subsidy programs. During the review period, the rate of basic export tax rebates on pipe and tube declined in small increments every two months from 11 to 8.4 percent.

In addition to basic export tax rebates, the Turkish government provided supplemental tax rebates to companies with annual export revenues of more than U.S. $2 million. During the review period, the rates of these rebates also declined every two months. For companies with export revenues between $2-10 million, the supplemental rebate rates were reduced from 6 to 2.4 percent; for companies with export revenues between $10-30 million, the rates were reduced from 12 to 4.8 percent; and for companies with export revenues over $30 million, the rates were reduced from 10 to 4 percent.

We calculated the benefit by allocating the total amount of basic and supplemental rebates each company received over its total f.o.b. value of exports during the review period. We then weight-averaged the resulting benefit by each company's proportion of pipe and tube exports to the United States. On this basis, we preliminarily determine the benefit from this program to be 7.96 percent *ad valorem* during the review period.

Effective January 1, 1987, pursuant to Communique 87/3 of Decree 86/11237, the Government of Turkey eliminated

basic and supplemental export tax rebates on exports of iron and steel products to the United States. Under Transity Article 2 of this decree, exporters were still eligible for rebates on shipments that occurred after December 1, 1986 for which irrevocable letters of credit had been opened prior to December 1, 1986. We verified that exporters received rebate payments only for shipments with letters of credit opened prior to December 1, 1986, and that there were no rebate payments received for shipments where letters of credit were opened or amended after December 1, 1986.

Finally, exporters submitted letters to the Turkish government renouncing eligibility for export tax rebate payments after July 31, 1987 for shipments where letters of credit opened prior to December 1, 1986 were still outstanding.

We preliminarily determine that for this program the cash deposit of estimated countervailing duties will be zero.

(2) RUSF

Payments to exporters from the Resource Utilization Support Fund ("RUSF"), created by Decree 84/8860, went into effect on January 1, 1985. RUSF payments were intended to replace preferential export financing that was simultaneously eliminated by Decree 84/8861. Exporters were eligible to receive payments of 4 percent of the f.o.b. value of export receipts that were converted from foreign currency into Turkish lira. On March 16, 1986, by Decree 86/10520, the rate of RUSF payments was reduced to 2 percent. Because this program is contingent upon export performance, we preliminarily determine that it confers a countervailable benefit on exports.

We calculated the benefit by allocating the amount of RUSF payments each company received over its total f.o.b. value of exports during the review period. We then weight-averaged the resulting benefit by each company's proportion of pipe and tube exports to the United States. On this basis, we preliminarily determine the benefit from this program to be 1.78 percent *ad valorem* during the review period.

Effective January 1, 1987, pursuant to Decree 86/11085, the Government of Turkey eliminated RUSF payments on exports. Under Transitory Article 1 of this decree, exporters were still eligible to receive RUSF payments on shipments that occurred after November 1, 1986 for which irrevocable letters of credit had been opened prior to November 1, 1986. We verified that exporters received RUSF payments only for shipments with letters of credit opened prior to November 1, 1986, and that there were no RUSF payments received for shipments where letters of credit were opened or amended after November 1, 1986.

Finally, exporters submitted letters to the Turkish government renouncing eligibility for RUSF payments after July 31, 1987 for shipments where letters of credit opened prior to November 1, 1986 were still outstanding.

We preliminarily determine that for this progam the cash deposit of estimated countervailing duties will be zero.

(3) Export Revenue Tax Deduction

Section 8 of Law 5422, as amended by section 6 of Law 2362 of January 1, 1982, permits producers that annually export industrial products valued in excess of U.S.$250,000 to deduct 20 percent of their export revenue from taxable corporate income. A five percent deduction is provided to exporters that are not producers. Thus, for products exported through a trading company, a total of 25 percent of the value of exports could be used as a deducation.

Under section 94 of the Turkish Income Tax Law, as revised by Decree 86/10415, tax deductions are subject to a "countervailing tax" of 10 percent of the deduction. In addition, export revenue tax deductions are subject to a 3 percent surcharge on the countervailing tax. The corporate tax rate was 46 percent. Because we consider the benefit from this program to occur when income tax returns are filed, we examined the tax return for tax year 1985 filed in 1986. There were no exports of pipe and tube to the United States during the 1985 portion of the review period.

We calculated the benefit by multiplying the amount of each company's deduction by the corporate tax rate and subtracting the amount of the countervailing tax and surcharge paid on the deduction. We allocated the result over the company's total f.o.b. value of exports during the review period. We then weight-averaged the resulting benefit by each company's proportion of pipe and tube exports to the United States. We preliminarily determine the benefit from this program to be 6.78 percent *ad valorem* during the review period.

(4) GIP

The General Incentives Program ("GIP") provides benefits intended to encourage investments and stimulate the Turkish economy. The program is designed to meet the targets of Turkey's five-year and annual development plans. Companies applying for GIP benefits must obtain an investment incentive certificate from the State Planning Organization, which reviews proposed projects and considers such factors as supply and demand for the product, need for additional productive capacity, potential profitability, and the effect on employment. Benefits are equally available to producers for the domestic market and for export. However, for the corporate tax allowance program of the GIP, different regions and sectors have different levels of benefits.

Prior to 1985, the industries for which benefits were available were listed on a General Incentives Table. However, on November 11, 1985, pursuant to Decree 85/10011, this table was replaced by a list of industries that were not eligible to receive benefits for new investment, but could continue to receive benefits for modernization of existing facilities. These restrictions applied to industries that were located within the most developed region of Turkey (the region where pipe and tube exporters are located), and new investments in seam welded pipe were among those proscribed.

We verified that pipe and tube exporters used the following programs under the GIP:

(A) Corporate Income Tax Allowances

The GIP provides deductions from taxable income based upon a percentage of a company's total investment. The amount of the deduction ranges from 30 to 100 percent of the cost of the investment, depending on the region and sector in which the investment is made. A deduction of at least 30 percent is available to all holders of investment incentive certificates within any region or sector.

Under the corporate tax allowance program, companies located in the first or second priority regions for development within Turkey are entitled to higher rates of deduction than companies located in the more developed or "normal" regions. All pipe and tube exporters are located in the "normal" regions and, therefore, are entitled to only the lowest tax deduction rates. Based on an eligibility rate of 30 percent, four pipe and tube companies claimed corporate tax deductions on their investments during the review period.

(B) Other GIP Benefits Used.

(1) Communique 85/1 provides exemptions from customs duties and other taxes on imports of capital equipment related to the investment

project listed on the investment incentive certificate.

(2) Decree 83/7507 provided companies with investment incentive certificates interest rebates of up to 8 percent on medium-term investment credits, and interest rebates of up to 7 percent on short-term export credits issued by commercial banks. Effective January 1, 1985, such interest rebates were abolished by Article 10 of Decree 84/8860, but companies with outstanding balances on medium-term investment credits were still eligible for interest rebates during the review period. Companies were no longer eligible for interest rebates on short-term export credits.

All five companies received exemptions on customs duties and other taxes on imported capital equipment during the review period. One exporter, Borusan, received interest rebates on medium-term investment credits that still had outstanding balances during the review period.

Any firm with an investment incentive certificate automatically qualifies for corporate income tax allowances, exemptions from customs duties and other taxes on imports of capital equipment and interest rebates on investment credits. We examined a computer printout listing approximately 800 investment incentive certificates issued to compaines located in the most developed region (eligible for the lowest level of benefits) of Turkey, the region where pipe and tube exporters are located. We verified that firms within a wide variety of industries, including the chemical, textile, food, machinery, transportation and metal industries, received investment certificates and GIP benefits at the same rates. The computer printout listed GIP benefits under the following programs: corporate income tax allowances, exemptions from customs duties and other taxes on imports of capital equipment, and RUSF interest rebates.

The GIP investment incentive certificates are widely used and are not provided "to a specific enterprise or industry or group of enterprises or industries." The pipe and tube industry is not eligible for benefits on more favorable terms than those available to other industries. Therefore, we preliminarily determine that the General Incentives Program does not confer countervailable benefits to pipe and tube exporters.

(5) Other Programs

We also examined the following programs and preliminarily determine that Turkish pipe and tube exporters did not use them:

(A) Support Price Stability Fund;

(B) Preferential export financing under Decree 84/8861; and

(C) Export credits under Communique No. 1.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 16.52 percent *ad valorem* for the period October 28, 1985 through December 31, 1986.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the final assessed duty under a countervailing duty order shall be disregarded to the extent that the estimated duty is less than the final assessed duty and refunded to the extent that the estimated duty is higher than the final assessed duty, for merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of a final affirmative injury determination by the International Trade Commission, which in this case was March 3, 1986 (51 FR 7342).

The Department therefore intends to instruct the Customs Service to assess countervailing duties of 16.52 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 28, 1985 and exported on or before December 31, 1986.

Because of the termination of the export tax rebate and RUSF programs, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 6.78 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date publication of this notice, and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administative review including the results of its analysis of issues raised in any such written comments or at a hearing.

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 19 CFR 355.10.

Gilbert B. Kaplan,

Acting Assistant Secretary Import Administration.

Date: December 9, 1987.

[FR Doc. 87-28778 Filed 12-14-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit to Dr. R. H. DeFran (P406)

On September 28, 1987, notice was published in the **Federal Register** (52 FR 36298) that an application had been filed by Dr. R. H. DeFran, Cetacean Behavior Laboratory, Department of Psychology, San Diego, California 92182 to take bottlenose dolphins (*Tursiops truncatus*).

Notice is hereby given that on December 9, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: December 7, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-28737 Filed 12-14-87; 8:45 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Scientific and Statistical Committee will convene a public meeting at the Conference Room of the Hotel Pierre, De Diego Avenue, Santurce, Puerto Rico, to examine the proposed guidelines of the draft uniform standards of the Code of Federal

Regulations, Parts 602/603 (specifically § 602.5, fishery management planning and development), in order to provide recommendations to the Council. The Committee also will consider and evaluate a report on ecosystem modeling of reef fish-habitat interactions.

The Council will convene its public meeting on December 22, 1987, at 9 a.m. and will adjourn at approximately 4 p.m.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918, (809) 753–4926.

Date: December 10, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–28774 Filed 12–14–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: January 15, 1988.

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 June 26, 1987, August 21, 1987, October 2, and October 9, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (52 FR 24049, 31659, 36996 and 37819) of additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and services 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 actions 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 on any contractors for the commodity and services listed.

(c) The action will result in authorizing small entities to provide the commodity and services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1988.

Commodity

Adapter Kit, Top Sling, 1005–00–406–1570

Services

Assembly of Kit Camouflage Support System, U.S. Army Troop Support Command, St. Louis, Missouri

Janitorial/Custodial, Edith-Green-Wendell Wyatt, Federal Building, 1220 SW 3rd Avenue, Portland, Oregon

Janitorial Service, Building 2700, Naval Air Station, Whidbey Island, Washington

C.W. Fletcher,

Executive Director.

[FR Doc. 87–28750 Filed 12–14–87; 8:45 am]

BILLING CODE 6820–33–N

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 commodities to be produced by workshops for the blind or other severely handicapped.

Comments must be received on or before: January 15, 1988.

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.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodities

Pad, Writing Paper
7530–01–124–5660
(Requirements for GSA Regions 2, 9, 10 plus New Cumberland Pennsylvania Army Depot)
7530–01–131–0091
(Requirements for GSA Regions 2, 9, 10 plus New Cumberland Pennsylvania Army Depot)
7530–00–285–3090
(Requirements for GSA Regions W, 2, 3, 4, 7, 8, 9, 10)
7530–01–124–7632
(Requirements for GSA Regions 4, 6, 8)

Strap Assembly
5855–01–137–7767
5855–00–125–0762
5855–00–125–0713

Credenza, Steel
7110–00–128–0096
7110–00–128–0546

C.W. Fletcher,

Executive Director.

[FR Doc. 87–28751 Filed 12–14–87; 8:45 am]

BILLING CODE 6820–33–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 87–1]

Complaint; Miracle Recreation Equipment Co., a Corporation

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Federal Hazardous Substances Act.

SUMMARY: Under Provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR Part 1025, 45 FR 29206), the Consumer Product Safety Commission must publish in the Federal Register Complaints which it issues. Printed below is a Complaint in the matter of Miracle Recreation Equipment Co., a corporation.

SUPPLEMENTARY INFORMATION: (Attached)

Date: December 9, 1987.

Sheldon D. Butts,

Deputy Secretary.

Complaint

In the Matter of Miracle Recreation Equipment Co., a corporation.

Nature of Proceedings

1. This is an administrative adjudicative proceeding pursuant to section 15 of the Federal Hazardous Substances Act (hereinafter, the "FHSA"), as amended, 15 U.S.C. 1274, for public notification and remedial action to protect the public from substantial risks of injury presented by children's toys or other articles intended for use by children, namely, items of public playground equipment known as "Flying Animal Swings." This proceeding is governed by the Consumer Product Safety Commission's "Rules of Practice for Adjudicative Proceedings," 16 CFR Part 1025.

Jurisdiction

2. The Consumer Product Safety Commission (hereinafter, the "Commission" or "CPSC") has jurisdiction over the subject matter of this proceeding pursuant to section 15(c) of the FHSA, 15 U.S.C. 1274(c).

Respondent

3. Respondent Miracle Recreation Equipment Co. (hereafter, "Miracle") is a corporation organized and existing under the laws of the State of Iowa, with corporate offices located at P.O. Box 275, Grinnell, Iowa 50112.

4. Respondent manufactured and distributed in commerce articles intended for use by children, namely, items of public playground equipment known as "Flying Animal Swings," within the meaning of 15 U.S.C. 1261(b) and 1274(c).

The Product

5. Miracle's Flying Animal Swings come in a 2, 3, 4, or 6 seat model (models 202, 203, 204 and 206, respectively). The swing seats are available in the form of either a pony, seal, lion or squirrel.

6. The Flying Animal Swings are sold nationwide as public playground equipment.

7. These Flying Animal Swings range in price from approximately, $1,000–$2,300. The individual animal figures can be purchased separately, for replacement, at approximately $200.

8. It is estimated that there are at least 10,000–12,000 of these Flying Animal Swing sets in Commerce.

9. The Flying Animal Swings are "toys" or "other articles intended for use by children". As such, they are subject to section 15(c) of the FHSA; 15 U.S.C. 1274(c).

Substantial Risk of Injury

10. The animal, figures used on the Flying Animal Swings have been made, at various times, of both metal and plastic, but are presently being made of plastic.

11. With its hanging rods attached, the individual animal figure weighs at least 35 pounds.

12. The older metal animal figures had a hanging rod attached directly to the tail of the figure.

13. Since the introduction of the plastic animal figure, the animal figures are supported by a steel pipe which runs through the body and projects to the rear of and vertically to the swing. It ends in a squared-off shape which is attached by a clevis and S-hook to the rear hanging rod.

14. The Commission tested a sample of the swing in accordance with section 9 ("Moving Impact of Swings") of the CPSC's Handbook for Public Playground Safety, Vol II; Technical Guidelines for Equipment and Surfaces, 1980, (hereinafter "the guidelines") a test designed to measure the impact of a swing with a child's head.

15. The guidelines set the acceptable acceleration limit at 100g's when tested at a position of 60° from the vertical (at rest) position. A swing which imparts peak acceleration in excess of 100g's is capable of causing a severe or fatal head injury to a child.

16. The impact tests, performed on the Flying Animal Swing, as described in section 9, showed that both the front and the rear of these animal figures imparted a peak acceleration in excess of 100g's to the test headform.

17. Section 7 of the guidelines entitled "Sharp Points, Corners and Edges; Pinch and Crush Points; Protrusions; Suspended Hazards" is intended to exclude, among other things, sharp edges or protrusion that can cut or puncture human tissue.

18. The design of the animal figures with the metal support protruding vertically and to the rear, when tested for compliance with section 7 of the guidelines, shows certain of the metal supports to be violative protrusions. This substantially increases the severity of the injury which will occur when the rear of one of these animal figures impacts a child's head.

19. At least six incidents have occurred in which a child was struck in the head by this protruding support. The victims ranged in age from 22 months to seven years. Each of these children sustained serious injury to the head and one lost the sight in one eye. In addition, one child suffered a contusion to the head when struck by a different portion of an animal figure. Finally, a two year old child died after being struck in the head by one of the Flying Animal Swing figures.

20. These swings contain a defect or defects which, because of the pattern of defect, the number of products distributed in commerce, the severity of the risk of injury or otherwise, creat a substantial risk or risks of injury to children within the meaning of section 15(c) of the FHSA, 15 U.S.C. 1274(c).

Relief Sought

Wherefore, in the public interest, Complaint Counsel requests that the Commission, after affording interested persons an opportunity for a hearing, in accordance with section 15(e) of the FHSA, 15 U.S.C. 1274(e):

A. Determine that the Flying Animal Swings contain a defect or defects which create a substantial risk or risks of injury to children within the meaning of section 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. 1274(c)(1) and (c)(2).

B. Determine that public notification under section 15(c)(1) of the FHSA, 15 U.S.C. 1274(c)(1), is required to adequately protect the public from the Flying Animal Swings which have been distributed.

C. Order Respondent under section 15(c)(1) of the FHSA, 15 U.S.C. 1274(c)(1), to

(1) Give public notice that the Flying Animal Swings contain a defect or defects which creates a substantial risk or risk of injury to children;

(2) Mail such notice to each person who is a manufacturer, distributor, or dealer of the Flying Animal Swings; and

(3) Mail such notice to every person to whom Respondent knows the Flying Animal Swings were delivered or sold.

(4) Include in the notices required by (c)(1) (2) and (3) above, a complete description of the potential hazard presented, a warning to stop using the Flying Animal Swings immediately, and clear instructions for repairing, replacing or refunding the purchase price of the Flying Animal Swings.

D. Specify the form and content of any notice required to be given.

E. Determine that action under section 15(c)(2) of the FHSA, 15 U.S.C. 1274(c)(2) is in the public interest and order Respondent

(1) To cease manufacturing for sale, offering for sale, or distributing in commerce Flying Animal Swings which present the substantial product hazard described above; and

(2) With respect to all Flying Animal Swings that have been distributed or sold, to elect, to repair the Flying Animal Swings so that they do not

contain a defect which creates a substantial risk of injury to children; to replace these swings with a like or equivalent swing which does not create a substantial product hazard to children; or to refund to consumers the purchase price of these swings.

(3) To make no charge to consumers and to reimburse them for any reasonable and foreseeable expenses incurred in availing themselves of any remedy provided under any other issued under section 15(c), FHSA, 15 U.S.C. 1274(c), as provided for in section 15(d)(1) of the FHSA, 15 U.S.C. 1274(c)(1).

(4) To reimburse distributors and dealers for expenses in connection with carrying out any orders issued under section 15(c)(1) or (c)(2) with regard to these swings as provided for in section 15(d)(2) of the FHSA, 15 U.S.C. 1274(d)(2).

(5) In accordance with section 15(c)(2) of the FHSA, 15 U.S.C. 1274(c)(2), to cease manufacturing, selling and distributing the defective Flying Animal Swings in commerce.

(6) To submit a plan satisfactory to the Commission within ten (10) days of service of the Final Order directing the actions specified in paragraphs C through E (5) above, in accordance with section 15(c)(2) of the FHSA, 15 U.S.C. 1274(c)(2).

(7) To keep records of its actions taken to comply with paragraphs C through E above, and to supply these records to the Commission staff upon request, for a period of three (3) years after entry of the Final Order issued by the Commission requiring notice and remedial action, for the purpose of monitoring compliance with the Final Order.

F. Order Respondent to notify the Commission at least 60 days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or by petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, the creation, or dissolution of subsidiaries, the dissolution of the corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission requiring notice and corrective action. This obligation shall last for a period of three years after issuance of said Final Order.

G. Grant such other and further relief as the Commission deems necessary to protect the public health and safety and to implement the FHSA.

Issued by Order of the Consumer Product Safety Commission.

David Schmeltzer,

Associate Executive Director for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

Melvin I. Kramer,

Complaint Counsel, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

Dated: December 7, 1987.

[FR Doc. 87-28744 Filed 12-14-87; 8:45 am]

BILLING CODE 6355-01-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 88-2-86CD]

Ascertainment of Whether Controversy Exists Concerning Distribution of 1986 Cable Royalty Fees

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, (202) 653-5175.

SUMMARY: In accordance with 17 U.S.C. 111(d)(5)(B), the Copyright Royalty Tribunal directs that all claimants to royalty fees paid by cable operators for secondary transmissions during 1986 (Phase I and Phase II claimants) shall submit not later than February 4, 1988 any comments concerning whether a controversy exists with regard to the distribution of the 1986 royalty fees. All claimants intending to participate in the 1986 proceeding shall include with their comments a Notice of Intent to Participate. Any particular controvesy, Phase I or Phase II, of which the Tribunal does not become advised by the end of the comment period will not be considered at a later date.

Mario F. Aguero,

Chairman.

Dated: December 10, 1987.

[FR Doc. 87-28748 Filed 12-14-87; 8:45 am]

BILLING CODE 1410-09-M

[Docket No. 87-1-85JB]

Final Determination of the Distribution of the 1985 Jukebox Royalty Fund; Correction

In FR Doc. 87-27911, beginning on page 46324, in the issue of Friday, December 4, 1987, make the following correction:

1. On page 46330, in the second column, in the second paragraph under "Conclusions of Law—ACEMLA's and IBC's Entitlements," in the eighth and ninth lines, the numbers "0.74%" and "0.65%" should read, "0.074%" and "0.065%".

Mario F. Aguer,

Chairman.

Dated: December 10, 1987.

[FR Doc. 87-28749 Filed 12-14-87; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 14-15 January 1988 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with military net assessment, strategic weapons requirements and US basing in the Pacific.

In accordance with section 10(d) of the Federal Advisory Committee Act, P.L. 92-463, as amend (5 U.S.C. App. II, (1982)), it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 9, 1987.

[FR Doc. 87-28745 Filed 12-14-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2. This document is intended to notify the general public of their opportunity to attend.

DATES: January 19–20, 1988, 9:00 a.m., until conclusion of business each day.

ADDRESS: National Advisory Council on Indian Education, 330 C Street, SW., Room 4072 (Conference Room), Switzer Building, Washington, DC 20202 (202/732–1353).

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., Room 4072, Switzer Building, Washington, DC 20202 (202/732–1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act (Title IV of Pub. L. 92–318), and to advise Congress, and the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) Chairman's Report.

(2) Executive Director's Report.

(3) Action on previous minutes.

(4) Election of Officers.

(5) Committee discussions and reports.

(6) NACIE Budget—FY'88.

(7) Plans for future NACIE activities.

(8) Regular Council business.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 330 C Street SW., Room 4072, Switzer Building, Washington, DC 20202.

Dated: December 9, 1987. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 87–28772 Filed 12–14–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver

Section 207(f), title 18, United States Code, and section 605(a)(3) of the Department of Energy Organization Act (Pub. L. 95–91) authorize the Secretary of Energy to waive the post-employment restrictions of subsections (a), (b), and (c) of section 207, title 18, United States Code, and of subsection (a)(1) of section 605 of the Department of Energy Organization Act, respectively, to permit a former employee with outstanding scientific or technological qualifications to make appearances before or communications to the Department in connection with a particular matter which requires such qualifications (in the case of section 207), or which lies in a scientific or technological field (in the case of section 605), where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that William A. Wallenmeyer, formerly Director of the Division of High Energy Physics, Office of High Energy and Nuclear Physics, Office of Energy Research, has a unique combination of outstanding scientific qualifications in the field of high energy physics and extensive experience in management of scientific research and development programs. I am further satisfied that it will serve the national interest to permit him, in his capacity as president of Southeastern Universities Research Association, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to the planning, implementation, and funding of the Continuous Electron Beam Accelerator Facility. I am satisfied that these activities are in a scientific field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of subsections (a), (b), and (c) of section 207, title 18, United States Code (in consultation with the Director of the Office of Government Ethics), and of subsection (a)(1) of section 605 of the Department of Energy Organization Act, to permit contact by Dr. Wallenmeyer with employees of the Department of Energy and other Government agencies with respect to the funding, design, construction, operation, and use of the Continuous Electron Beam Accelerator Facility.

John S. Herrington,

Secretary of Energy.

Date: December 7, 1987.

[FR Doc. 87–28788 Filed 12–14–87; 8:45 am]

BILLING CODE 6450–01–M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S–EU–921, for the sale of 15 grams of uranium–238 to Bayerisches Landesamt for Umweltschutz, Muenchen, the Federal Republic of Germany for use in analyzing environmental samples.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 8, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–28690 Filed 12–14–87; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement; European Atomic Energy Community and Indonesia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Indonesia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/IE(EU)–4, for the retransfer of 125 grams of uranium oxide enriched to 19.75 percent in the isotope uranium-235 from the Federal Republic of Germany to Indonesia for use as standards in the BATAN fuel element plant.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 8, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–28689 Filed 12–14–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP81–108–008]

Boundary Gas, Inc., Changes in FERC Gas Tariff

December 9, 1987.

Take notice that on December 3, 1987, Boundary Gas, Inc. ("Boundary") submitted for filing First Revised Volume No. 1 to supersede Original Volume No. 1 of its FERC Gas Tariff.

Boundary states that the purpose of this filing is to implement Phase 2 of the Boundary Project providing for the resale to the fifteen Boundary Stockholders of up to 92,500 Mcf per day of gas purchased by Boundary from TransCanada PipeLines Limited. Boundary further states that the tariff complies in all respects with the Order issued by the Commission on July 24, 1987 in Docket No. CP81–108–005; consistent with that Order, the tariff shall be permitted to become effective on the date Phase 2 deliveries commence which is anticipated to be January 1, 1988.

A copy of Boundary's filing has been served upon each of the Boundary customers and their respective State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions protests should be filed on or before December 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–28723 Filed 12–14–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–122–003]

Colorado Interstate Gas Co.; Compliance Filing

December 9, 1987.

Take Notice that on December 3, 1987, Colorado Interstate Gas Company ("CIG") tendered for filing the following revised tariff sheets:

Volume No. 1

Sixth Revised Sheet No. 1
Substitute Thirty-Third Revised Sheet No. 7
Thirty-Fourth Revised Sheet No. 7
Substitute Thirty-Third Revised Sheet No. 8
Thirty-Fourth Revised Sheet No. 8
Fourth Revised Sheet No. 9
Fourth Revised Sheet No. 10
Third Revised Sheet No. 10A
Second Revised Sheet No. 10B
Third Revised Sheet No. 11
Fourth Revised Sheet No. 14
Fifth Revised Sheet No. 16
Second Revised Sheet No. 16A
First Revised Sheet No. 16B
First Revised Sheet No. 16C
Fourth Revised Sheet No. 18
Third Revised Sheet No. 30

CIG states that these revised tariff sheets are submitted in compliance with Ordering Paragraph (B) of Opinion No. 290 (*Colorado Interstate Gas Company*, 41 FERC ¶ 61,179 (November 18, 1987)) which required that CIG file within 15 days of the date that Opinion No. 290 was issued revised, rate schedules to reflect the holdings of that Opinion. Specifically, CIG states that the instant filing:

(1) Eliminates prospectively the minimum annual bill provisions of certain rate schedules as required by Opinion No. 290;

(2) Revises prospectively the rates for service under Rate Schedules EX–1 to comply with the requirements of Opinion No. 290 that fixed costs be allocated to this Rate Schedule;[1] and

(3) Eliminates retroactively Rate Schedule PR–1.

CIG states that Opinion No. 290 and the record in Docket No. RP85–122 is insufficient for it, at this time, to be able to establish a modified fixed-variable ("MFV") rate design on a prospective basis. CIG suggests that a technical conference be established for this purpose and states that it intends to specify in its request for rehearing of Opinion No. 290 the nature of the clarifications required in order to establish a MFV rate design to be effective prospectively from November 18, 1987.

CIG states that on November 16, 1987, it filed in Docket No. TA88–2–32–000 to adjust its rates to reflect a change in the Gas Research Institute (GRI) surcharge to be effective January 1, 1988.

CIG requests all necessary waivers of the Commission's Regulations in order for its filing to be accepted and to be effective on November 18, 1987.

Copies of CIG's filing have been served on CIG's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on of before December 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–28724 Filed 12–14–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–38–000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

December 9, 1987.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf)

[1] Transmission facility costs required by Opinion No. 290 to be allocated to Rate Schedule PS–1 are already reflected in the rate for this service in Docket No. RP87–30–000. Similarly, no change of rate or to CIG's Tariff is required at this time to establish a demand-commodity rate for service under Rate Schedule F–1. However, for reasons discussed below, establishment of a two-part demand charge for this service requires clarification from the Commission.

on December 2, 1987, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1, with the proposed effective date of January 1, 1988:

Fourth Revised Sheet No. 5A

Columbia Gulf states that the aforementioned tariff sheet is being filed to reflect a decrease in the Gas Research Institute (GRI) funding unit from 1.52¢ per Mcf to 1.51¢ per Mcf as authorized by Opinion No. 283 issued by the Federal Energy Regulatory Commission (Commission) on September 29, 1987, in Docket No. RP87-71-000. Ordering Paragraph (B) of such Opinion approves the GRI funding requirement for the year 1988 and provides that members of GRI shall collect from their applicable customers a general R & D funding unit of 1.51¢ per Mcf (1.46¢ per Dth) during 1988 for payment to GRI.

Copies of this filing were served upon the Company's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 16, 1987 Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28725 Filed 12-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-169-027]

Consolidated Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

December 9, 1987.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on December 4, 1987, filed First Revised Volume No. 1 of its FERC Gas Tariff.

The proposed effective date is December 1, 1987. The tariff sheets are being filed to implement the Stipulation and Agreement filed February 10, 1986, and supplemented February 19, 1986, in this proceeding, as conditioned by Commission orders issued February 13, 1987, and November 4, 1987.

Consolidated also announced an "open season" for interruptible transportation requests to be held from December 5, 1987, through December 17, 1987.

The filing also includes a reduction in the GRI surcharge effective January 1, 1988.

Copies of the filing were served upon parties to Docket No. RP85-169 and Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions or protests should be filed on or before December 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28726 Filed 12-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

December 9, 1987.

Take notice that K N Energy, Inc. on December 3, 1987, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. The proposed changes will adjust K N's rates charged its jurisdictional customers pursuant to the Gas Research Institute charge adjustment provision (section 22) of K N's FERC Gas Tariff, Third Revised Volume No. 1. Such adjustment is to track the increased GRI rate set, effective January 1, 1988, per Opinion No. 283 issued on September 29, 1987. Copies of this filing were served upon the company's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before December 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28727 Filed 12-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-18-000]

Texas Gas Transmission Corp.; Filing of Revised Tariff Sheets

December 9, 1987.

Take notice that on November 25, 1987, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, Original Volume No. 1

Tenth Revised Sheet No. 10
Tenth Revised Sheet No. 10A
Sixth Revised Sheet No. 11
Sixth Revised Sheet No. 12
Fourth Revised Sheet No. 12A
Second Revised Sheet No. 116

FERC Gas Tariff, Original Volume No. 3

Second Revised Sheet No. 21
Second Revised Sheet No. 22

The revised tariff sheets are being filed pursuant to Section 24 of Texas Gas's tariff to reflect the 1988 General RD&D Funding Unit authorized by Opinion No. 283, issued by the Commission on September 29, 1987, in Docket No. RP87-71.

Texas Gas proposes that the revised tariff sheets become effective January 1, 1988.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28728 Filed 12-14-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $390,000 (plus accrued interest) obtained pursuant to a consent order between the DOE and Sauvage Gas Company, Inc. and Sauvage Gas Service Company, Inc. The funds will be distributed to refund applicants who purchased refined petroleum products from Sauvage during the period of federal petroleum price controls.

DATE AND ADDRESS: Comments must be filed by January 14, 1988, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should be filed in duplicate and display a conspicuous reference to Case Number KEF-0024.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Sauvage Gas Company, Inc. and Sauvage Gas Service Company, Inc. to settle possible pricing violations with respect to the firms' sales of refined petroleum products during the period January 1, 1973 through January 27, 1981. Under the terms of the consent order, Sauvage remitted $390,000 which is being held in an interest-bearing escrow account.

We propose to distribute these funds in two stages. In the first stage, we will accept claims from identifiable purchasers of refined petroleum products who may have been injured by Sauvage's pricing practices during the period of federal petroleum price controls. The specific requirements which an applicant must meet in order to receive a refund are set out in Section II of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of refined petroleum products which they purchased from Sauvage. If any funds remain after meritorious claims are paid in the first stage, they may be used for indirect restitution in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99-509, 1 Fed. Energy Guidelines ¶ 11,702.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: December 7, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 7, 1987.

Names of Firms: Sauvage Gas Company, Inc.; Sauvage Gas Service Company, Inc.

Date of Filing: March 28, 1986.

Case Number: KEF-0024.

Under the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of actual or alleged violations of DOE regulations. On March 28, 1986, in accordance with the provisions of Subpart V, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order that it entered into with Sauvage Gas Company, Inc. and Sauvage Gas Service Company, Inc. (hereinafter collectively referred to as Sauvage).

I. Background

During the period of Federal petroleum price controls, Sauvage engaged in the purchase and resale of refined petroleum products, including middle distillates, propane, butane, natural gasoline and natural gas liquid (NGL) mixed stream products. Sauvage's sales were primarily concentrated in the Midwestern states. A DOE audit of Sauvage's records revealed possible violations of the price regulations in the firm's purchase and resale of petroleum products. Based on this audit, the ERA issued a Proposed Remedial Order (PRO) on November 4, 1981, alleging that during the period September 1973 through July 1977, Sauvage commited certain pricing violations in its sales of NGLs and NGL products. On August 27, 1982, the OHA granted the ERA's motion to withdraw the Sauvage PRO. *Sauvage Gas Company,* 10 DOE ¶83,008 (1982). However, the ERA continued to challenge the firm's pricing practices.

In order to settle all claims and disputes between Sauvage and the DOE regarding the firm's sales of refined petroleum products during the period January 1, 1973 through January 27, 1981 (the consent order period), the parties entered into a consent order on September 29, 1985. Under the terms of the consent order, Sauvage deposited $390,000 into an interest-bearing escrow account for ultimate distribution by the DOE. With interest, the total value of the Sauvage escrow account has grown to $444,917.19 as of October 31, 1987. This Proposed Decision concerns the distribution of the funds in the Sauvage escrow account.

II Proposed Refund Procedures

Subpart V sets forth general guidelines to be used by the OHA in formulating a plan for distributing funds received as a result of an enforcement proceeding. The Subpart V process may be used in situations like the present case where the DOE is unable to readily identify those persons who likely were injured by alleged overcharges or ascertain the amount of the refunds they should receive.

The distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of Sauvage propane, butane, natural gasoline, middle distillates and NGL mixed stream products (the covered

products) who may have been injured by Sauvage's pricing practices during the period of federal price controls. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Sauvage covered products during the period June 13, 1973 through the date of decontrol of each covered product.[1] If any funds remain after all meritorious first-stage claims have been paid, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, Title III, 1 Fed. Energy Guidelines ¶11,702 *et seq.*

A. *Refunds to Identifiable Purchasers.* In the first stage of the Sauvage refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Sauvage's alleged overcharges. While there is a variety of methods by which such a showing can be made, a refiner, reseller or retailer claimant is generally required to demonstrate (i) that it maintained a bank of unrecovered increased product costs, in order to show it did not pass the alleged overcharges through to its own customers, and (ii) that market conditions were the reason that it did not pass through those increased costs. For periods in which the DOE regulations did not require the computation of cost banks, a claimant in the oil business will only be required to make the latter showing, which might be made through a demonstration of lowered profit margins, decreased market shares, or depressed sales volume during the period of purchases from Sauvage. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451 (1986). Claimants may also use the "competitive disadvantage methodology" to demonstrate that they were injured by Sauvage's alleged overcharges. *See, e.g., Dorchester Gas Corporation/Phillips Petroleum Co.*, 16 DOE ¶ 85,400 (1987).

We propose to adopt presumptions of injury which have been used in many prior refund cases. These presumptions are founded upon our experience in prior Subpart V proceedings and upon specific information concerning Sauvage's regulated operations during the consent order period. Presumptions in refunds cases are specifically authorized by the Subpart V regulations. *See* 10 CFR 205.282(e). These presumptions will enable the OHA to consider the refund applications in the most efficient way possible in views of the limited resources available, while permitting applicants to participate in the refund process without incurring inordinate expense.

1. *Applicants Claiming a Refund of $5,000 or less.* The first presumption we plan to use is that purchasers of Sauvage covered products seeking small refunds were injured by the alleged regulatory violations settled in the Sauvage consent order. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers or retailers who purchased relatively small amounts of product from Sauvage. We are also concerned that the cost to the applicants and to the government of compiling and analyzing information to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986) and cases cited therein. Under the small claims presumption, a claimant would not be required to submit any additional evidence of injury beyond volumes of Sauvage covered products purchased if its refund claim is below $5,000.[2]

2. *Spot Purchasers.* We propose to adopt a rebuttable presumption that a reseller or retailer that made only spot purchases from Sauvage did not suffer economic injury as a result of those purchases. As we have noted in previous cases, spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full price of the purchases to their own customers. *Office of Enforcement*, 8 DOE ¶82,597 at 85,396–97 (1981). We believe the same rationale holds true in the present case. Accordingly, a firm which made only spot purchases from Sauvage will be ineligible to receive a refund, even one below the $5,000 threshold level, unless it presents evidence rebutting the spot purchaser presumption that it was not injured. In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that: (1) They made the spot purchases in order to maintain supplies to base period customers; and (2) they were forced by market conditions to resell the product at a loss. *See Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986); *Waller Petroleum Co./Wooten Oil Co.*, 13 DOE ¶ 85,110 (1985).

3. *End-Users.* The third presumption we plan to adopt is that end-users or ultimate consumers whose businesses were unrelated to the petroleum industry were injured by Sauvage's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We therefore propose that end-users of Sauvage covered products need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Sauvage products for consumption as fuel or raw materials will not be considered end-users for the purpose of the showing of injury. *Seminole Refining Inc.*, 12 DOE ¶ 85,188 at 88,576 (1985).

We also propose to require end-user firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement to provide with their applications a full explanation of the manner in which any refunds which they receive would be passed through to their customers. They will also be required to indicate how the appropriate regulatory body or membership group will be advised of the applicant's receipt of refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). A cooperative's sales of Sauvage's products to non-members will be treated in the same manner as sales by other resellers.

B. *Calculation of Refund Amounts.* We plan to adopt a volumetric method to divide the Sauvage escrow account among applicants who demonstrate that they are eligible to receive refunds. This method generally presumes that the alleged overcharges were spread equally

[1] The decontrol dates for the covered products are as follows: January 28, 1981, for propane and NGL mixed stream products; January 1, 1980, for butane and natural gasoline; and July 1, 1976, for middle distillates.

[2] Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 without being required to make a detailed demonstration of injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 (1981).

over all the gallons of covered products sold by Sauvage during the period of Federal petroleum price controls. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. *See generally* 10 CFR Part 212. However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that it incurred a disproportionate share of alleged overcharges. In other words, the volumetric presumption will be rebuttable, as will all of the other presumptions that we propose to adopt. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,189 (1982).

Under the volumetric method we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons of Sauvage covered products that it purchased during the period of price controls times the volumetric refund amount. The volumetric refund amount is calculated by dividing the $390,000 received from Sauvage by the total gallons of covered products which the firm sold during the period of controls.[3] This calculation yields a volumetric refund amount of $.001862 per gallon. In addition, successful claimants will receive a proportionate share of the accrued interest.

As in previous cases, we will establish a minimum refund amount of $15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 at 88,746 (1987).

Applications for refund should not be filed at this time. Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the Sauvage consent order, we intend to publicize the distribution process and solicit comments on all aspects of the foregoing Proposed Decision. All comments must be filed within 30 days of the publication of this Proposed Decision in the Federal Register.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Sauvage Gas Company, Inc. and Sauvage Gas Service Company, Inc. pursuant to consent order number 710HO6008Z, entered on September 29, 1985, will be distributed in accordance with the foregoing Decision.

[FR Doc. 87-28789 Filed 12-14-87; 8:45 am]

BILLING CODE 6450-01-M

[3] Based on information contained in the Sauvage audit file, we estimate that the firm sold approximately 209.4 million gallons of covered products during the period when the price of those products was regulated by the DOE.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $200,000 obtained as a result of a Consent Order which the DOE entered into with Martinoil Company, a reseller-retailer of petroleum products located in Fresno, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed by January 14, 1988, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0124.

FOR FURTHER INFORMATION CONTACT: Jon F. Leyens, Office of hearings and Appeals, Department of Energy 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and order set out below. The Proposed Decision sets forth procedures and standards that DOE has tentatively formulated to distribute to adversely affected parties $200,000 plus accrued interest obtained by the DOE under the terms of a Consent Order entered into with Martinoil Company (Mortinoil). The funds were provided to the DOE by Martinoil to settle all claims and disputes between the firm and the DOE regarding the firm's compliance with the Federal Petroleum Price and Allocation Regulations in its sales of covered products during the period August 20, 1973, through January 27, 1981.

OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals that purchased covered products from Martinoil during the consent order period. In order to obtain a refund, each claimant will be required to submit a schedule if its monthly purchases of covered products from Martinoil and to demonstrate that it was injured by Martinoil's alleged regulatory violations. The specific requirements for proving injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Residual funds in the Martinoil escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99-509 Title III.

Any member of the public may submit written comments regarding the proposed rufund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 7, 1987.

George B Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 7, 1987.

Name of Firm: Martinoil Company
Date of Filing: October 13, 1983.
Case Number: HEF-0124

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a

Consent Order entered into with the Martinoil Company (Martinoil).[1]

I. Background

Martinoil was a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and was located in Fresno, California.[2] A DOE audit of Martinoil's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between November 1, 1973, and April 30, 1977, Martinoil committed possible pricing violations with respect to its sales of covered petroleum products.

In order to settle all claims and disputes between Martinoil and the DOE regarding the firm's compliance with the Mandatory Petroleum Price and Allocation Regulations during the period August 20, 1973, through January 27, 1981, Martinoil and the DOE entered into a Consent Order on August 8, 1983. The Consent Order refers to ERA's allegations of regulatory violations, but states that Martinoil does not admit committing any such infractions.

Under the terms of the Consent Order, Martinoil was required to deposit $200,000 into an interest-bearing escrow account for ultimate distribution by the DOE. These consent order monies were paid in full on October 6, 1983. This Decision concerns the distribution of those funds. Comments are solicited on these proposed procedures.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged regulatory violations or to ascertain readily the level of injury sustained by such persons. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we will use the funds currently in escrow to provide refunds to claimants who demonstrate that they were injured by Martinoil's alleged regulatory violations during the period August 20, 1973, through January 27, 1981 (consent order period).[3] Residual funds in the Martinoil escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. No. 99–509, Title III. *See* 51 FR 43964 (December 5, 1986).

A. Calculation of Refund Amounts. In order to determine the potential refund amounts for applicants in this proceeding, we propose to adopt a volumetric refund presumption. The volumetric refund presumption assumes that Martinoil's alleged overcharges were spread equally over all gallons of covered products that Martinoil sold during the consent order period.

Under the volumetric method, a claimant that adequately demonstrates injury will be eligible to receive a refund equal to the number of gallons of covered products that it purchased from Martinoil during the consent order period times the volumetric factor.[4] The volumetric factor is the average per-gallon refund and in this case equals $0.000726 per gallon.[5] In addition, successful claimants will receive proportionate shares of the interest that has accrued on the Martinoil escrow account.

Product	Deregulation date
Diesel fuel, kerosene	7/1/76
Naphthas, lubricants	9/1/76
Motor gasoline, L.P. gas	1/28/81

However, the volumetric refund presumption is rebuttable. A claimant that believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

B. Determination of Injury. The assignment of potential refund amounts to claimants is only the first step in the distribution process. We must also determine whether these claimants were forced to absorb the alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions which will be used to help determine the level of a purchaser's injury. Applicants that are not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined below.

1. *Injury Presumptions.* The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible. First, we propose to adopt a presumption of injury with respect to small claims submitted by resellers and retailers of Martinoil's covered products. Second, we plan to adopt presumptions that end users, certain types of regulated firms, and cooperatives were injured by Martinoil's alleged pricing violations. Finally, we plan to adopt presumptions that spot purchasers and those selling Martinoil's covered products on consignment were not injured by the alleged overcharges.

a. Reseller and retailer small claims. The first injury presumption we plan to adopt is that resellers and retailers seeking small refunds were injured by Martinoil's pricing practices. Without this presumption, a reseller or retailer applying for a refund would have to sort through records dating as far back as 1973 to gather proof that it absorbed Martinoil's alleged overcharges. The cost to the applicant of gathering this information, and to OHA of analyzing it, could exceed the actual refund amount. Under the small claims presumption, a claimant that is a reseller or retailer would not be required to submit any additional evidence of injury beyond volumes of covered products it purchased from Martinoil if its refund claim is below $5,000. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984). Resellers and retailers of Martinoil's covered products that are

[1] The Martinoil Co. also owned and controlled three related firms, El Monte Liquid Gas Co., El Monte Gas Co., Inc. and Marco Tank Lines. References in this Decision to Martinoil include the parent company and its three subsidiaries.

[2] Martinoil is now owned by J.D. Streett & Company, Inc. of Maryland Heights, Missouri.

[3] In its audit of Martinoil, ERA did not allege that the firm committed any allocation violations. However, since the Consent Order covers Martinoil's compliance with all aspects of the Federal Petroleum Price and Allocation Regulations, the escrow funds may be used to provide restitution to firms that show that they were injured by Martinoil's allocation practices. For these claimants, we propose to implement the same procedures that have been used in prior Subpart V proceedings involving alleged allocations violations. *See, e.g.*, Power Pak Co., Inc., 14 DOE ¶ 85,001 (1986). The remainder of this Decision concerns only the filing of claims involving Martinoil's alleged pricing violations.

[4] Purchases of a product after it was deregulated will not be used in the calculation of an applicant's refund amount. Below is a list of products sold by Martinoil and the dates on which they were deregulated:

[5] This figure is computed by dividing the $200,000 received from Martinoil by the 275,590,149 gallons of covered products sold by the firm during the consent order period.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at ¶ 85,225. *See also* 10 CFR 205.286(b).

seeking refunds in excess of $5,000 must follow the procedures that are outlined below in Section 2.

b. End users. As noted above, we presume that end users of Martinoil's covered products were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984), and cases cited therein. Consequently, end users of Martinoil's covered products will only have to document their purchase volumes from Martinoil to demonstrate injury.

c. Regulated firms and cooperatives. In addition, we propose that public utilities, agricultural cooperatives, or other firms whose prices are regulated by government agencies or cooperative agreements need not submit detailed proof of injury. Such firms would have routinely passed through price increases to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) *(Tenneco), and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Cooperatives should note, however, that their sales to nonmembers will be treated the same as sales by any other reseller.

d. Spot purchasers. If a reseller or retailer was a spot purchaser of covered products from Martinoil—*i.e.*, a firm that made only sporadic, discretionary purchases—it will ordinarily not be eligible to receive a refund since spot purchasers are presumed not to have been injured.[6] The basis for this presumption is that spot purchasers tend to have considerable discretion as to where and when to make purchases and would therefore not have made spot market purchases at increased prices unless they were able to pass through the full amount of the quoted selling price at the time of purchase to their customers. *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1987) (*Vickers*). However, the spot purchaser presumption is rebuttable; we will consider evidence that spot purchasers "were unable to recover the product prices that paid * * *" *Office of Special Counsel*, 10 DOE ¶ 85,042 at 88,200 (1982) *See also Marion Corp.*, 12 DOE ¶ 85,014 (1984); *Tenneco Oil Co./Imperial Oil Co.*, 10 DOE ¶ 85,002 (1982). In past refund proceedings, we have approved refunds to spot purchasers that demonstrate that (i) the purchases were necessary to maintain supplies to base period purchasers; and (ii) the claimant was forced by market conditions to resell the product at a loss that was not subsequently recouped. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

e. Consignees. Finally, as in previous cases, we propose to adopt the rebuttable presumption that consignees of Martinoil's covered products were not injured by Martinoil's alleged pricing violations. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with its supplier, under which the supplier retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). A consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of the [the consent order firm's pricing] practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. *Non-Presumption Demonstration of Injury.* A reseller or retailer that claims a refund in excess of $5,000 will be required to document its injury. There are two aspects to such a demonstration. First, a firm is generally required to provide a monthly schedule of its banks of unrecouped increased product costs for each covered product that it purchased from Martinoil during the consent order period. Cost banks for a product should cover the period November 1, 1973, through the product's price decontrol date.[7] If a firm no longer has records of contemporaneously calculated cost banks for a particular product, it may approximate those banks by submitting the following information:

(1) The weighted average gross profit margin that the firm received for the covered product on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for the covered product during the period, November 1, 1973, through the product's price decontrol date; and

(3) A monthly schedule of the firm's sales of the product during the period November 1, 1973, through the product's price decontrol date.[8]

The existence of banks of unrecovered increased product costs that exceed an applicant's potential refund amount is only the first part of a demonstration of injury. A firm must also show that market conditions forced it to absorb the alleged overcharges. This demonstration involves a comparison between the monthly weighted average prices that a firm paid Martinoil for a covered product and average market prices for the same months. Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Martinoil for each covered product that it purchased between August 20, 1973 and the product's price decontrol date. *See supra* note 4.

If a reseller or retailer that is eligible for a refund in excess of $5,000 elects not to submit the cost bank and purchase price information described above, it can still apply for a small claims refund of $5,000, plus accrued interest. If, however, a firm provides the above-mentioned cost bank and price data and this office undertakes an analysis of the material which shows that the firm was not injured, the firm will not be eligible to receive any refund.

III. Applications for Refund

Applications for Refund should not be filed at this time. Before implementing the procedures outlined in this Proposed

[6] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

[7] Retailers and resellers of motor gasoline were only required to maintain cost banks through July 15, 1979 and April 30, 1980, respectively, rather than the January 27, 1981 price decontrol date of motor gasoline. Therefore, in showing injury with respect to their purchases of motor gasoline, such claimants will not be required to submit cost bank material through the decontrol date of motor gasoline.

[8] Retailers and resellers of motor gasoline only have to submit the information detailed in Parts (2) and (3) through July 15, 1979 and April 30, 1980, respectively. *See supra* note 7.

Decision, we intend to publicize it in order to solicit comments from any interested parties. All comments must be filed with the Office of Hearings and Appeals within 30 days of the publication of this Proposed Decision in the Federal Register.

Through the above procedures, we believe we will be able to distribute the Martinoil consent order funds as equitably and efficiently as possible. The information each applicant must provide, if these proposed procedures are adopted, is summarized below:

(1) For each covered product, an applicant must submit a monthly schedule of the number of gallons that it purchased from Martinoil during the consent order period.[9]

(2) An applicant must submit all relevant information necessary to support its claim in accordance with the injury presumptions and requirements outlined above in Section II, Part B.

(3) Each applicant must indicate whether it has received a refund, from any source, for the alleged overcharges identified in the ERA audits underlying this proceeding.

(4) If the applicant's firm has changed ownership during or since the consent order period, the applicant must provide the names and addresses of the previous or subsequent owners. In addition, the applicant must either state the reasons why it should receive the refund instead of the previous or subsequent owners, or provide a signed statement from the previous or subsequent owners indicating that they do not claim a refund.

(5) Each applicant must indicate whether it is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims. As noted above, residual funds will be distributed in accordance with the provisions of PODRA.

[9] Since we will not process claims for less than $15 in principal, *see supra* note 5, an applicant must have purchased at least 19.973 gallons of covered products from Martinoil during the consent order period in order to receive a refund.

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by Martinoil Company pursuant to the Consent Order executed on August 8, 1983 will be distributed in accordance with the foregoing decision.

[FR Doc. 87-28790 Filed 12-14-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3300-3]

Revision of Minnesota National Pollutant Discharge Elimination System (NPDES) Program To Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Minnesota.

SUMMARY: On December 15, 1987, the Regional Administrator for the Environmental Protection Agency (EPA), Region V approved the State of Minnesota's National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of Minnesota to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Almo Manzardo, Chief, Permits Section. U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312/353-2105.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are more appropriate controlled under a general permit rather than by individual permits.

Minnesota was authorized to administer the NPDES program in June, 1974. Their program, as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For these reasons the Minnesota Pollution Control Agency (MPCA) requested a revision of their NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: non-contact cooling water, heat pump discharges, storm water discharges and backwash water discharges from potable water treatment plants.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Minnesota submitted in support of its request, copies of the relevant statutes and regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c). In addition, the State submitted a program description supplementing the original application for the NPDES program authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 123.44. Based upon Minnesota's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide Federal Register notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of Minnesota's authority to issue general permits.

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
Arkansas	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	
Colorado	03/27/75		
Connecticut	09/26/73		06/03/81
Delaware	04/01/74		
Georgia	06/28/74	12/08/80	03/12/81
Hawaii	11/28/74	06/01/79	08/12/83
Illinois	10/23/77	09/20/79	
Indiana	01/01/75	12/09/78	
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74	08/28/85	
Kentucky	09/30/83	09/30/83	09/30/83
Maryland	09/05/74		09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri	10/30/74	06/26/79	06/03/81

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Montana	06/10/74	06/23/81	
Nebraska	06/12/74	11/02/79	09/07/84
Nevada	09/19/75	08/31/78	
New Jersey	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	
North Carolina	10/19/75	09/28/84	06/14/82
North Dakota	06/13/75		
Ohio	03/11/74	01/28/83	07/27/83
Oregon	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	
Rhode Island	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77		08/10/83
Vermont	03/11/74		03/16/82
Virgina Islands	06/30/76		
Virginia	03/31/75	02/09/82	
Washington	11/14/73		09/30/86
West Virginia [1]	05/10/82	05/10/82	05/10/82
Wisconsin [1]	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	

[1] Denotes Approved State General Permit Program.

IV. Review Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), I certify that this State General Permits Programs will not have a significant impact on a substantial number of small entities. Approval of the Minnesota NPDES State General Permits Programs establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Minnesota NPDES State General Permits Programs merely provides a simplified administrative process.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 87-28756 Filed 12-14-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009831-006

Title: New Zealand/U.S. Atlantic and Gulf Shipping Lines Rate Agreement

Parties: PACE Line, Columbus Line

Synopsis: The proposed amendment would require the unanimous consent of all parties entitled to vote for any amendment or modification to the agreement and would permit the parties to assess cargo interests for the cost of providing alternate port service at discharge ports. The parties have requested a shortened review period.

Agreements No.:
202-010270-024
202-010656-024

Titles:
(1) Gulf-European Freight Association Agreement
(2) North Europe-U.S. Gulf Freight Association Agreement

Parties (1) & (2):
Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Lines (GCL), B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
P & OCL (Trans Freight Lines) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendments would permit the parties to use loyalty contracts in conformity with U.S. antitrust laws and would provide that no member may use such a contract except as agreed by the associations, whether by exercise of independent action or otherwise.

Agreements No.:
202-010636-028
202-010637-025

Title:
(1) U.S. Atlantic-North Europe Conference
(2) North Europe-U.S. Atlantic Conference

Parties (1) & (2):
Atlantic Container Line, B.V
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Gulf Container Lines (GCL), B.V.
P & OCL (Trans Freight Lines) Limited
Compagnie Generale Maritime (CGM)
Nedlloyd Lignen, B.V.

Synopsis: The proposed amendments would permit the parties to use loyalty contracts in conformity with U.S. antitrust laws and would provide that no member may use such a contract except as agreed by the conferences, whether by exercise of independent action or otherwise.

By Order of the Federal Maritime Commission.

Dated: December 9, 1987.

Joseph C. Polking.

Secretary.

[FR Doc. 87-28693 Filed 12-14-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisitions of Shares of Banks or Bank Holding Companies; John E. Schilling et al.

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 December 31, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *John E. Schilling,* Duluth, Minnesota, to acquire 25 percent; Eugene V. Stowell, Cloquet, Minnesota, to acquire 25 percent; Joseph L. Bullyan, Duluth, Minnesota, to acquire 25 percent; and William J. Gravell, Duluth, Minnesota, to acquire 25 percent of the voting shares of Floodwood Agency, Inc., Floodwood, Minnesota, and thereby indirectly acquire First State Bank, Floodwood, Minnesota.

2. *James E. Berkely,* Stockton, Kansas; to acquire 2.26 percent of the voting shares of Western Bancshares, Inc., Stockton, Kansas, and thereby indirectly acquire Rooks County State Bank, Stockton, Kansas.

Board of Governors of the Federal Reserve System, December 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28695 Filed 12-14-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; U.S. Bancorp

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire Sheppard Financial Services, Inc., Seattle, Washington, and thereby engage in investment advisory services pursuant to § 225.25(b)(4)(ii) and (iii); and providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28696 Filed 12-14-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0329]

Filing of Food Additive Petition; Diversey Wyandotte Corp.

AGENCY: The Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Diversey Wyandotte Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of potassium permanganate, sodium lauryl sulfate, magnesium oxide, trisodium phosphate, and sodium hypochlorite, with potassium bromide as an optional ingredient, as components of a sanitizing solution to be used on food-contract surfaces.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4020) has been filed by Diversey Wyandotte Corp., 1532 Biddle Ave., Wyandotte, MI 48192, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of potassium permanganate, sodium lauryl sulfate, magnesium oxide, trisodium phosphate, and sodium hypochlorite, with potassium bromide as an optional ingredient, as components of a sanitizing solution to be used on food-contact surfaces.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 7, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-28714 Filed 12-14-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0360]

Filing of Food Additive Petition; Union Carbide Corp.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Union Carbide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyoxyethylene grafted polydimethylsiloxane as an extrusion aid in the production of olefin polymers for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4041) has been filed by Union Carbide Corp., Bound Brook, NJ 08805, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of polyoxyethylene grafted polydimethylsiloxane as an extrusion aid in the production of olefin polymers for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this peition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 1, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-28713 Filed 12-14-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M-0374]

Vision Care/3M; Premarket Approval of 3M Fluoropolymer (Flurofocon A) Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by VisionCare/3M, St. Paul, MN, for premarket approval, under the Medical Device Amendments of 1976, of the spherical 3M Fluoropolymer (flurofocon A) Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by January 14, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On February 26, 1987, Vision Care/3M, St. Paul, MN 55144, submitted to CDRH an application for premarket approval of the 3M Fluoropolymer (flurofocon A) Contact Lens. The rigid gas permeable lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic and for the correction of refractive or corneal astigmatism of 2.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from −0.25 D to −7.00 D and is to be disinfected using the chemical lens care system specified in the approved labeling.

On July 24, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 30, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 14, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 7, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-28715 Filed 12-14-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-050-08-4341-14]

Emergency Closure of Public Lands in the Shoshone District; Cowcatcher Ridge East of City of Hailey in Blaine County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public lands closure.

SUMMARY: Effective immediately through June 30, 1988 all public lands burned in the Freidman Fire east of Hailey, Idaho are closed to motorized vehicles. The affected area includes approximately 424 acres of public lands along the upper west and southwest slopes of Cowcatcher Ridge. Signs have been posted to identify the affected area.

The legal description of the area is:

T. 2N., R. 18E., Boise Meridian
Portions of Sections 12, 13, and 24.
T. 2N., R. 19E., Boise Meridian
Portions of Sections 7 and 18.

The purpose of this closure is to protect soil and vegetation in an area burned in late September as a result of a plane crash.

DATES: December 15, 1987 through June 30, 1988.

ADDRESSES: Shoshone District Office, Monument Resource Area, P.O. Box 2B, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Steve Ellis, Monument Resource Area Manager, Telephone (208) 886–2206.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8364.1.

K. Lynn Bennett,

District Manager.

[FR Doc. 87–28697 Filed 12–14–87; 8:45 am]

BILLING CODE 4310-GG-M

[MT-070-08-4332-06]

Proposed Decision on Intensive Wilderness Inventory; Sleeping Giant Units, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This proposed decision is issued under the authority of section 202 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, and under the guidelines provided in step 5 of the Wilderness Inventory Handbook of September 27, 1978, issued by the U.S. Department of the Interior, Bureau of Land Management.

The Butte District Office has completed intensive wilderness field inventories for two units in the Sleeping Giant area. These areas are Sheep Creek (10,925 acres) and Jackson Peak Add-on (375 acres). The Jackson Peak Add-on is contiguous to the existing Sleeping Giant Wilderness Study Area (WSA). This WSA (6,112 acres) will be studied by the BLM under Section 603 of FLPMA for potential wilderness designation during the next 2 years.

The two inventory units are located some 25 miles north of Helena in western Montana.

BLM proposes that the Sheep Creek unit be removed from further wilderness review and that the Jackson Peak Add-on be included with the Sleeping Giant WSA and studied for its wilderness potential.

The public is invited to review this proposed decision and make comments until January 30 to the Bureau of Land Management, Butte District Office, P.O. Box 3388, Butte, MT 59702. After the close of the comment period, all public input will be evaluated and a final decision will be issued.

A copy of the Wilderness Characteristics Narrative Summaries and Maps showing the inventory units may be obtained from the above BLM office. Copies of the complete narratives and original inventory maps will be available for review at the Butte District Office, 106 N. Parkmont (Industrial Park), Butte, MT 59702.

To facilitate public review and comment on this proposal, the following schedule of public meetings is established:

Public Meetings

Helena—January 6, 1988, Jorgenson's Holiday Motel, Big Sky Room, Helena, Montana, 6:30 p.m.

Great Falls—January 7, 1988, Heritage Inn, Paris/Venice Room, Great Falls, Montana, 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: James A. Moorhouse, BLM Butte District Office, Box 3388, Butte, Montana 59702, 406–494–5059.

Ray Brubaker,

Acting State Director.

December 9, 1987.

[FR Doc. 87–28729 Filed 12–14–87; 8:45 am]

BILLING CODE 4310-DN-M

Bureau of Reclamation

Intent to Prepare an Environmental Impact Statement; San Xavier Development Project, AZ

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to Prepare a Draft Environment Statement for the San Xavier Development Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental impact statement (EIS) for the San Xavier Development Project, Tohono O'odham Nation, Arizona.

This project is authorized under Pub. L. 97–293, the Southern Arizona Water Rights Settlement Act of 1982 (SAWRSA). SAWRSA settles a water right suit filed by the Papago Tribe of Arizona, now the Tohono O'odham Nation, against several major water users in the Santa Cruz and Avra-Altar Valley basins in southern Arizona. As a result of SAWRSA, the Secretary of the Interior, acting through the Bureau of Reclamation, will provide water to the San Xavier District of the Nation.

The District was awarded 27,000 acre-feet annually of water suitable for agricultural use to be delivered from the Central Arizona Project (CAP) aqueduct and an additional 23,000 acre-feet of water suitable for agricultural use to be obtained through exchange with reclaimed water or by other means. That water is assumned to be Colorado River water although the necessary agreements have not been completed. SAWRSA also limits the amount of groundwater pumping that can continue annually on the reservation.

DATE: The draft EIS is expected to be completed and available for review by June 1988.

FOR FURTHER INFORMATION CONTACT: Interested public entities and individuals may obtain information on the project and provide input to the draft EIS by contacting: Lynn Almen, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85068, Telephone: (602) 870–6770.

SUPPLEMENTARY INFORMATION: The purpose of the San Xavier Development Project is to fulfill the Secretary's obligations required under SAWRSA. These include: (1) Delivery of 50,000 acre-feet annually of water suitable for agriculture; (2) design and construction of a new irrigation system on the reservation for the 27,000 acre-feet of water delivered annually from the main project works of the CAP. The Secretary was directed by SAWRSA not to construct a separate delivery system to deliver reclaimed water to the reservation. The Nation is responsible for all costs associated with the on-reservation system for distribution of the additional 23,000 acre-feet of water. SAWRSA also states that the Secretary will pay annual damages whenever he cannot acquire and deliver the awarded quantities of water or if construction of the Federal portion of the facilities is not completed within 10 years of the date of the Act (October 12, 1992).

Planning for the project has been conducted by the Nation under a Pub. L. 93–683 contract (Indian Self-Determination and Education Assistance Act) with Reclamation. Dring the course of the planning, eight action alternatives were developed. From those eight, two action alternatives were carried forward for more detailed analysis and evaluation. These two action alternatives are:

1. Full Development Alternative

This alternative would utilize 46,000 acre-feet of water to irrigate approximately 11,000 acres of land. Main features include the main canal, pipelines, field ditches, turnouts, irrigated fields, floodways, vegetated areas, and an operational headquarters. Irrigation methods will include a combination of sprinkler, gravity (surface), and bubblers. Approximately 13,300 acres would be impacted by this alternative. This alternative reserves 4,000 acre-feet of water for use on the existing farm.

2. Partial Development Alternative

This alternative would utilize 27,000 acre-feet of water to irrigate about 7,500 acres. The main features are the same as the Full Development Alternative. The entire acreage would be irrigated by linear move sprinklers. Approximately 9,600 acres would be impacted by this alternative. Of the remaining 23,000 acre-feet of water, 4,000 acre-feet would be reserved for use on the existing farm and the rest would be marketed off the reservation.

The draft EIS will also include the No Federal Action Alternative. Under this alternative, no water would be delivered to the Nation, there would be no construction of a water delivery system to agricultural fields, and the Secretary would pay annual damages to the Nation for non-delivery of water as specified in SAWRSA.

Site selection and the scope of the project were developed through public meeting which have been ongoing since late 1984. The last scoping meetings were held in June 1987 at the San Xavier District, and in Sells and Tucson, Arizona. Input to development of the project has been received from the District Council, the Nation's Council, interested agencies and individuals. No additional scoping meetings are planned.

Dated: December 8, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87-28620 Filed 12-14-87; 8:45 am]

BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340.

Title: Permanent Program Performance Standards—Underground Mining Activities 30 CFR Part 817.

Abstract: Section 516 of Pub. L. 95-87 provides that permittees conducting surface coal mining operations with underground mining activities shall meet all applicable performance standards of the Act. This information is used by the regulatory authority in monitoring and inspecting underground mining activities to ensure that they are conducted in a manner which preserves and enhances environmental and other values of the Act.

Bureau Form Number: None.

Frequency: On occasion, quarterly, and annually.

Description of Respondents: Under ground coal mining operators.

Annual Responses: 23,306.

Annual Burden Hours: 143,854.

Bureau clearance officer: David Collegeman, (202) 343-5447.

Dated: December 3, 1987.

Donald Hinderliter,

Acting Assistant Director for Budget and Administration

[FR Doc. 87-28701 Filed 12-14-87 8:45 am]

BILLING CODE 4310-05-M

National Park Service

National Register of Historics Places; Notification of Pending Nominations; Colorado et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 5, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 30, 1987.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Larimer County

Loveland, *Rialto Theater,* 228-230 E. Fourth Ave.

IOWA

Des Moines County

Burlington, *Hotel Burlington,* 206 N. Third St.

KANSAS

Cowley County

Winfield, *Winfield Public Carnegie Library (Carnegie Libraries of Kansas TR),* 1001 Millington St.

Montgomery County

Independence, *Independence Public Carnegie Library (Carnegie Libraries of Kansas TR),* 220 E. Maple

KENTUCKY

Henderson County

Henderson, *Audubon, John James, State Park,* US 41

MICHIGAN

Cass County

Niles vicinity, *Smith's Chapel,* Redfield Rd. between Brush & Fir Rds.

MONTANA

Silver Bow County

Butte vicinity, *Ramsay Historic District,* 6.5 mil. W of Butte on I 90

NEW JERSEY

Camden County

Camden, *Grant, Cooper, Historic District,* Point, N. Front, Linden, Penn & N. Second Sts.

NEW MEXICO

McKinley County

Gallup, *Atchison, Topeka and Santa Fe Railway Depot (Downtown Gallup MRA),* 201 E. Sixty-six Ave.

Gallup, *Chief Theater (Downtown Gallup MRA),* 228 W. Coal Ave.

Gallup, *Cotton, N.C., Warehouse (Downtown Gallup MRA),* 101 N. Third St.

Gallup, *Drake Hotel (Downtown Gallup MRA),* 216 E. Sixty-six Ave.

Gallup, *El Morro Theater (Downtown Gallup MRA),* 205-209 W. Coal Ave.

Gallup, *El Rancho Hotel (Downtown Gallup MRA),* 1000 E. Sixty-six Ave.

Gallup, *Grand Hotel (Downtown Gallup MRA),* 306 W. Coal Ave.

Gallup, *Harvey Hotel (Downtown Gallup MRA),* 408 W. Coal Ave.

Gallup, *Lebanon Lodge No. 22 (Downtown Gallup MRA),* 106 W. Aztec

Gallup, *Palace Hotel (Downtown Gallup MRA),* 236 W. Sixty-six Ave.

Gallup, *Rex Hotel (Downtown Gallup MRA),* 300 W. Sixty-six Ave.

Gallup, *US Post Office (Downtown Gallup MRA),* 201 S. First St.

Gallup, *White Cafe (Downtown Gallup MRA),* 100 W. Sixty-six Ave.

NORTH CAROLINA

Forsyth County

Bethania, *Stauber, Samuel B., Farm,* SR 1611

Rowan County

Salisbury, *Shaver Rental Houses District,* 303, 309 & 315 W. Council & 120 N. Jackson

Wake County

Knightdale vicinity, *Knight, Henry H. and Bettie S., Farm,* US 64

Raleigh, *Oakwood Historic District (Boundary Increase),* Portions of N. & S. Bloodworth Sts., N. & S. East Sts., N. Person St., E. Morgan St., New Bern Ave. & E. Edenton St.

OREGON

Clackamas County

Lake Oswego, *Lake Oswego Hunt Club Ensemble*, 2725 SW Iron Mountian Blvd.

TEXAS

Harris County

Houston, *Anderson, John W., House (Houston Heights MRA)*, 711 Columbia
Houston, *Baring, Otto H., House (Houston Heights MRA)*, 1030 Rutland
Houston, *Burlingame, George L., House (Houston Heights MRA)*, 1238 Harvard
Houston, *Clare, J. H., House (Houston Heights MRA)*, 939 Arlington
Houston, *Copeland, Austin, House I (Houston Heights MRA)*, 921 Arlington
Houston, *Copeland, Austin, House II (Houston Heights MRA)*, 925 Arlington
Houston, *Durham Jay L., House (Houston Heights MRA)*, 921 Heights Blvd.
Houston, *Fluegel, William F., House (Houston Heights MRA)*, 1327 Ashland
Houston, *House at 1217 Harvard (Houston Heights MRA)*, 1217 Harvard
Houston, *House at 1220 Harvard (Houston Heights MRA)*, 1220 Harvard
Houston, *House at 1435 Heights Boulevard (Houston Heights MRA)*, 1435 Heights Blvd.
Houston, *Kennedy, Marshall W., House (Houston Heights MRA)*, 1122 Harvard
Houston, *Lindenberg, Emil, House (Houston Heights MRA)*, 1445 Harvard
Houston, *McCain, Henry Hicks, House (Houston Heights MRA)*, 1026 Allston
Houston, *Morton Brothers Grocery (Houston Heights MRA)*, 401 W. Ninth
Houston, *Nairn, Forrest A., House (Houston Heights MRA)*, 1148 Heights Blvd.
Houston, *Roessler, Charles, House (Houston Heights MRA)*, 736 Cortlandt
Houston, *Shoaf, John H., House (Houston Heights MRA)*, 2030 Arlington

Hartley County

Channing, *Hartley County Courthouse and Jail*, Railroad Ave.

WISCONSIN

Dodge County

Mayville, *Beaumont Hotel*, 45 Main St.

La Crosse County

Agger Rockshelter

Vernon County

Larson Cave

[FR Doc. 87-28746 Filed 12-14-87; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

Date Submitted: December 7, 1987.

Submitted Agency: Agency for International Development.

OMB Number: 0412-0506.

Type of Submission: Revision.

Title: Information Collection Elements in the A.I.D. Acquisition Regulations (AIDAR).

Purpose: The Federal Acquisition Regulation (FAR), Subpart 33.103 provides that protests to a solicitation or to the award of a contract by an agency may be filed with the agency, which protests "shall be handled in accordance with agency procedures." The Agency for International Development (A.I.D.) intends to codify its procedures for handling such protests in the A.I.D. Acquisition Regulation (AIDAR). The new regulation shall provide that protests must be in writing and shall include the name, address, and telephone number of the protester, identify the issuing office and the solicitation or contract number, and describe the alleged grounds for and type of relief requested. Pursuant to 5 CFR Part 1320 *et seq.*, this description of the contents of a protest made to A.I.D. require OMB approval under the Paperwork Reduction Act. Respondents will have a submission burden of three responses and an estimated annual recordkeeping burden of 40 hours per recordkeeper.

Reviewer: Francine Picoult, (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Date: December 7, 1987.

John H. Elgin,

Planning and Evaluation Division.

[FR Doc. 87-28739 Filed 12-14-87; 8:45 am]
BILLING CODE 6116-01-M

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on January 14-15, 1988 at the Pan American Health Organization Building, 525-23rd Street, NW., Washington, DC, Conference Room 'C'. The Committee will discuss research policy with regard to Sustainable Agriculture and Aging in Developing Countries.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Jackson, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235-8929.

Curtis R. Jackson,

A.I.D. Representative, Research Advisory Committee.

Date: December 2, 1987.

[FR Doc. 87-28741 Filed 12-14-87; 8:45 am]
BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

[Civil Action No. 86-203]

Lodging of Consent Decree; United States v. Ashland Oil, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 4, 1987 a proposed Consent Decree in *United States v. Ashland Oil, Inc.*, Civil Action No. 86-203, was lodged with the United States District Court for the Eastern District of Kentucky. The original complaint in this Clean Air Act ("the Act") action was filed on November 5, 1986 against Ashland Oil, Inc. ("Ashland") alleging violations, at Ashland's Catlettsburg, Ky. petroleum refinery, of section 112(c) of the Act, 42 U.S.C. 7412(c), and the regulations promulgated pursuant thereto, specifically 40 CFR Part 61, Subparts J & V and section 113(b) of the Act, 42 U.S.C. 7413(b) relating to the National Emission Standards for Hazardous Air Pollutants ("NESHAP"). The United States' complaint sought injunctive relief and civil penalties for Ashland's alleged violations of the Act and the National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene. The Consent Decree requires that Ashland comply with the National Emission Standard for Equipment Leaks

of Benzene, 40 CFR Part 61, Subparts J and V, which apply to sources that are intended to operate in volatile hazardous air pollutant ("VHAP") service. Ashland must modify its existing recordkeeping system at the Catlettsburg facility to contain all the specific information required by 40 CFR 61.246 and maintain the information in a readily accessible location. Under the terms of the proposed decree Ashland has agreed to submit a detailed Compliance Plan ("Plan") to the U.S. Environmental Protection Agency ("EPA") and the Commonwealth of Kentucky which shall include a report on the status of Ashland's compliance with the National Emission Standard for Equipment Leaks of Benzene at its Catlettsburg refinery. The Plan will outline in detail the measures Ashland has taken and will take to ensure compliance with the NESHAP for benzene, with a timetable for completion of the measures identified. In addition Ashland shall complete and submit a Benzene NESHAP Compliance Report ("Report"), prepared by an internal review term, designed to review and make recommendations regarding the improvement of Ashland's benzene NESHAP compliance and management policies, practices and systems at the Catlettsburg refinery. The Report will set forth the specific actions Ashland will take and a schedule for implementation which will be incorporated into the Compliance Plan. The Consent Decree provides for payment of a $95,000 civil penalty and stipulated penalties for Ashland's noncompliance with the requirements of the decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Ashland Oil, Inc.*, D.J. Ref. No. 90-5-2-1-994.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Kentucky, Fourth Floor, Federal Bldg., Limestone & Barr Streets, Lexington, Kentucky 40507. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th Street & Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $2.40 payable to the Treasurer of the United States for copying.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-28705 Filed 12-14-87; 8:45 am]

BILLING CODE 4410-01-M

[Civil Action No. C87-1621]

Lodging of Consent Decree Pursuant to the Clean Water Act; Washington

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 24, 1987, a proposed consent decree in *United States of America and the State of Washington* v. City of Bellingham, Washington, Civil Action No. C87-1621, was lodged with the United States District Court for the Western District of Washington. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Water Act against the City of Bellingham for violations of the secondary treatment standards of the Clean Water Act in the operation of its wastewater treatment facility.

The consent decree provides that the City of Bellingham will construct a wastewater treatment facility capable of achieving secondary treatment levels, attain compliance with its National Pollutant Discharge Elimination System permit, maintain compliance with interim effluent limitations during construction of the new facility, and pay a civil penalty of $23,190.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Washington* v. City of Bellingham, Washington, D.J. Ref. 90-5-1-1-2671.

The proposed consent decree may be examined at the office of the United States Attorney, 3600 Seafirst 5th Avenue Plaza, 800 5th Avenue, Seattle, Washington, 98104, or the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington, 98101. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-28706 Filed 12-14-87; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984; Berkeley Sensor and Actuator Center

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice has been filed by the Berkeley Sensor & Actuator Center (the "Center") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Center and (2) the nature and objectives of the Center. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Center and its general areas of planned activity are given below.

The parties to the Center are Allied Corporation, Baxter Healthcare Corporation, Borg-Warner Corporation, Ford Motor Company, General Motors, Honeywell Inc., Rockwell International, Tektronix, Inc., and Texas Instruments, Inc. The objectives of the Center are to engage in research on sensors and actuators whose fabrication methods or whose designs include planar processing techniques or integrated circuits that accomplish signal conditioning, data formatting, data output and similar operations.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-28762 Filed 12-14-87; 8:45 am]

BILLING CODE, 4410-01-M

Pursuant to the National Cooperative Research Act of 1984; Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the

Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on July 31, 1987 disclosing a change in the membership of COS. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified notification.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. Prior to its July 31, 1987 filing of notification, COS filed additional written notifications on August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, June 12, 1987, and July 23, 1987. Subsequently, COS filed additional written notifications on October 5, 1987, October 23, 1987, and November 16, 1987. The Department published notices in the **Federal Register** in response to these additional notifications on September 4, 1986 (51 FR 31735), October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), and November 9, 1987 (52 FR 43138), respectively.

On June 1, 1987, National Communications System became a party to COS; on June 19, 1987, the Defense Communications Agency became a party to COS; and on July 13, 1987, NYNEX Corporation became a party to COS.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-28761 Filed 12-14-87; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984; the Industry/University Cooperative Research Center for Software Engineering

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Industry/University Cooperative Research Center for Software Engineering ("Center") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on November 13, 1987, disclosing an addition to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 5, 1987, the Center filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 9, 1987, 52 FR 4065.

The identity of the new party is Arthur Andersen & Co. The identities of the parties to the Industry/University Cooperative Research Center for Software Engineering including the additional member are:

—Arthur Andersen & Co.
—AT&T
—Computer Sciences Corporation
—Digital Equipment Corporation
—GTE Data Services
—Harris Corporation
—Hewlett Packard Corporation
—IBM Corporation
—Magnavox Government and Industrial Electronics Company
—Modular Computer Systems, Inc.
—Racal-Milgo, Inc.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-28763 Filed 12-14-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Knoll Pharmaceuticals

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice of November 20, 1987, Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made appication to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classed of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than January 14, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: December 10, 1987.

[FR Doc. 87-28757 Filed 12-14-87; 8:45am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Norac Co., Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 11, 1987, Norac Company, Inc., 405 South Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7390)	I

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than January 14, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: December 10, 1987.

[FR Doc. 87-28758 Filed 12-14-87; 8:45 am]

BILLING CODE 4410-09-M

Application; Manufacturer of Controlled Substances; Upjohn Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 30, 1987, Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made

application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396).	I
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than January 14, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: December 9, 1987.

[FR Doc. 87-28719 Filed 12-14-87; 8:45 am]

BILLING CODE 4410-09-M

Registration; Manufacturer of Controlled Substances; Applied Science Laboratories

By Notice dated August 24, 1987, and published in the **Federal Register** on August 28, 1987; (52 FR 32614), Applied Science Laboratories, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Durg	Schedule
Lysergic acid diethylamide (7315).	I
D-lysergic acid methylpropylamide (7328).	I
Tetrahydrocannabinols (7370)	I
Mescaline HCL (7387)	I
3, 4 Methylenedioxyamphetamine HCL (7402).	I
3, 4 Methylenedioxymethamphetamine HCL (7406).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Cyclohexamine (PCE) HCL (7456).	I
1-phenylcyclohexylpyrrolidine HCL (7461).	I
Thiophene Analog of PCP (HCL salt) (7469).	I
Dihydromorphine (9145)	I
Phencyclidine HCL (7472)	II
1-phenylcyclohexylamine (7460).	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603).	II
Codeine-6-glucuronide (9069)	II
Acetylcodeine (9105)	II
Norcodeine HCL (9115)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9187)	II
Ecgonine methyl ester (9185)	II
Ecgonine HCL (9189)	II
Methadone HCL (9251)	II
Normorphine HCL (9360)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Durg Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-28717 Filed 12-14-87; 8:45 am]

BILLING CODE 4410-09-M

Registration; Manufacturer of Controlled Substances; Ciba-Geigy

By Notice dated August 24, 1987, and published in the **Federal Register** on August 31, 1987; (52 FR 32852), Pharmaceuticals Division, Ciba-Geigy Corporation, Regulatory Compliance SEF030G, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of methylphenidate (1724F), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: December 9, 1987.

[FR Doc. 87-28718 Filed 12-14-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, Time and Place: January 12, 1988, 9:30 a.m., Room S4215 A&B Francis Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act, and 5 U.S.C. 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For Further Information Contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC this 10th day of December, 1987.

Christopher Hankin,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 87-28797 Filed 12-14-87; 8:45 am]

BILLING CODE 410-02-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Carl Liametz Manufacturing Co. et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade

Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 28, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 28, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC, 20213.

Signed at Washington, DC, this 7th day of December 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm	Location	Date received	Date of petition	Petition No.	Articles produced
Carl Liametz Manufacturing Co. (ACTWU)	LaCrosse, WI	12/7/87	11/24/87	20,309	Jackets & Shirts.
G.B.R. Fabrics, Inc. (Workers)	Teaneck, NJ	12/7/87	11/27/87	20,310	Fabric.
Jeremy Industries (Workers)	Teaneck, NJ	12/7/87	11/27/87	20,311	Fabric.
General Electric Co. (IUE)	Louisville, KY	12/7/87	11/23/87	20,312	Air Conditioners.
M.G. Kinsler Co., Inc. (ILGWU)	Springfield, MA	12/7/87	11/23/87	20,313	Coats.
Mast Industries (Workers)	Andover, MA	12/7/87	11/20/87	20,314	Women's Wear.
P.O.K. Mfg. Co. (UGWA)	Pharoah, OK	12/7/87	11/7/87	20,315	Trousers.
Preway, Inc. (IAM)	Wisconsin Rapids, WI	12/7/87	11/23/87	20,316	Gas & Oil.
Potter & Brumfield (IAM)	Princeton, IN	12/7/87	11/23/87	20,317	Relays.
Ranme Manufacturing, Inc. (Workers)	Brooklyn, NY	12/7/87	11/23/87	20,318	Coats.
Regency Exploration (Workers)	Oklahoma City, OK	12/7/87	11/23/87	20,319	Oil.
Seagrave Leather Corp. (Workers)	E. Wilton, ME	12/7/87	11/23/87	20,320	Leather.
Sprague Electric Co. (Workers)	San Antonio, TX	12/7/87	11/18/87	20,321	Electronic Equipment.
Stackpole Carbon Co. (IUE)	St. Marys, PA	12/7/87	11/27/87	20,322	Molded Graphite.
True Form Foundation, Inc. (Workers)	Windber, PA	12/7/87	11/18/87	20,323	Girdles.
True Form Foundation, Inc. (Workers)	Darby, PA	12/7/87	11/18/87	20,324	Girdles.

[FR Doc. 87-28793 Filed 12-14-87; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; International Wire Products Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 23, 1987–November 27, 1987 and November 30, 1987–December 4, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–20,143; International Wire Products Co., Wyckoff, NJ

TA–W–20,180; Flying J., Inc., Cut Bank, MT

TA–W–20,168; McMillan Petroleum (Arkansas), Inc., Norphlet, AR

TA–W–20,135; Adirondack Steel Casting Co., Inc., Watervliet, NY

TA–W–20,155; Stolper Industries, Inc., Menomonee Falls, WI

TA–W–20,158; Arvin North American Automotive, Greenwood, IN

TA–W–20,196; W. Mullen, Inc., Avon MA

TA–W–20,111; Babcock & Wilcox Co., Beaver Falls, PA

TA–W–20,112; Babcock & Wilcox Co., Ambridge, PA

TA–W–20,113; Babcock & Wilcox Co., Koppel, PA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified,

TA–W–20,220; Bear Creek Uranium Co., Casper WY

The workers' firm does not produce an article has required for certification under section 222 of the Trade Act of 1974.

TA–W–20,146; Lambert Wood Properties, Refugio, TX

The worker's firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,150; The O.M. Edwards Co., Inc., Syracuse, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,199; Westmoreland Coal Company, Clothier, WV

U.S. imports of coal are negligible.

TA-W-20,193; Stone Container Corp., Toledo OH

U.S. imports of grocery bags multiwall bags and shipping sacks are negligible.

TA-W-20,164; Jeddo Highland Coal Co., Shennandoah, PA, Hazleton, PA and West Pittston, PA

U.S. Imports of coals are negligible.

TA-W-20,215; Phoenix Steel Corp., Phoenixville, PA

U.S. imports of seamless carbon steel pipe and tubing decreased absolutely and relative to domestic shipments in 1986 compared to 1985 and in the first quarter of 1987 compared to the same period in 1986.

TA-W-20,153; Shanhouse Outerwear, Inc., Magnolia, AR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,149; Mt. Carmel Fashions, Girardville, PA

A certification was issued covering all workers of the firm separated on or after December 30, 1986.

TA-W-20,151; Sanjo Dress, Inc., New York, NY

A certification was issued covering all workers of the firm separated on or after December 30, 1986.

TA-W-20,183; General Motors Corp., BOC Chicago Plant, Willow Springs, IL

A certification was issued covering all workers of the firm separated on or after September 23, 1986.

TA-W-20,142; G.A. Gray Co., Cincinnati, OH

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,137; Behring Diagnostics, LaJolla, CA

A certification was issued covering all workers of the firm separated on or after September 17, 1986.

TA-W-20,122; Gramercy Mills, Passaic, NJ

A certification was issued covering all workers of the firm separated on or after September 11, 1986 and before August 1, 1987.

TA-W-20,154; Ship N' Shore, Inc., Travelers Rest, SC

A certification was issued covering all workers of the firm separated on or after September 27, 1986.

TA-W-20,128; Ristance Assemblies, Bremen, CT

A certification was issued covering all workers of the firm separated on or after April 1, 1987.

TA-W-20,123; Hamilton Oil Corp., Houston, TX

A certification was issued covering all workers of the firm separated on or after September 11, 1986.

TA-W-20,125; Klopman Fabrics, Dublin, VA

A certification was issued covering all workers of the firm separated on or after September 15, 1986.

TA-W-20,184; General Motors Corp., CPC Hamilton Report, Hamilton, OH

A certification was issued covering all workers of the firm separated on or after September 23, 1986.

TA-W-20,140-20,141; Frazier Engineering, Inc., Greenfield, IN

A certification was issued covering all workers of the firm separated on or after September 14, 1986 and before July 31, 1987.

I hereby certify that the aforementioned determinations were issued during the period November 23-27, 1987 and November 30-December 4, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: December 8, 1987.

[FR Doc. 87-28792 Filed 12-14-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-253-C]

The Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

The Helen Mining Company, R.D. 2, Box 2110, Homer City, Pennsylvania 15748-0504 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Homer City Mine (I.D. No. 36-00926) located in Indiana 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 statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to a roof fall certain areas of the mine cannot be safely traveled and to rehabilitate the areas would expose miners to hazardous conditions.

3. As an alternative method, petitioner proposes that—

(a) When an impassable roof fall occurs in an area of the mine, utilizing a single return aircourse, an evaluation will be conducted to insure that an adequate quantity of air is passing over the fall;

(b) The inby and outby ends of the roof fall will be supported according to the approved roof control at the mine; and

(c) The mine examiner will conduct weekly examinations of the return aircourse by traveling the aircourse and examining the inby and outby ends of the roof fall, to insure proper flow and volume. Tests for methane will also be conducted.

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 January 14, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 8, 1987.

[FR Doc. 87-28794 Filed 12-14-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-33-M]

Vermont Marble Co.; Petition for Modification of Application of Mandatory Safety Standard

Vermont Marble Company, 61 Main Street, Proctor, Vermont 05765 has filed a petition to modify the application of 30 CFR 56.19017 (emergency braking for

electric hoists) to its Rochester Verde Antique Quarry (I.D. No. 43–00043) located in Windsor County, Vermont. 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 each electric hoist be equipped with a manually-operable switch that will initiate emergency braking action to bring the conveyance and the counterbalance safety to rest. This switch shall be located within reach of the hoistman in case the manual controls of the hoist fail.

2. Petitioner states that the only time miners are in the bucket is at the beginning of the quarry season when the walls are being scaled and the stairs are being installed for access to the bottom of the quarry, and in an emergency situation.

3. As an alternate method, petitioner proposes to add an additional qualified hoist operator to the derrick hoist in the event of hoisting situations. The additional person could take over proper hoisting procedures in the event of the hoist person failing physically.

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 January 14, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 8, 1987.

[FR Doc. 87–28795 Filed 12–14–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–254–C]

Walkco Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Walkco Coal Company, Inc., HC 64, Box 337, Lily, Kentucky 40740 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its Mine No. 3 (I.D. No. 15–16147) located in Whitley 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 monitor, 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 20% 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 further 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 January 14, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: December 8, 1987.

[FR Doc. 87–28796 Filed 12–14–87; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–102]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Photonics.

DATE AND TIME: January 7, 1988, 8 a.m. to 5 p.m., and January 8, 1988, 8 a.m. to 12:15 p.m.

ADDRESS: Lockheed Missiles & Space Company, 3251 Hanover Street, Building 201, Main Conference Room, Palo Alto, CA 94304.

FOR FURTHER INFORMATION CONTACT: Ms. Anemarie DeYoung, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2704.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on Photonics, chaired by Dr. Stanley Weiss, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons

including the team members and other participants).

Type of Meeting: Open.

Agenda: January 7, 1988

8 a.m.—Ad Hoc Review Team's Discussion and Formulation of Report.

5 p.m.—Adjourn.

January 8, 1988

8 a.m.—Ad Hoc Review Team's Discussion on the Proposed Report Content.

12:15 p.m.—Adjourn.

December 9, 1987.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-28716 Filed 12-14-87; 8:45 am]

BILLING CODE 7510-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16165; File No. 812-7998]

Advisers Management Trust et al.; Application

December 9, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an amended order of exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Advisers Management Trust ("Advisers"), Sentry Life Insurance Company ("Sentry"), Sentry Variable Life Account I ("Account"), and Sentry Equity Services, Inc. ("SES").

Relevant 1940 Act Sections and Rules: Exemption requested under section 6(c) from sections 2(a)(32), 9(a), 13(a), 15(a), 15(b), 22(c), 27(c)(1), and 27(d) and Rules 22c-1, 6e-2(b)(15), 6e-3(T)(b)(12)(ii), 6e-3(T)(b)(13)(iv), and 6e-3(T)(b)(15).

Summary of Application: The application requests that the Order of the Commission dated September 23, 1986 (Release No. IC-15324), be amended to add Advisers as a party.

Filing Date: The application was filed on November 10, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on January 4, 1988. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Applicants should be served with a copy of the request, either personnally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Advisers Management Trust, 342 Madison Avenue, New York, NY 10173, Sentry Life Insurance Company, Sentry Variable Life Account I, and Sentry Equity Services, Inc., 1800 North Point Drive, Stevens Point, WI 54481.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, at (202) 272-3017 or Lewis B. Reich, Special Counsel, at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's Commercial Copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Sentry, the Account, and SES filed an application on May 14, 1986, and an amendment thereto on July 11, 1986, for an order of the Commission pursuant to Section 6(c) of the Act exempting them from sections 2(a)(32), 9(a), 13(a), 15(a), 15(b), 22(c), 27(c)(1), and 27(d) of the Act and Rules 22c-1, 6e-2(b)(15), 6e-3(T)(b)(12)(ii), 6e-3(T)(b)(13)(iv), and 6e-3(T)(b)(15) thereunder, to the extent necessary permit the deduction of a contingent deferred administrative charge in connection with the offering of flexible premium variable life insurance contracts, and to permit the Account to invest in shares of Advisers, which are sold to variable annuity and variable life insurance separate accounts of Sentry and of affiliated and unaffiliated life insurance companies.

2. The Commission issued a notice of the application on August 25, 1986 (Release No. IC-15274; File No. 812-6380) (the "August 1986 Notice"). On September 23, 1986, the Commission issued an Order granting the requested exemptions (the "September 1986 Order") (Release No. IC-15324).

3. Advisers was not a party to the September 1986 Order. Applicants have since determined that Advisers should have joined in the original application and should be subject to the conditions stated in the August 1986 Notice and the terms of the September 1986 Order.

4. This application has been filed solely for the purpose of adding Advisers as an applicant and beneficiary of the exemptive relief granted by the September 1986 Order.

5. The Applicants, and Advisers specifically, reaffirm all of the representations and agree to all the conditions stated in the August 1986 Notice, which is incorporated herein by reference.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-28784 Filed 12-14-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16163; 812-6874]

Bankers National Life Insurance Co. et al.; Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Bankers National Life Insurance Company ("Bankers"), Bankers National Variable Account B ("Account 8"), and Equitec Securities Company ("Equitec") (collectively, "Applicants").

Relevant 1940 Act Sections: Order requested under section 6(c) for an exemption from sections 2(a)(35), 26(a)(2)(C), and 27(c)(2).

Summary of Application: Applicants seek an order to permit the deduction of an asset-based sales load from certain variable annuity contracts.

Filing Date: The application was filed on September 16, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, Washington, DC 20549. Bankers and Accounts B, 101 Gibraltar Drive, Morris Plains, New Jersey 07950.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy Rappa (202) 272-

2058 or Special Counsel Lewis B. Reich, (202) 272–2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Bankers, a legal reserve stock life insurance company wholly-owned by Conseco, Inc., an insurance holding company, is the depositor of Account B. Account B, a separate account of Bankers registered under the 1940 Act as a unit investment trust, was established to fund certain individual flexible purchase payment deferred variable annuity contracts issued by Bankers. The application relates to certain new annuity contracts (the "Annuity Contracts") to be offered by Bankers and Account B in conjunction with Equitec, a broker-dealer registered under the Securities Exchange Act of 1934 that will be the principal underwriter for the Annuity Contracts. The Annuity Contracts are designed for use in connection with retirement plans qualifying for special income tax treatment under sections 401, 403, 404, 408, and 457 of the Internal Revenue Code of 1986, as well as for use with plans not qualifying for that special treatment.

2. Under the Contracts, Contract Owners have the right to allocate purchase payments to various sub-accounts of Account B, each of which invests exclusively in the shares of a corresponding portfolio of the Equitec Siebel Series Trust (the "Trust"), an open-end, diversified management investment company. The Trust presently comprises 4 portfolios: The Total Return ("TR") Portfolio, the Aggressive Growth ("AG") Portfolio, the High Yield ("HY") Portfolio, and the Money Market ("MM") Portfolio.

3. If part or all of the contract value is surrendered, Bankers will deduct a contingent deferred sales load ("CDSL") equal to the lesser of (a) 5% of the total of all purchase payments made within 72 months prior to the date of the request for surrender, or (b) 5% of the amount surrendered. No CDSL will be charged against any values which have been held under the Annuity Contract for at least 72 months. No charge will be made for the part of a surrender in a contract year that does not exceed 10% of the net sum of purchase payments made more than one year prior to the date of the surrender. Surrenders will be made first from purchase payments on a first-in, first-out basis and then from any gains.

4. The Annuity Contracts also will provide for the deduction from contract value, on a daily basis, of a sales load ("Asset Based Sales Load") equal on an annual basis to .25% of contract values. To the extent that these charges are insufficient to cover the actual costs of distributing the Annuity Contracts, Bankers will recover any deficiency from its general account surplus. In no event will the sum of any asset-based sales charge and any CDSL assessed under an Annuity Contract exceed 9% of the total purchase payments made.

5. The literal language of the definition of "sales load" in section 2(a)(35) of the 1940 Act contemplates that any sales load imposed on a security of a registered investment company be a front-end load. If the asset-based sales load is not a sales load for purposes of the Act, then relief from sections 26(a)(2)(C) and 27(c)(2), which govern certain payments from separate account assets, also would be required. Accordingly, Applicants request relief from sections 2(a)(35), 26(a)(2)(C), and 27(c)(2) to the extent necessary to permit deduction of the asset-based sales load.

6. Applicants submit that imposition of a sales charge in the form of an asset-based charge is more favorable to a Contract Owner than the deduction of this charge from purchase payments—the conventional way of imposing such a charge. The amount of the Contract Owner's investment in Account B will not be reduced as it would be if this charge was taken in full from purchase payments. Moreover, the asset-based sales load will impose no greater burden on Contract Owners than would a front-end sales load of the same amount because at no time will the combined amount of any CDSL and the asset-based sales load exceed 9% of purchase payments.

7. Applicants submit that the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted, such order will be expressly conditioned on Applicants' monitoring the combined amount of the asset-based sales charge and any contingent deferred sales charges for each Contract to ensure that it will never exceed 9% of the total purchase payments made by the Contract Owner.[1]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 9, 1987.

[FR Doc. 87–28785 Filed 12–14–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16164; File No. 812–6911]

John Hancock Mutual Life Insurance Co. et al.; Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: John Hancock Mutual Life Insurance Company ("John Hancock"), John Hancock Variable Annuity Account F ("Account F") and Tucker, Anthony & R.L. Day, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to permit John Hancock to deduct from Account F the mortality and expense risk charges imposed under individual variable annuity contracts (the "Contracts") issued by John Hancock.

Filing Date: The application was filed on October 27, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on January 4, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; John Hancock, c/o Francis C. Cleary, Jr., John Hancock Place, Boston, Massachusetts 02117.

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this condition.

FOR FURTHER INFORMATION CONTACT: Nancy Rappa, Staff Attorney, at (202) 272–2058 or Lewis B. Reich, Special Counsel, at (202 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. Account F, a registered unit investment trust under the Investment Company Act of 1940, was established by John Hancock as a separate account pursuant to Massachusetts law to fund the Contracts. A registration statement on Form N–4 under the Securities Act of 1933 has been filed to register the offering of the Contracts. Account F presently consists of five subaccounts, each of which invests solely in the shares of one of the Funds of Freedom Variable Annuity Funds, a diversified, open-end management investment company registered under the 1940 Act. Tucker, Anthony & R.L. Day, Inc., a registered broker/dealer, is the principal underwriter for the Contracts.

2. Prior to a Contract's maturity, John Hancock assesses an annual maintenance charge of $35 (with the right reserved to increase the charge to $50) at the beginning of each contract year after the first and at full surrender during a contract year. In addition, for certain administrative services, John Hancock makes a daily charge to the Account equal to 0.20% on an annual basis of the current value of its assets.

3. A withdrawal charge is assessed whenever any amount is withdrawn from a contract prior to maturity. A Contractowner may withdraw in any one contract year, without the assessment of any charges, up to 10% of the difference between the purchase payments made prior to the beginning of the contract year and any partial withdrawals (including withdrawal charges assessed) made prior to the beginning of the contract year. If the Contractowner withdraws an amount in excess of 10% of such difference in any one contract year, the amount withdrawn in excess of 10% subjects the contract to a withdrawal charge to the extent that the excess is attributable to purchase payments made within six years of the date of withdrawal or surrender.

4. Withdrawal charges are based upon the purchase payments made to date less any partial withdrawals, annual maintenance charges and withdrawal charges to date and are assessed as follows:

Years from date of deposit to date of withdrawal	Withdrawal charge (percent)
Less than 1	5
1 but less than 2	5
2 but less than 3	4
3 but less than 4	3
4 but less than 5	2
5 but less than 6	1
6 or more	0

In no event will the aggregate withdrawal charges against a contract ever exceed 8.5% of the purchase payments.

5. John Hancock deducts from the daily net asset value of each subaccount of Account F an amount, computed daily, which is equal to an annual rate of 1.05% to compensate John Hancock for its assumption of mortality and expense risks. The charge is allocable 0.65% to John Hancock's assumption of mortality risks and 0.40% to John Hancock's assumption of expense risks. The mortality undertaking guarantees that the variable annuity payments are made regardless of how long an annuitant may live or a group of annuitants may live. Applicants represent that the level of this charge is guaranteed and will not change.

6. Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks assumed by John Hancock under the Contracts and that John Hancock is entitled to reasonable compensation for its assumption of mortality and expense risks.

7. Applicants further represent that the mortality and expense risk charge is within the range of industry practice with respect to comparable annuity products. This representation is based upon John Hancock's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates.

8. Applicants also represent that there is a reasonable likelihood that Account F's proposed distribution financing arrangement will benefit Account F and the contract owners.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. John Hancock will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

2. John Hancock will maintain at its administrative offices and make available to the Commission a memorandum setting forth the basis for the conclusion that Account F's distribution financing agreement will benefit Account F and the contract owners.

3. Account F will invest only in management investment companies which undertake, in the event they adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of trustees (or directors) a majority of whom are not interested persons of the company approve any such plan under Rule 12b–1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–28786 Filed 12–14–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16162; 812–6463]

Overland Funding, Inc.; Application

December 9, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Overland Funding, Inc. ("Applicant")

Relevant 1940 Act Sections: Exemption is requested under section 6(c) from all provisions of the Act.

Summary of Application: Applicant seeks an order amending an existing order conditionally exempting it from all provisions of the 1940 Act (Investment Company Act Release No. 15361, dated October 19, 1986) (the "Order") to permit the issuance of one or more classes of adjustable interest rate bonds secured by certain mortgage related collateral (which may include certain mortgage collateral representing beneficial ownership interests in less than 100% of the distributions of principal or interest or both made on mortgage loans underlying such mortgage related collateral ("Strip Mortgage Certificates")), the election by Applicant to have one or more series of the bonds secured by certain mortgage related collateral treated as a real estate mortgage investment conduit (a "REMIC") and the sale of the residual interest in such series.

Filing Date: The application for an amended order was filed on June 8, 1987 and amended on November 27, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, Roger D. McWherter, 9400 Antioch, Overland Park, Kansas 66212.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, a Delaware corporation, is a wholly-owned, limited purpose subsidiary of Sante Fe Financial Corporation, which itself is a wholly-owned Kansas subsidiary of The Overland Park Savings and Loan Association, a Kansas-chartered stock savings and loan association. Applicant previously received an exemptive order from the Commission dated October 16, 1986 (Investment Company Act Release No. 15361) (the "Order"), permitting Applicant to issue one or more series ("Series") of bonds ("Bonds"), containing one or more classes of compound interest Bonds and non-compound interest Bonds. Because of changing market conditions, Applicant now seeks to amend the Order to permit it to: (1) Issue Series of Bonds which may contain one or more classes of adjustable interest rate Bonds, (ii) elect one or more Series of Bonds to be treated as a REMIC, and (iii) sell the residual interests in such REMIC Bonds to one or more persons.

2. Applicant may issue one or more Series of Bonds secured by Mortgage Certificates.[1] Each Series of Bonds will consist of one or more classes of Bonds, including compound interest Bonds, non-compound interest Bonds, adjustable interest rate Bonds, or any combination thereof.

3. Initially, all of the residual interests in the Bonds of any Series will be held by the Applicant. Applicant anticipates that it may sell such residual interests at the time of the issuance of the Bonds, or at some later date.

4. Without the consent of each bondholder ("Bondholder") to be affected, neither the Applicant, the trustee for the Bondholders ("Trustee") nor any holders of the residual interests in the Bonds of any Series will be able to: (a) Change the state maturity on any Bond; (b) reduce the principal amount or the rate of interest on any Bonds; (c) change the provisions relating to the application of distributions on the Mortgage Certificates to the payment of principal of Bonds; (d) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (e) permit the creation of a lien ranking prior to or on a parity with the lien of the related indenture ("Indenture") with respect to the Mortgage Certificates; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

5. The sale of the residual interests in the Bonds of any Series will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to the Indenture, to support payments of principal and interest on the Bonds.

6. The interests of the Bondholders will not be compromised or impaired by the ability of Applicant to sell its residual interests in the Bonds of any Series, and there will not be a conflict of interest between the Bondholders and the holders of the residual interests in the Bonds of any Series for several reasons: (a) The collateral which initially will be deposited with the Trustee and pledged to secure the Bonds will not be speculative in nature because it will consist solely of GNMA Certificates, FNMA Certificates or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; (c) the Indenture under which the Bonds will be issued subjects the collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders;[2] and (d) the owners of the residual interests in the Bonds of any Series will be entitled to receive current distributions representing the residual payments on the collateral securing such Series from the Applicant, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of bonds. Furthermore, if the Applicant does not elect that the Bonds of a Series be treated as a REMIC under the Internal Revenue Code of 1986, the owners of the residual interests in the Series of Bonds will be liable for the expenses, taxes and other liabilities incurred with respect to such Series of Bonds (other than the principal and interest on the Bonds) to the extent not previously paid from the trust estate. The identity of the owners of the residual interests in the Bonds of any Series, however, will not alter in any way the payments made to the Bondholders, which payments are governed by an Indenture which will meet the requirements of the Trust Indenture Act of 1939.

7. Except to the extent permitted by the limited right to substitute collateral, it will not be possible for the owners of the residual interests in the Bonds of any Series to alter the collateral initially deposited with the Trustee, and in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Although it is possible that any collateral substituted for collateral initially deposited with the Trustee may have a different prepayment experience than the original collateral, the interests

[1] "Mortgage Certificates" refers to Mortgage Pass-Through Certificates fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA Certificates"), Guaranteed Mortgage Pass-Through Securities issued and guaranteed by the Federal National Mortgage Association ("FNMA Certificates") and Mortgage Participation Certificates issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates") and includes Strip Mortgage Certificates issued and guaranteed by GNMA, FNMA or FHLMC.

[2] The Indenture further will specifically provide that no amounts may be released from the lien of the Indenture to be remitted to the Applicant (or any owner of the residual interests in the Bonds of any Series) until (i) the Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, and (iii) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds.

of the Bondholders will not be impaired because; (a) the prepayment experience of any collateral will be determined by market conditions beyond the control of the owners of the residual interests in the Bonds of any Series, which market conditions are likely to affect all Mortgage Certificates of similar payment terms and maturities in a similar fashion; and (b) the interests of the owners of the residual interests in the Bonds of any Series are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience. Further, in the event the Applicant sells its residual interests in the Bonds of any Series there usually will be more than one owner of the residual interests, and in that event, it appears less likely that the owners of the residual interests will be able to agree on any desired substitution of collateral than if there were a single owner who could unilaterally decide on the timing and execution of the substitution.

8. The sale of the residual interests in the Bonds of any Series will have no effect on the ownership of any equity interest in the Applicant and will not affect the existence of the Applicant as a wholly-owned subsidiary of Santa Fe.

9. The election by the Applicant to have a Series of Bonds treated as a REMIC will have no effect on the level of the expenses that would be incurred in connection with the issuance of the Bonds. If the Applicant elects to have a Series of Bonds treated as a REMIC, the Applicant will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds by one or more of the methods outlined in the application.

Applicant's Legal Conclusions

1. The requested amendment of the Order is necessary and appropriate in the public interest because: (a) the Applicant is not the type of entity to which the provisions of the 1940 Act were intended to be applied; (b) the Applicant may be unable to proceed with its proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Applicant's activities are intended to serve a recognized and critical public need; (d) granting the requested amendment of the Order will not be inconsistent with the protection of investors because they will be protected during the offering and sale of the bonds by the registration or exemption provisions of the Securities Act of 1933 ("1933 Act") and thereafter by the Trustee representing their interests under the Indenture; and (e) the residual interests in the Bonds of any Series will be owned entirely by the Applicant or offered only to a limited number of sophisticated institutional investors through private placements.

Applicant's Conditions:

The Applicant agrees that if the requested amendment of the Order is granted it will be expressly conditioned on the following:

A. Conditions relating to the Bond Collateral

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transmission exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgaged related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. However, the collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates and FHLMC Certificates.

3. If new mortgage collateral is substituted, the substitute collateral will: (a) Be of equal or better quality than the collateral replaced; (b) have similar payment terms and cash flow as the collateral replaced; (c) be insured or guaranteed to the same extent as the collateral replaced; and (d) meet the conditions set forth in paragraphs (2) and (4). In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event will any new mortgage collateral be substituted for any substitute mortgage collateral.

4. All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds ("Collateral") will be held by the Trustee, or on behalf of the Trustee by an independent custodian. Neither the Trustee nor the custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent public accountant will audit the books and records of the Applicant and, in addition, will report on whether the anticipated payments of principal and interest on the mortgage collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

B. Conditions relating to variable-rate Bonds

1. Each class of adjustable interest rate Bonds will have a set maximum interest rate.

2. At the time of the deposit of the Collateral with the Trustee, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Certificates pledged to secure the Bonds, plus investment income thereon, and funds, if any, pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of adjustable interest rate Bonds. Such Collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Idenure prior to payment of the Bonds.[3]

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[3] In the case of a series of Bonds that contains a class or classes of adjustable or floating rate Bonds, a number of mechanisms exist to ensure that this condition will be valid notwithstanding subsequent potential increases in the interest rate applicable to the adjustable or floating rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the adjustable or floating rate Bonds; (ii) "inverse" floating rate Bonds (which pay a lower rate of interest as the rate increases on the corresponding "normal" floating rate Bonds); (iii) floating rate collateral (such as FNMA adjustable rate Certificates) to secure the Bonds; (iv) interest rate swap agreements (under which the issuer of the Bonds would make periodic payments to a counterparty at a fixed rate of interest based on a stated principal amount, such as the principal amount of Bonds in the floating rate class, in exchange for receiving corresponding periodic payments from the counterparty at a floating rate of interest based on the same principal amount) and (v) hedge agreements (including interest rate futures and option contracts, under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the floating rate class of Bonds). It is expected that other mechanisms may be identified in the future. Applicant will give the Staff of the Division of Investment Management (the "Staff") notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

C. Conditions Relating to the Sale of Residual Interests

1. Residual interests in a series of Bonds will be offered and sold only to a limited number, in no event more than one hundred, of (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be capable of evaluating the risks of purchasing residual interests and understanding the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, will purchase at least $200,000 of such residual interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing a residual interest and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Such purchases will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities.

2. Each sale of a residual interest will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

3. Resales of each residual interest will be prohibited if there would be more than 100 beneficial owners of such residual interests as a result of any such transfer.

4. Each purchaser of a residual interest will be required to represent that it is purchasing such residual interests for investment purposes and not for distribution and that it will hold such residual interest in its own name and not as nominee for undisclosed investors.

5. No holder of a controlling interest in Applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with the custodian acting on behalf of the Trustee, or the rating agency rating the Bonds. None of the owners of the residual interests in the Bonds of any Series will be affiliated with the Trustee.

D. Condition Relating to REMICs

The election by the Applicant to treat a Series of Bonds as a REMIC will have no effect on the level of expenses that would be incurred in connection with the issuance of such Bonds. All administrative fees and expenses incurred in connection with the issuance of a Series of Bonds which the Applicant has elected to be treated as a REMIC will be paid or provided for in a manner satisfactory to the agency or agencies rating the Bonds, and as set forth in the application. Applicant will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of the method selected.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-28787 Filed 12-14-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25180; File No. SR-PSE-87-29]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change

On November 23, 1987, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend PSE Rule XI, section 2(d)(2)(D)(i) to reflect the increased initial and maintenance margin requirements applicable to the PSE's broad-based stock index option contracts.

On November 2, 1987, the Commission approved proposed rule changes filed by the PSE and three other options exchanges to increase initial and maintenance margin requirements applicable to broad-based stock index option contracts.[3] In Release No. 25081, the Commission approved the PSE's proposal to change PSE Rule XXI, section 16(b)(i) (Index Options: Margins) to increase margin requirements for broad-based stock index options to 100% of the current option premium plus 10% of the current underlying index value, less any out-of-the-money amount, with a minimum of 100% of the current premium plus 5% of the current index value.

The Exchange proposes to amend PSE Rule XI, section 2(d)(2)(D)(i) (Margins: Other Provisions) to reflect the increased initial and maintenance margin requirement applicable to broad-based stock index contracts that was approved in Release No. 25081. The proposed rule change will ensure that all references to margin requirements on broad-based indexes in the PSE rules reflect uniformly the current increased percentage amounts.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[4] which provides, in pertinent part, that the rules of the exchange must be designed to protect investors and the public interest. In Release No. 25081, the Commission approved increased margin requirements for broad-based stock index options in order to provide more financial protection to the securities industry at a time of increased market volatility. The Commission finds that the proposed rule change will protect investors and the public interest by ensuring that all references to margin requirements on broad-based indexes in the PSE Rules uniformly reflect the increased percentage amounts approved in Release No. 25081.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register**. The proposed rule change is based upon and reflects a proposed rule change that was approved by the Commission on November 2, 1987 (Release No. 25081).

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] Securities Exchange Act Release No. 25081 (November 2, 1987), 52 FR 42751 ("Release No. 25081").

[4] 15 U.S.C. 78f(b)(5) (1982).

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all Written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

Dated: December 9, 1987.

[FR Doc. 87-28734 Filed 12-14-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25178; File No. SR-NYSE-87-41]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change

On November 18, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend NYSE Rule 431 (Margin Requirements) to increase the initial and maintenance margin requirements for broad-based stock group index options.

The Exchange's current margin requirement for each short put or call option on a broad index stock group, adopted in 1986,[3] is 100% of the current market value of the option (*i.e.*, the current option premium value) plus 5% of the aggregate value of the underlying index reduced by the amount the option is out-of-the-money, with a minimum of 100% of current market value of the option plus 2% of the aggregate value of the underlying index.[4] These requirements were based on volatility studies conducted to determine margin requirements that would be sufficient to cover index option price changes. The NYSE, along with the other options exchanges, determined that the option premium plus an amount equal to the maximum expected price change in the underlying product would provide sufficient minimum protection for both customers and member organizations. In view of the increased volatility in the stock markets in general and in the markets for broad index stock group options during the week of October 19, 1987, however, the Exchange has determined that these margin requirements should be increased at this time.

The NYSE has proposed to raise the margin requirement applicable to short options on broad-based stock indexes. The increased requirement for both initial and maintenance margin is 100% of the current market value of the broad stock index option plus 10% of the current market value of the underlying index reduced by any out-of-the-money amount, with a minimum of 100% of the current market value of the option plus 5% of the current market value of the underlying index. On October 26, the NYSE had increased the margin requirements to these levels on a temporary basis pursuant to NYSE Rule 431(f)(8)(A),[5] for any positions established on or after November 2, 1987. This rule filing will make this increase permanent. Member organizations will continue to have discretion to maintain broad stock index options positions established prior to November 2, 1987 at the margin requirement applicable at the time the positions were established. The increased margin requirements are designed to protect both investors and member firms by assuring that broad index stock group option positions are adequately covered. In addition, these requirements should provide a cushion of protection during periods of increased market volatility.

The Exchange will review the market activity in its broad index stock group options. If volatility continues and if conditions warrant, the Exchange will determine whether the initial and maintenance margin requirements for these options are adequate.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5),[6] which provides, in pertinent part, that the rules of the Exchange must be designed to protect investors and the public interest. The increased margin requirements for broad index stock group options will provide more financial protection to the securities industry at a time of increased market volatility. The five percent/two percent margin levels are based on historical volatility levels which are no longer valid in light of the events of the week of October 19, 1987. Hence, at a minimum, higher margin levels are needed to ensure the financial stability of member firms. At this time the NYSE has determined to raise the initial margin level for broadbased index options to premium plus 10%. While the Commission believes this action is necessary as an interim step in assuring the adequacy of margin levels in light of recent market events, the Commission reserves judgment on whether the premium plus 10% level is sufficient as a permanent standard. At a minimum, the NYSE will have to recalculate its volatility equations. Perhaps more importantly, the Commission currently is undertaking a study of the market events of the week of October 19, 1987. One aspect of the study will concern the effect of margin levels on derivative index products on the recent market volatility. Until the study is finished, the Commission reserves judgment both on the level of margin set by the proposed rule change as well as the method of determining adequate margin.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in light of the increased stock market volatility during the week of October 19 and its effect on margin adequacy. In addition, the Commission notes that the American, Pacific, and Philadelphia Stock Exchanges and the Chicago Board Options Exchange have adopted identical changes to their margin requirement rules.[7]

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[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12)(1987).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] *See* Securities Exchange Act Release No. 22469 (September 26, 1985), 50 FR 40633.

[4] NYSE Rule 431(f)(2)(D)(i).

[5] NYSE Rule 431(f)(8)(A) states that whenever the Exchange determines that market conditions so warrant, the Exchange may prescribe higher initial and maintenance margin requirements for accounts of customers relative to any securities as the Exchange deems appropriate.

[6] 15 U.S.C. 78f(b)(5) (1982).

[7] *See* Securities Exchange Act Release No. 25081 (November 2, 1987), 52 FR 42751.

Interested persons are invited to submit written data, views and argument concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule changes are approved. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

Dated: December 8, 1987.

[FR Doc. 87-28735 Filed 12-14-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7265]

Issuer Delisting; Application To Withdraw From Listing and Registration; the Home Group, Inc. (Common Stock, Par Value $1.00)

December 9, 1987.

The Home Group, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's Common Stock is also listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in dual trading of its stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before December 31, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-28736 Filed 12-14-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0174]

Surrender of License; Mount Vernon Venture Capital Co.

Notice is hereby given that Mount Vernon Venture Capital Company, 8330 Woodfield Crossing Boulevard, Suit 200, Indianapolis, Indian 46240 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Mount Vernon Venture Capital Company was licensed by the Small Business Administration on September 29, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on November 25, 1987 and accordingly, all rights, privileges, and franchises derived thereform have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.,

Dated: December 4, 1987.

[FR Doc. 87-28731 Filed 12-14-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1042]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: Operation of a motor vehicle in the United States by foreign diplomatic personnel is a benefit under the Foreign Missions Act. Administration of this benefit requires the Department of State to register, title, and issue license plates to motor vehicles owned by foreign diplomatic personnel, and to collect information regarding the insurance of motor vehicles owned by foreign diplomatic personnel and official representatives of foreign governments to international organizations in the United States. The following summarizes the information collection proposal submitted to OMB:

Title of information collections—Diplomatic Motor Vehicle Registrations (Mission/Personal Owned).

Originating office—Office of Foreign Missions.

Form numbers—DSP-100, 101, 102.

Type of request—New.

Frequency—On occasion and annually.

Respondents—Foreign government representatives.

Estimated number of responses—10,000.

Estimated number of hours needed to respond—7,500.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional information or comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult, (202) 395-7340.

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[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1987).

December 4, 1987.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 87-28738 Filed 12-14-87; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/1139]

Integrated Services Digital Network (ISDN) Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Tuesday, January 5, 1988 and Wednesday, January 6, 1988 in Conference Room 10A-10B, 1120 20th Street, NW., Washington, DC. The meeting will begin at 9:30 a.m. each day. Work under agenda item 5 is expected to be covered during the afternoon of January 5 and continued into January 6, as necessary.

The agenda for the meeting is as follows:

1. Approval of Minutes of December 1, 1987 meeting.
2. Report on results of Study Group "S" meeting, December 7-16, 1987, held in Geneva.
3. Review of contributions in preparation for the meeting of CCITT Study Group II, Geneva, 15-23 February 1988.
4. Report from CCITT Special Study Group XVIII Broadband ISDN meeting.
5. Consideration of contributions in preparation for drafting and/or editors group meetings relevant to network node, or user network node interface Recommendations, and other ISDN Broadband issues.
6. Consideration of contributions for the CCITT Study Group XVIII meeting, Seoul, January 25-February 5, 1988
7. Consideration of Nominations for U.S. Delegation to CCITT Study Group XVIII meeting.
8. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the AT&T building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meetings, persons who plan to attend should so advise Ms. Cindy Perfumo (201-234-4047).

Date: December 1, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U.S. CCITT National Committee.

[FR Doc. 87-28703 Filed 12-14-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1140]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 7, 1988 at 9:30 a.m. in Room 1406, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The purpose of the meeting will be to review results of the Study Group "S" meeting held in December in Geneva, to prepare and approve U.S. Contributions and consider nomination of delegates to upcoming meeting of Study Group VIII scheduled to begin on February 8, 1988, and to consider any other issues related to Study Group A interests.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653-6102. All attendees must use the C Street entrance to the building.

Date: December 3, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87-28704 Filed 12-14-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1141]

Study Group 8 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 8 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 13, 1988 from 9:30 a.m. until 4:00 p.m. in Meeting Rooms 9 A and B, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC.

Study Group 8 studies matters relating to systems of radiocommunications and radiodetermination for the mobile services. The purpose of the meeting is to consider preparations for the international meeting of Study Group 8 in April/May 1988.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

December 4, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87-28702 Filed 12-14-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S-819]

Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended, To Permit Certain Foreign-Flag Operations; American President Lines, Ltd.

American President Lines, Ltd. (APL), by application dated November 24, 1987, requests waivers of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), for foreign-flag operations of APL for a period of five years, under Operating-Differential Subsidy Agreement, Contract MA/MSB-417.

APL's Existing Services

APL now performs four subsidized containership services. Its two transpacific services cover the range of former Trade Route (TR) 29 to/from California on up to 108 annual sailings (Line A) and to/from Oregon-Washington on up to 80 annual sailings (Line B). Former TR 29 include ports in the Far East on the continent of Asia from the U.S.S.R. to Thailand, inclusive, Japan, Taiwan, and the Philippines. APL's two Extension services add authority to serve ports of Southeast and South Asia and the Persian Gulf on up to 28 sailings to/from California (Line A Extension) and up to 80 sailings to/from

Oregon-Washington (Line B Extension). APL is permitted by its contract to provide any part of the service by transfer or relay of cargo between subsidized vessels at any foreign port on the authorized services.

APL performs its Line A and Line B services primarily with line-haul vessels making direct calls at most foreign TR 29 ports, including Yokohama, Kobe, and Okinawa, Japan; Kaohsiung and Chilung, Taiwan; and Hong Kong. Korea and the Philippines are served by APL subsidized feeder vessels.

The APL Extension services are currently performed by a feeder network that includes two subsidized U.S.-flag APL owned vessels providing service on a relay basis to Singapore and Colombo via Kaohsiung.

APL believes that considerations of economy and operating efficiency call for Extension services to be served by APL owned or chartered foreign-flag feeder vessels.

APL currently utilizes nine foreign-flag common carrier feeder services with 14 vessels:

Number ships	Relay port	Ports served
1	Al Fujayrah (Fujayrah).	Bahrain, Ad Damman, Al Kuwayt.
2 [1]	Colombo	Masqat, Fujayrah, Karachi.
2	Colombo	Bombay, Cochin.
3	Colombo	Madras, Calcutta, Chalna, Chittagong.
1	Singapore	Port Kelang, Pinang.
1	Singapore	Djakarta.
1 [2]	Kao-hsiung	Singapore, Colombo.
1	Singapore	Bangkok.
2	Fujayrah	Mogadiscio, Dar es Salaam, Mombasa.

[1] Until recently 1 ship was serving Karachi and Masqat over Fujayrah.

[2] Served in conjunction with 2 APL-owned, U.S.-flag, subsidized feeders serving same itinerary.

APL also operates 3 foreign-flag ships under a section 804 waiver serving Manila, Singapore, and Bangkok over Kao-hsiung.

A previous section 804 waiver application of APL, to charter two foreign-flag vessels for Philippines/Hong Kong—Kao-hsiung service, advertised in the **Federal Register** of September 30, 1987 (52 FR 36664), Docket S–814, was withdrawn by letter of October 28, 1987. Although not serving the Extension area, APL operates two owned, U.S.-flag, subsidized feeders serving the Philippines over Kao-hsiung, and serving Korea over Yokohama.

APL's Application

APL desires to substitute ten APL-owned or chartered foreign-flag feeder vessels for the first ten vessels in the first six services shown in the listing above. The proposed services would be as follows, with probable port coverage as shown:

No. ships	Capacity	Between	Service area
1	350 FEU	Extension ara port.	Persian Gulf—Gulf of Oman.
	Port coverage	Fujayrah or Khor al Fakkan.	Dubai, Ad Dammam, Al Kuwayt, Bahrain, Masqat, inducement ports.
2	450 FEU each	Extension area port.	Karachi, other ports in India.
	Port coverage	Fujayrah or Colombo.	Karachi, ports in India.
2	400 FEU each	Extension area port.	West coast india.
	Port coverage	Colombo or Fujayrah, Singapore, or Madras.	Bombay, Mangalore, Porbandar, Cochin, optional Jamnagar/Tuticorin.
3	300 FEU each	Extension area port.	Bay of Bengal ports.
	Port coverage	Colombo or Singapore.	Calcutta, Chalna, Chittagong, Madras, inducement Vishakhaptnam/Paradip.
1	250 FEU	Singapore	mainland Malaysia.
	Port coverage	Singapore	Port Kelang, Pinang, Pasir Gudang.
1	300 FEU	Singapore	Indonesia.
	Port coverage	Singapore	Djakarta, optional Surabaya/Semarang.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on December 29, 1987. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating–Differential Subsidies)

By Order of the Maritime Administrator.

Date: December 9, 1987.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 87–28760 Filed 12–14–87; 8:45 am]

BILLING CODE 4910–81–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 240
Tuesday, December 15, 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

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 Thursday, December 17, 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.

Applications for Federal deposit insurance:

Chaves Industrial Bank, an operating noninsured industrial bank located at 501 Lincoln Street, Denver, Colorado.

First Bank of Connecticut, an operating non-FDIC-insured savings association located at 80 Elm Street, New Haven, Connecticut.

Application for consent to establish a facility:

Beverly Bank, Chicago, Illinois, for consent to establish a facility at 10312 South Cicero Avenue, Oak Lawn, Illinois.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum regarding the leasing of office space.

Memorandum and resolution re: Contracts for the FDIC loose-leaf reporting service and its index.

Memorandum and resolution re: Petition of the Institute of Foreign Bankers, Inc. for an extension of the deadline for compliance with Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks," which requires an insured domestic branch of a foreign bank to limit its transfer risk concentrations to any one country to 200 percent of the branch's required capital equivalency ledger account for the branch's home country and 100 percent for all other countries and to reduce any existing excess exposures, including commitments, to within the transfer risk limitations by January 22, 1988.

Memorandum and resolution re: Final amendment to the Corporation's rules and regulations in the form of new Part 350, entitled "Disclosure of Financial and Other Information by FDIC Insured Nonmember Banks," which requires FDIC-insured state-chartered banks that are not members of the Federal Reserve System and FDIC-insured state-licensed branches of foreign banks to prepare, and make available on request, annual disclosure statements consisting of (1) required financial data comparable to specified schedules in call reports filed for the previous two year-ends, (2) information that may be required of particular organizations by administrative orders, and (3) other optional information.

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: December 10, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-28798 Filed 12-11-87; 9:01 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION.

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 Thursday, December 17, 1987, the Federal Deposit Insurance Corporation's Board of Director will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) 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.

Recommendations regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,142-M Delegation of Authority to Sell Bank Stock Loans.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separation, 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)).

Matters relating to the possible closing of certain insured banks:

Names and locations of bank authorized to be exempt for disclosure pursuant to the provisions of 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)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 500 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: December 10, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-28799 Filed 12-11-87; 9:01 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:00 p.m. on Tuesday, December 8, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of American Saving Bank, an operating non-FDIC-insured savings bank located at 820 A Street, Tacoma, Washington, for Federal deposit insurance.

Recommendations regarding the Corporation's assistance agreement with an insured bank.

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter 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 by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 10, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-28800 Filed 12-11-87; 9:01 am]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: 10:00 a.m., Friday, December 18, 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 their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendment to Regulation T (Credit by Brokers and Dealers) to permit broker-dealers to facilitate the exercise of employee stock options. (Proposed earlier for public comment; Docket No. R-0611)

2. Proposed revision of Regulation F (Securities of State Member Banks). (Proposed earlier for public comment; Docket No. R-0609)

3. Proposed amendments to the by-laws of the Federal Reserve System's Committee on Employee Benefits.

4. Proposals to reduce automated clearing house risk. (Proposed earlier for public comment; Docket No. R-0591)

Discussion Agenda

5. Proposed amendments to Regulation Z (Truth in Lending) regarding disclosures for closed-end adjustable-rate mortgages. (Proposed earlier for public comment; Docket No. R-0545)

6. Publication for comment of proposed amendments to Regulation Z (Truth in Lending) regarding disclosures for home equity lines of credit.

7. 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.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: December 10, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28856 Filed 12-11-87; 12:53 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Friday, December 18, 1987, following a recess at the conclusion of the open meeting.

PRICE: 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. Proposed purchase of computers within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: December 10, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28857 Filed 12-11-87; 12:53 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 21, 1987.

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 for the meeting.

Date: December 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28901 Filed 12-11-87; 4:00 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 52, No. 240
Tuesday, December 15, 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 AGRICULTURE

7 CFR Part 8

4-H Club Name and Emblem

Correction

In rule document 87-5738 beginning on page 8432 in the issue of Tuesday, March 17, 1987, make the following correction:

§ 8.3 [Corrected]

On page 8432, in the third column, in § 8.3, in the second paragraph, in the first line, "County Cooperative Service" should read "County Cooperative Extension Service".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-943-07-4220-10; A-22923]

Proposed Withdrawal of Federal Land; Opportunity for Public Meeting

Correction

In the issue of Wednesday, October 14, 1987, on page 38171, in the third column, a correction to FR Doc. 87-20227 appeared. The fourth item in the correction document was inaccurate and should have appeared as follows:

* * * * *

4. Also under T.7 S., R.1 W., the ninth line reading "Sec. 7, all" should read "Sec. 8, all".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 79-17; Notice 35]

New Car Assessment Program; Optional Testing by Manufacturers

Correction

In notice document 87-28294 beginning on page 46880 in the issue of Thursday, December 10, 1987, the docket number in the heading was inaccurate and should read as it appears above.

BILLING CODE 1505-01-D

federal register

Tuesday
December 15, 1987

Part II

Department of Energy

Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines; Notice

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Notice of amendments to and republication of the Department of Energy's NEPA guidelines.

SUMMARY: The Department of Energy is amending Section D of its guidelines for compliance with the National Environmental Policy Act (NEPA) by adding eight new typical classes of actions, by modifying four existing typical classes of actions, and by deleting one typical class of actions, as proposed on February 25, 1985, (50 FR 7629). Section D was originally published on March 28, 1980, (45 FR 20694) and subsequently has been amended on February 23, 1982, (47 FR 7976), January 6, 1983, (48 FR 685), and January 7, 1987, (52 FR 659). Sections A, B, C, and amended Section D of the NEPA guidelines are republished in their entirety.

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT:

Carol Borgstrom, Acting Director, Office of NEPA Project Assistance EH-25, Room 3E-080 U.S. Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585 (202) 586-4600.

Henry Garson, Esq. Assistant General Counsel for Environment, GC-11, Room 6A-113 U.S. Department of Energy 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6947.

SUPPLEMENTARY INFORMATION: On March 28, 1980, the Department of Energy (DOE) published in the **Federal Register** (45 FR 20694) final guidelines for compliance with the National Environmental Policy Act (NEPA), as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508). Section D of the Department's guidelines identifies typical classes of DOE actions: (1) which normally do not require either an environmental assessment (EA) or an envi ronmental impact statement (EIS), i.e., categorical exclusions, (2) which normally require an EA but not necessarily an EIS, and (3) which normally require an EIS. These classes of actions were identified pursuant to CEQ regulations (40 CFR 1507.3(b)(2)).

A notice of proposed amendments to Section D of DOE's guidelines was published on February 25, 1985, (50 FR 7629). The proposed amendments related primarily to activities of the Department's Power Marketing Administrations, and proposed adding eight new typical classes of actions, modifying four existing typical classes of actions, and deleting one typical class of actions. Specifically, the proposed amendments were the addition of seven and modification of two categorical exclusions, the addition, modification, and deletion of classes of actions which normally require an EA, and the modification of one class of actions which normally requires an EIS.

Publication of the proposed amendments commenced a 30-day public comment period. No comments were received. The final amendments as stated below are essentially the same as the proposed amendments. Certain clarifying changes have been made, as noted.

The following categorical exclusions, i.e., actions which normally do not individually or cumulatively have a significant effect on the quality of the human environment and therefore for which neither an EA nor an EIS is required, have been added:

1. Construction of tap lines (defined as usually being less than 10 miles in length) which are not for the integration of major new sources of generation into DOE's main transmission systems, and where such actions do not impact environmentally sensitive areas such as archaeological sites, critical habitats, floodplains, and wetlands. (Note - This has been modified from the amendment proposed in 50 FR 7629 to make it clear that the parenthetical information is a definition of "tap lines" and is not a transmission line length criterion, and to use a length that is more in keeping with the normal maximum length of a tap line, i.e., 10 miles instead of 6 miles.)

2. Construction of microwave and radio communication towers and associated facilities where such actions do not impact environmentally sensitive areas such as archaeological sites, critical habitats, floodplains, and wetlands, and where such actions do not prejudice future site selection decisions for substations or other transmission facilities. (Note - The words "and radio communication" have been added to the amendment proposed in 50 FR 7629 to include radio towers, which have environmental impacts similar to those of microwave towers.)

3. Disposal of real property by the DOE through the General Services Administration where the planned land use is to remain unchanged.

4. Financial and technical assistance to individuals (builders, owners, designers) and to state and local governments to promote energy efficiency in new structures built in compliance with applicable, duly adopted building codes.

5. Small scale research and development projects designed to demonstrate potential electrical energy conservation associated with residential/commercial buildings, appliance/ equipment efficiency standards, and manufacturing and industrial processes (e.g., insulation effectiveness, lighting efficiencies, appliance efficiency ratings, and development of manufacturing or industrial plant efficiencies).

6. Activities undertaken to restore existing fish and wildlife facilities, including minor habitat improvements or improvements to existing fish passage facilities at existing dams or diversion canals.

7. Power marketing services including storage, load shaping, seasonal exchanges, or other similar activities where the operations of hydroelectric projects remain within established constraints and which do not alter the environmental status quo. (Note - The term "load factoring" in the amendment proposed in 50 FR 7629 has been replaced by the term "load shaping".)

The addition of the new categorical exclusion number 1 above makes it necessary to make a conforming change, as proposed, to an existing typical class of actions normally requiring an EA. The typical class of actions "Construction of new service facilities such as tap lines and substations," has been modified to read as follows: "Construction of new substations."

The following typical class of actions has been added to those which normally require EAs but not necessarily EISs: Execution of marketing plans or allocation plans for the long term allocation (greater than 1 year) of existing or excess power resources to customers who can receive the resources over existing transmission systems. (Note - This has been modified from the amendment proposed in 50 FR 7629 to reflect the focus of environmental review on marketing or allocation plans rather than on individual contracts executed under approved plans. The allocation of power resources to customers in a manner differing from existing contractual arrangements is already an existing class of actions requiring an EA. The term "facilities" in the amendment proposed in 50 FR 7629 has been replaced by the term "systems".)

The existing categorical exclusion "Execution of contracts for the short term or seasonal allocation of excess

power resources to customers who can receive these resources over existing transmission systems," is modified as follows: Execution of contracts, marketing plans, or allocation plans for the short term or seasonal allocation (less than 1 year) of existing or excess power resources to customers who can receive these resources over existing transmission systems. (Note: This has been modified from the amendment proposed in 50 FR 7629 to include marketing or allocation plans as well as individual contracts executed under approved plans. The allocation of power resources to customers in a manner differing from existing contractual arrangements is already an existing class of actions requiring an EA.)

The existing class of actions normally requiring an EIS, "DOE actions which cause energy conservation on a substantial scale," is modified as follows: DOE actions which cause energy conservation on a substantial scale, including those where effects are primarily on the indoor environment (e.g., indoor air quality). (Note: This has been modified from the amendment proposed in 50 FR 7629 for clarification.)

The existing categorical exclusion "Minor additions to a substation, transformer additions, or changes in transformer assignments that do not affect the area beyond the previously developed substation area," is modified as follows: Minor substation modifications, which do not involve the construction of new transmission lines or the integration of a major new resource, and where such actions do not impact environmentally sensitive areas such as archaeological sites, critical habitats, floodplains, and wetlands. (Note: This modification is identical to that proposed in 50 FR 7629.)

As a result of the above modification, the following typical class of actions normally requiring an EA but not necessarily an EIS has been deleted: "Modifications of existing facilities (e.g., substations, storage yards) where impacts extend beyond the previously developed facility area." Thus, an EA is not automatically required for facility modifications that extend beyond the previously developed area. However, if the limiting criteria in the categorical exclusion cannot be met (if the action involves construction of new transmission lines or the integration of a major new source or if there will be impacts in environmentally sensitive areas), then an EA would be required.

DOE has consulted with the Council on Environmental Quality (CEQ) regarding these amendments, in accordance with 40 CFR 1507.3. CEQ had no objection to the proposed amendments. Therefore, DOE has adopted these amendments to Section D of its NEPA Guidelines, effective immediately.

The Department's NEPA Guidelines are republished as follows in their entirety. The republication incorporates amendments to the original Section D (45 FR 20694, March 28, 1980) which were finalized on February 23, 1982, (47 FR 7976), January 6, 1983, (48 FR 685), January 7, 1987, (52 FR 659), and by this notice. Sections A, B, and C of the Guidelines are reprinted as published in 45 FR 20694 with the exceptions that (1) responsible DOE offices have been changed as appropriate and (2) the list of other environmental laws that are coordinated with the NEPA process has been updated.

Issued in Washington, DC on November 19, 1987.

Mary L. Walker,

Assistant Secretary for Environment, Safety and Health.

DOE NEPA GUIDELINES

Purpose

The purpose of these guidelines is to provide procedures which the Department of Energy (DOE) will apply to implement the Council on Environmental Quality (CEQ) regulations for compliance with the National Environmental Policy Act (NEPA). The CEQ regulations are codified at 40 CFR Parts 1500-1508. The guidelines are issued pursuant to and are to be used only in conjunction with the CEQ regulations.

The guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. They are not intended, however, to create or enlarge any procedural or substantive rights against DOE. Any deviation from the guidelines must be soundly based and must have the advance approval of the Under Secretary of DOE.

Section A - NEPA and Agency Planning

1. DOE Process

The CEQ regulations (40 CFR 1501.2) require that: "Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts."

To implement this requirement DOE will:

(a) Review preliminary internal program planning documents, regulatory agenda, draft legislation, budgetary materials and other developing DOE proposals, to ensure the proper integration of the NEPA process;

(b) Incorporate into its early planning processes a careful consideration of: (i) The potential environmental consequences of its proposed actions, and (ii) appropriate alternative courses of action;

(c) At the earliest possible time, in accordance with paragraph A.3 herein, determine whether an environmental assessment (EA) or an environmental impact statement (EIS) is required.

2. Applicant Processes

With respect to applicant processes, the CEQ regulations (40 CFR 1501.2(d)) require agencies to:

"(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that: (1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time."

To implement this requirement:

(a) Applicants for a DOE lease, permit, license, certificate, financial assistance, allocation, exemption or similar action are expected to:

(1) Consult with DOE as early as possible in their planning processes to obtain guidance with respect to the appropriate level and scope of any studies or environmental information which DOE may require to be submitted as part of or in support of their application;

(2) Conduct studies which are deemed necessary and appropriate by DOE to determine the impact of the proposed action on the quality of the human environment;

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during the preliminary planning stages of the proposed action to ensure that environmental factors including permitting requirements are identified;

(4) Submit applications for all required Federal, regional, State and local permits or approvals as early as possible;

(5) Notify DOE as early as possible of other Federal, regional, State, local and Indian tribe actions required for project completion in order that DOE may coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2, regarding elimination of duplication with State and local procedures, as appropriate;

(6) Notify DOE of private persons and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2);

(7) Notify DOE if, prior to completion of the DOE environmental review and decisionmaking process, the applicant plans or is about to take an action in furtherance of an undertaking within DOE's jurisdiction which may meet either of the criteria set forth at 40 CFR 1506.1(a).

(b) Upon receipt of an application, or earlier if possible, DOE will:

(1) Initiate and coordinate any requisite environmental analyses in accordance with the requirements set forth at 40 CFR 1506.5;

(2) Determine, in accordance with paragraph A.3 herein, whether an EA or an EIS is required; and

(3) Establish time limits for the NEPA process when requested to do so by an applicant.

(c) For major categories of DOE actions involving a large number of applicants, DOE may prepare generic guidelines describing the level and scope of environmental information expected from the applicant and will make such guidelines available to applicants upon request.

(d) For DOE programs that frequently involve another agency or agencies in related decisions subject to NEPA, DOE will cooperate with the other agencies in developing environ-mental information and in determining whether to prepare an EA or an EIS. Where appropriate and acceptable to the other agencies, DOE will develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

3. Whether to Prepare an Environmental Impact Statement

The CEQ regulations (40 CFR 1501.4) require the Federal agency, in determining whether to prepare an EIS, to:

"(a) Determine under its procedures supplementing these regulations (described in Section 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (Section 1508.9)."

To implement this requirement and the requirements contained at 40 CFR 1507.3(b)(2):

(a) DOE has (in Section D), identified typical classes of DOE action:

"(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment [categorical exclusions (Section 1508.4)].

(iii) Which normally require environmental assessments but not necessarily environmental impact statements."

(b) DOE will review individual proposed actions to determine the appropriate level of NEPA documentation required where:

(1) The proposed action is not encompassed within the categories of Section D,

(2) The proposed action is encompassed within the categories of Section D, but DOE believes that the categorization is not appropriate to the individual proposed action.

(3) Public comment received on or relating to a proposal included within the categories of Section D raises a substantial question regarding the categorization.

(c) DOE will, in conducting the reviews of paragraph (b) above, either:

(1) Determine that neither an EA nor an EIS is required where it is clear that the proposed action is not a major Federal action significantly affecting the quality of the human environment. (In such cases, a brief memorandum may be prepared explaining the basis for that determination);

(2) Prepare an EA where it is unclear whether an EIS is required; or

(3) Proceed directly to EIS preparation where it is clear that an EIS is required.

(d) DOE may add actions to or remove actions from the categories in Section D based on experience gained during implementation of the CEQ regulations and these guidelines.

4. Scoping

The CEQ regulations (40 CFR 1501.7) require:

"* * * an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action."

To implement this requirement, DOE will:

(a) As soon as practicable after a decision to prepare an EIS, publish in the **Federal Register** a Notice of Intent (NOI) to prepare an EIS in accordance with 40 CFR 1501.7. However, where DOE finds that there is a lengthy period between DOE's decision to prepare an EIS and the time of actual preparation, DOE may instead publish the NOI at a time sufficiently in advance of preparation of the draft EIS to provide reasonable opportunity for interested persons to participate in the EIS preparation process;

(b) Provide additional dissemination of the NOI in accordance with 40 CFR 1506.6;

(c) Through the NOI, invite comments and suggestions on the proposed scope of the EIS including environmental issues and alternatives for consideration in the preparation of the draft EIS and invite public participation in the NEPA process except where there is an exception for classified proposals pursuant to 40 CFR 1507.3(c) and paragraph C.1, herein. The comment period for the NOI will normally be 20 days. To the extent practicable, DOE may consider comments received after the close of the designated comment period on the NOI in preparing the draft EIS.

(d) If a scoping meeting is to be held, provide notice of the meeting in the NOI at least 15 days before the meeting.

(e) Prepare and use an EIS implementation plan to record the results of the scoping process and to

provide guidance to DOE for the preparation of an EIS.

(1) The EIS implementation plan will be a brief document and will contain:

(i) Information to address the provisions of 40 CFR 1501.7(a)(2), (3), (5), (6), and (7);

(ii) A detailed outline of the EIS;

(iii) A description of the means by which the EIS will be prepared, including the nature of any contractor assistance to be used.

(2) The EIS implementation plan may also contain:

(i) Target page limits for the EIS; (ii) Target time limits for EIS preparation; (iii) An allocation of assignments among DOE and cooperating agencies.

(3) DOE will complete an EIS implementation plan as soon as practicable after the close of the designated comment period on the NOI or after a scoping meeting, if one is held, whichever is later.

(4) DOE may revise the implementation plan, as necessary during EIS preparation.

Section B - NEPA and Agency Decisionmaking

1. DOE Decisionmaking

The CEQ NEPA regulations (40 CFR 1505.1) require that agencies adopt procedures to ensure that decisions are made in accordance with the policies and purposes of NEPA.

To implement this CEQ requirement, this section designates the major decisionmaking processes for DOE's principal programs and provides procedures to assure that the NEPA process corresponds with the decisionmaking processes. These processes are designated as policy level decisionmaking, program level decisionmaking, and project level decisionmaking. The procedures consist of general procedures applicable to all DOE decisionmaking processes followed by specific procedures applicable to the individual decisionmaking processes.

The decisionmaking structure designated herein is consistent with the CEQ tiering concept (40 CFR 1502.20), which provides for focusing on the actual issues ripe for decision and eliminating repetitive discussions of the issues already decided. Accordingly, environmental documents prepared for policy level decisions will normally focus on broad issues and will provide the foundation for subsequent program and project environmental documents. Environmental documents prepared for program level decisions will normally focus on narrower issues than at the policy level and may summarize and incorporate by reference discussions contained in any relevant policy level environmental document but should not repeat the discussion of issues already decided at the policy level of decisionmaking.

Similarly, environmental documents prepared for project level decisions will normally focus on issues specific to the proposed project and may summarize and incorporate by reference discussions contained in any broader environmental documents but should not repeat the discussion of issues decided at higher levels of decisionmaking.

2. General Procedures

(a) The following general procedures apply to all DOE decisionmaking processes. DOE will:

(1) At the earliest possible time in the decisionmaking process: (i) Identify and evaluate environmental factors and appropriate alternative courses of action, and (ii) determine in accordance with paragraph A.3 herein the appropriate level of environmental review document required.

(2) Commence preparation of the relevant environmental document as close as possible to the time that DOE begins development of or is presented with a proposal (40 CFR 1508.23), and complete the document in advance of final decisionmaking.

(3) During the development and consideration of a proposal and the relevant environmental document, review other DOE planning and decisionmaking documents to ensure that alternatives (including the proposed action) to be considered by the decisionmaker are encompassed by the range of alternatives in the relevant environmental document.

(4) Circulate the relevant environmental document or summary thereof with the proposal and other decisionmaking documents through DOE's internal review processes to ensure that DOE officials use the environmental documents in making decisions and that the decisionmaker consider the alternatives described therein.

(5) Where an EIS is prepared, publish the record of decision (40 CFR 1505.2) in the **Federal Register** and make it available to the public as specified in 40 CFR 1506.6 except as provided in paragraph C.1. For the purposes of 40 CFR 1506.1, the record of decision will be deemed issued upon signature by the appropriate DOE official.

(6) Utilize the tiering concept in accordance with 40 CFR 1502.20 and 1508.28 to the fullest extent practicable.

3. Specific Procedures

(a) *Policy-level-decisionmaking.* At this level of decisionmaking, DOE is deciding on broad strategies to achieve energy goals such as conservation, development of new resources and use of more abundant resources. Policy level decisions may, for example, be represented by proposals for legislation or by formal statements of national energy policy.

(1) For legislative proposals, DOE will: Identify and evaluate relevant environmental issues and reasonable alternatives, and make a determination regarding the need to prepare an environmental document during the proposal formulation and early drafting stages; and, normally prepare, consider, and publish any required environmental document in connection with the submittal of a proposal to Congress, except as may be provided in 40 CFR 1506.8.

(2) For formal statements of national energy policy DOE will: Initiate implementation of the applicable general procedures specified above during the analysis phase of policy development; and will prepare, consider, and publish any required environmental document in advance of policy adoption for those policies that will result in or substantially alter DOE programs.

(b) *Program-level-decisionmaking.* At this level of decisionmaking, DOE is deciding on a variety of approaches to implement specific policies or statutory authorities. Program level decisions are generally represented by the advancement of an energy technology program, the issuance of program regulations, or the adoption of a program plan.

(1) For energy technology research, development, demonstration and commercialization programs, DOE will: initiate the applicable general procedures specified above concurrent with program initiation; and, if required, prepare the relevant environmental document when environmental effects can be meaningfully evaluated. When required, the relevant environmental document would normally be prepared in advance of a decision to proceed with the development phase of a research, development, demonstration, and commercialization program. Nevertheless, DOE will consider the following factors throughout the program in determining the necessity and appropriate timing of the relevant environmental document: (i) The significance of the environmental impacts of the technology, if applied, on the quality of the human environment;

and (ii) The extent to which continued investment in the new technology is likely to cause the program to reach a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(2) For programs that are implemented by regulations, DOE will initiate implementation of the applicable general procedures specified above during early regulation drafting stages. Publication of a draft EIS, if required, will normally accompany publication of the proposed regulations and will be available for public comment at any hearings held on the proposed regulations. The draft EIS need not accompany notices of inquiry or advance notices of proposed rulemaking intended to gather information during early stages of regulation development. The relevant environmental document, with comments and responses, will be included in the administrative record. In accordance with 40 CFR 1506.10(b)(2), final rulemakings promulgated pursuant to the Administrative Procedure Act may be issued simultaneously with publication of the notice of the availability of the final EIS.

(3) For programs that are not included in paragraphs (1) or (2) and that are implemented by a formal program plan, DOE will: initiate implementation of the applicable general procedures specified above concurrent with program plan formulation; and, if required, prepare the relevant environmental document when the environmental effects of the program can be meaningfully evaluated. If an EIS is required, it will be prepared, considered, and published and the requisite record of decision issued before taking an action that would have an adverse environmental impact or limit the choice of reasonable alternatives except as provided in 40 CFR 1506.1(c).

(c) *Project level decisionmaking.* At this level of decisionmaking, DOE is deciding on specific actions to execute a program or to perform a regulatory responsibility. Project level decisions are generally represented by the approval of projects, by the approval or disapproval of applications, or by the decisions on applications rendered in adjudicatory proceedings.

(1) For projects that are undertaken directly by DOE, including projects involving the sole source procurement of a site and/or process, DOE will: initiate implementation of the applicable general procedures specified above concurrent with project concept development; and, if required, prepare, consider, and publish the relevant environmental document before making a go/no-go decision on the project. In addition, if a DOE project requires preparation of an EIS, DOE will not take an action concerning the project which would have an adverse environmental effect or which would limit the choice of reasonable alternatives until the required record of decision is issued.

(2) For major system acquisition projects involving selection of sites and/or processes by competitive procurement, DOE will:

(i) Require that environmental data and analyses be submitted as a discrete part of an offeror's proposal. (The level of detail required for environmental data and analyses will be specified by DOE for each applicable procurement action. The data will be limited to those reasonably available to offerors.)

(ii) Independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(iii) For proposals in the competitive range, prepare and consider before the selection of sites and/or processes an environmental impact analysis in accordance with the following:

(a) In order to comply with 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential or trade secret information, the environmental impact analysis will be subject to the confidentiality requirements of the competitive procurement process and therefore exempt from mandatory public disclosure.

(b) The environmental impact analysis will be based on the environmental data and analyses submitted by offerors and on supplemental information developed by DOE as necessary for a reasoned decision.

(c) The environmental impact analysis will focus on environmental issues that are pertinent to a decision on proposals in the competitive range and will include:

(1) A brief discussion of the purpose of each proposal including any site or process variations having environmental implications.

(2) For each proposal, a discussion of the salient characteristics of the proposed sites and/or processes as well as alternative sites and/or processes reasonably available to the offeror or to DOE.

(3) A brief comparative evaluation of the environmental impacts of the proposals. This evaluation will focus on significant environmental issues and clearly identify and define the comparative environmental merits of the proposals.

(4) A discussion of the environmental impacts of each proposal. This discussion will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects which cannot be avoided, areas where important environmental information is incomplete or unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal.

(5) To the extent known for each proposal, a list of Federal, State, and local government permits, licenses, and approvals which must be obtained in implementing the proposal.

(iv) Document the consideration given to environmental factors in a publicly available selection statement to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The selection statement will not contain business, confidential, trade secret or other information the disclosure of which is prohibited by 18 U.S.C. 1905 or the confidentiality requirements of the competitive procurement process. The selection statement will be filed with the Environmental Protection Agency.

(v) If the selected sites and/or processes are likely to have significant effects on the quality of the human environment, phase subsequent contract work to allow publicly available EIS's to be prepared, considered and published in full conformance with the requirements of 40 CFR Parts 1500-1508 and in advance of a go/no-go decision.

(3) For projects that involve applications to DOE for financial assistance or applications to DOE for a permit, license, exemption, allocation or similar regulatory action involving informal administrative proceedings, DOE will: apply NEPA early in the process in accordance with 40 CFR 1501.2(d) and paragraph A.2 herein; commence preparation of the relevant environmental document, if required, no later than immediately after applications are received and in accordance with the requirements set forth at 40 CFR 1506.5; and consider the relevant environmental document, if one is prepared, in decisions on the application.

(4) For actions that involve adjudicatory proceedings, excluding judicial or administrative, civil, or criminal enforcement actions, DOE will: normally prepare, consider and publish the relevant environmental document, if required, in advance of a decision, and include the document in the formal record of the proceedings. If an EIS is required, the draft EIS will normally precede preliminary staff recommendations, and publication of

the final EIS will normally precede final staff recommendations and that portion of the public hearing related to the EIS. The EIS need not precede preliminary hearings designed to gather information for use in the EIS.

Section C - Other Requirements of NEPA

1. Access to NEPA Documents

The CEQ NEPA regulations (40 CFR 1507.3(c)) allow an agency to develop criteria for limiting public access to environmental documents which involve classified information. This section provides the DOE policy for addressing classified information as well as policy for addressing confidential information.

Classified or confidential information is exempted from mandatory public disclosure by Section 552(b) of the Freedom of Information Act (FOIA) (5 U.S.C. 552), Section 1004.10(b) of DOE's regulations implementing FOIA (10 CFR Part 1004), and 18 U.S.C. 1905. Public access to such information will be restricted in accordance with such regulations and applicable statutes.

All NEPA documents (as defined at 40 CFR 1508.10), the EIS implementation plan, and the record of decision are subject to the mandatory public disclosure requirements of FOIA and the DOE regulations implementing FOIA except documents which are determined, in accordance with the applicable statutes and regulations, to contain classified or confidential information. DOE will determine the treatment of documents containing classified or confidential information on a case by case basis in accordance with the requirements of DOE's FOIA regulations and the applicable statutes.

Wherever possible, the fundamental policy of full disclosure of NEPA documents will be followed. In some cases, this will mean that classified or confidential information may be excised, prepared as an appendix, or otherwise segregated to allow the release of the nonsensitive portions of a document.

2. Supplemental Statements

(a) If required, DOE will prepare, circulate, and file a supplement to a draft or final EIS, in accordance with 40 CFR 1502.9(c). However, where it is unclear whether an EIS supplement is required, DOE will prepare an analysis which provides sufficient information to support a DOE determination with respect to the criteria of 40 CFR 1502.9(c) (i) and (ii). Based on the analysis, DOE will determine whether to prepare an EIS supplement. Where DOE determines that an EIS supplement is not required, DOE will prepare a brief memorandum which explains the basis for that determination.

(b) When applicable, DOE will incorporate an EIS supplement or a brief memorandum and supporting analysis into any related formal administrative record prior to making a final decision on the action which is the subject of the EIS supplement or analysis.

3. Revisions of Time Periods

The CEQ regulations (40 CFR 1507.3(d)), allow agencies to provide for periods of time other than those presented in 40 CFR 1506.10 when necessary to comply with other specific statutory requirements.

Certain circumstances, such as statutory deadlines, may require that the periods established in 40 CFR 1506.10 for the timing of DOE NEPA actions be altered. If DOE determines that, in order to comply with specific requirements of other statutes, such revisions are necessary, a notice of the determination will be published in the **Federal Register**. This notice will briefly provide the reason for such alterations and contain information on the revised time periods. Related notices of substantive action, if applicable, may be published jointly with notices published pursuant to this paragraph.

4. Coordination With Other Environmental Laws

The CEQ regulations (40 CFR 1502.25) provide for integrating the NEPA process and other environmental requirements.

To the fullest extent possible, DOE will:

(a) Coordinate NEPA compliance with other environmental review requirements including those under: the Clean Air Act, the Clean Water Act, the Coastal Zone Management Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Wild and Scenic Rivers Act, the National Historic Preservation Act, Section 13 of the Federal Nonnuclear Research and Development Act, the Marine Protection, Research and Sanctuaries Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and other Acts, as deemed appropriate by DOE.

(b) Determine the applicability of other environmental requirements early in the planning process to ensure compliance and to avoid delays.

(c) In addition to the information required by 40 CFR 1502.25(b), include in draft and final EISs plans and estimated schedules for compliance with other applicable environmental review requirements.

(d) Use the relevant NEPA document to support the fulfillment of the review and documentation requirements of other environmental statutes and regulations, and to report the status of compliance with these other environmental authorities.

5. Status of NEPA Actions

Individuals or organizations desiring information or status reports on elements of the NEPA process should address their inquiries to:

Office of NEPA Project Assistance, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

6. Oversight of Agency NEPA Activities

The Assistant Secretary for Environment, Safety and Health, or his/her designee, will be responsible for overall review of DOE NEPA compliance.

7. Compliance

These guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. Any deviation from the guidelines must be soundly based and must have the advance approval of the Under Secretary of DOE.

8. Revisions to the Guidelines

DOE will, in accordance with 40 CFR 1507.3, review these guidelines on a continuing basis and revise them as necessary to ensure full compliance with the purposes and provisions of NEPA. Substantive changes will be published in the **Federal Register** and will be finally adopted only after an opportunity for public review.

SECTION D.—TYPICAL CLASSES OF ACTIONS

Normally do not require EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
Classes of Actions Generally Applicable to All of DOE		
Administrative procurements (e.g., general supplies).	DOE actions which enable or result in engineering development activities, i.e., detailed design, development, fabrication, and test of energy system prototypes.	DOE actions which are expected to result in the construction and operation of a large scale project.
Contracts for personal services.	DOE actions which provide grants to state and local governments for energy conservation programs.	DOE actions which cause energy conservation on a substantial scale, including those where effects are primarily on the indoor environment (e.g., indoor air quality).
Personnel actions.	Rate increases for products or services marketed by DOE, and approval of rate increases for non-DOE entities which exceed the rate of inflation in the period since the last increase.	
Reports or recommendations on legislation or proposed rulemaking which was not initiated by DOE.		
Compliance actions, including investigations, conferences, hearings, notices of probable violations and remedial orders.		
Interpretations and rulings, or modification or rescissions thereof.		
Promulgation of rules and regulations which are clarifying in nature, or which do not substantially change the effect of the regulations being amended.		
Actions with respect to the planning and implementation of emergency measures pursuant to the International Energy Program.		
Information gathering, analysis, and dissemination.		
Actions in the nature of conceptual design or feasibility studies.		
Actions involving routine maintenance of DOE-owned or operated facilities.		
Actions in the nature of analytic energy supply/demand studies which do not result in a DOE report or recommendation on legislation or other DOE proposals.		
Adjustments, exceptions, exemptions, appeals, stays or modifications or rescissions of orders issued by the Office of Hearings and Appeals.		
Rate increases for products or services marketed by DOE, and approval of rate increases for non-DOE entities, which do not exceed the rate of inflation in the period since the last rate increase.		
Actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid.		
General plant projects such as road and parking area resurfacing, modifications to heating-ventilating-air conditioning systems, minor alterations of existing buildings, and other similar projects where: (1) The projects are located within previously developed areas and will not affect environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands and (2) the projects are not part of a proposed action that is or may be the subject of an EA or EIS.		
Installation of meteorological towers and associated activities to assess potential wind energy resources where the installation has no impacts on environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands, and where the installation does not prejudice future site selection decisions for large wind turbines.		
Construction of microwave and radio communication towers and associated facilities where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands, and where such actions do not prejudice future site selection decisions for substations or other transmission facilities.		
Disposal of real property by the Department of Energy through the General Services Administration where the planned land use is to remain unchanged.		
Financial and technical assistance to individuals (builders, owners, designers) and to state and local governments to promote energy efficiency in new structures built in compliance with applicable, duly adopted building codes.		
Small scale research and development projects designed to demonstrate potential electrical energy conservation associated with residential/commercial buildings, appliance/equipment efficiency standards, and manufacturing and industrial processes (e.g. insulation effectiveness, lighting efficiencies, appliance efficiency ratings, and development of manufacturing or industrial plant efficiencies).		
Activities undertaken to restore existing fish and wildlife facilities, including minor habitat improvements or improvements to existing fish passage facilities at existing dams or diversion canals.		
Classes of Actions Generally Applicable to Licenses to Import/Export Natural Gas Pursuant to Section 3 of the Natural Gas Act		
	Approval/disapproval of new license or amendment to an existing license which does not involve new construction, but which requires operational changes which may or may not be significant, such as an increase in liquid natural gas throughput, change in transportation or storage operations.	Approval/disapproval of applications involving the construction of new liquid natural gas (LNG) terminals, regasification or storage facilities, or a significant expansion of an existing LNG terminal, regasification or storage facility.

SECTION D.—TYPICAL CLASSES OF ACTIONS—Continued

Normally do not require EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
		Approval/disapproval of an application involving a significant operational change, such as a major increase in the quality of liquid natural gas imported or exported.
Classes of Actions Generally Applicable to International Activities		
Approval of DOE participation in international "umbrella" agreements for cooperation in energy R&D which do not commit the U.S. to any specific projects or activities. Approval of technical exchange arrangements for information, data or personnel with other countries or international organizations. Approval of export of small quantities of special nuclear materials or isotopic materials in accordance with the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" FEDERAL REGISTER, Part VII, June 9, 1978).		
Classes of Actions Generally Applicable to Power Marketing Administrations (PMA)		
Minor substation modifications, which do not involve the construction of new transmission lines or the integration of a major new resource, and where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands. Emergency repair of transmission lines including replacement or repair of damaged equipment as well as the removal and replacement of downed transmission lines. Additions or modifications to transmission facilities which do not affect the environment beyond the previously developed facility area, including tower modifications, changing insulators, replacement of poles and crossarms, and similar actions. Grant or denial of requests for multiple use of DOE transmission line rights-of-way, such as grazing permits and crossing agreements including electric lines, water lines, and drainage culverts. Execution of contracts, marketing plans, or allocation plans for the short term or seasonal allocation (less than 1 year) of existing or excess power resources to customers who can receive these resources over existing transmission systems. The renewal of existing power contracts in kind. Construction of tap lines (defined as usually being less than 10 miles in length) which are not for the integration of major new sources of generation into DOE's main transmission systems, and where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands. Power marketing services including storage, load shaping, seasonal exchanges, or other similar activities where the operations of hydroelectric projects remain within established constraints and which do not alter the environmental status quo. Actions undertaken in order to bring an existing DOE transmission facility into compliance with changes in applicable Federal, state, or local environmental standards or to mitigate adverse environmental effects, where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands. Such actions include, for example, noise abatement measures, and the acquisition of additional rights-of-way to establish buffer areas. Execution of contracts for the short term (less than one-year) or seasonal acquisition of excess power from existing power resources which can be transmitted over existing transmission systems with no changes in the operations of the power resources. Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events where the adjustments result in only minor changes in reservoir levels and streamflows. Contract interpretations, amendments, and modifications, including replacement, which are clarifying or administrative in nature, and which do not extend the term or otherwise substantially change the contracts being amended. Leasing of existing transmission facilities where the leases do not involve any change in operation. Acquisition or minor relocation of existing access roads serving existing transmission facilities where the relocation does not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands. Replacing conductors on existing transmission lines where the replacement conductors carry the same nominal voltage as the existing conductors and where the replacement work does not involve new support structures, new substations, or other new facilities. Research, inventory, and information collection activities which are directly related to the conservation of fish and wildlife resources and which involve only negligible animal mortality or habitat destruction, and no introduction of either contaminants or exotic organisms.	Upgrading (reconstructing) an existing transmission line. Construction of new substations. Annual vegetation management program (system-wide). Construction and operation of wind resource, low-head hydro, and solar energy pilot projects. The allocation of power resources to customers in a manner differing from existing contractual arrangements. Implementation of an erosion control program that is system-wide. Execution of marketing plans or allocation plans for the long term allocation (greater than 1 year) of existing or excess power resources to customers who can receive the resources over existing transmission systems.	Main transmission system additions--additions of new transmission lines, main grid substations and switching stations to PMA's main transmission grid. Integrating transmission facilities--transmission system additions for integrating new sources of generation into PMA's main grid.

SECTION D.—TYPICAL CLASSES OF ACTIONS—Continued

Normally do not require EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
	Classes of Actions Generally Applicable to Nuclear Waste Management Program.	
	Exploratory and site characterization activities which by virtue of resource commitment or elapsed time for completion may foreclose reasonable site alternatives.	DOE actions resulting in the site selection, construction, or operation of major treatment, storage and/or disposal facilities for transuranic and high level nuclear waste and/or spent nuclear fuel such as spent fuel storage facilities and geologic repositories.
	Land acquisition activities solely for the purposes of reserving possible candidate sites and which do not prejudice future programmatic site selection decisions.	
	The demonstration or implementation of intermediate-depth burial of low-level waste at DOE sites.	
	Classes of Actions Generally Applicable to DOE Implementation of Powerplant and Industrial Fuel Use Act of 1978 (FUA)	
The grant or denial of any temporary exemption for any electric powerplant or major fuel-burning installation.		
The grant or denial of any permanent exemption of any existing electric powerplant or major fuel-burning installation, other than an exemption (1) under section 312(c), relating to cogeneration; (2) under section 312(1), relating to scheduled equipment outages; (3) under section 312(b), relating to certain state or local requirements; and (4) under section 312(g), relating to certain intermediate load powerplants.		
The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (Act) (Pub. L. 95-620) for any new electric powerplant or major fuel-burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum.		
The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new peakload powerplant.		
The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new electric powerplant or major fuel-burning installation to permit operation for emergency purposes only.		
The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Act for any new or existing major fuel-burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 28 days per year over a three-year period.		
The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new major fuel-burning installation which, in petitioning for an exemption due to lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, certifies that it will be operated less than 600 hours per year.		
The grant or denial of a permanent exemption from the prohibitions of Title II of the Power Plant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620) for any new cogeneration powerplant.		

[FR Doc. 87-28586 Filed 12-14-87; 8:45 am]

BILLING CODE 6450-01-T

federal register

Tuesday
December 15, 1987

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Special Flight Authorization for Noise Restricted Aircraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 24394; Amdt. No. 91-203]

Special Federal Aviation Regulation No. 47; Special Flight Authorization for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Special Federal Aviation Regulation (SFAR) 47 provides for limited issuance of special flight authorizations to conduct certain nonrevenue operations that are otherwise prohibited by the Part 91, Subpart E, noise restrictions. The current rule expires on December 31, 1987. This rule extends SFAR 47 through December 31, 1989, and requires all requests for special flight authorizations to be submitted in writing at least five days prior to the date the applicant wishes to conduct its flight. The FAA does not plan to extend the SFAR beyond January 1, 1990.

DATES: Effective date of this amendment is January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mrs. Laurette Fisher, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267-3561.

SUPPLEMENTARY INFORMATION:

Background

Under Part 91 of the Federal Aviation Regulations (FAR), on or after January 1, 1985, no person may operate a civil subsonic turbojet airplane with maximum weight of more than 75,000 pounds to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under FAR Part 36. This restriction applies to U.S. registered aircraft that have standard airworthiness certificates and foreign registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. SFAR 47 was adopted February 26, 1985, (50 FR 7751, February 26, 1985) to permit certain operations of noise restricted aircraft without a formal grant of exemption under FAR Part 11. The FAA has determined this process to be cost beneficial and time-efficient both to the government and the private sector. On December 31, 1986, FAA extended SFAR 47 for a one year period until December 31, 1987.

This rule amends section 3 of SFAR 47 to require the applicant for a special flight authorization to submit its request in writing five days before that applicant's requested flight date.

This rule amends section 5 of SFAR 47 to extend the regulation to December 31, 1989. Extension beyond that date is not necessary because, by that date, most non-compliant Stage 1 aircraft will either have been modified to meet Stage 2 noise standards or be out of service.

Paperwork Reduction Act

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number.

Review of Comments

These amendments are based on Notice of Proposed Rulemaking No. 87-9 published in the **Federal Register** on September 16, 1987 (52 FR 179). Interested persons have been afforded the opportunity to participate in the development of all aspects of this rulemaking by submitting written comments to the public regulatory docket. The period for submitting comments closed October 16, 1987. One comment was received which supported the proposal. This amendment and the reasons for its adoption are the same as those contained in Notice 87-9, and, unless otherwise indicated, the proposals contained in the Notice have been adopted without change.

Economic Impact

This rule has minimal economic impact. The rule provides an alternative from the exemption process for certain operations, reducing administrative costs upon operators and the FAA. While the operations are not without some noise costs, these costs can be characterized as trivial, since the number of operations at any one airport will be extremely low in number.

Even though benefits will exceed costs for this proposal, the FAA finds that the SFAR is not likely to have significant economic impact upon a substantial number of small entities. The basis for this is the very low number of requests which FAA foresees as a result of the adoption of this proposal. This number should not exceed twenty over the life of the regulation. Accordingly, preparation of a full regulatory evaluation is not required.

Lists of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Pilots, Airspace, Air transportation, Airworthiness directives and standards.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared. The changes proposed in this rule do not significantly affect the quality of the human environment.

Conclusion

The rule has minimal economic consequences. Accordingly, for reasons stated earlier the FAA has determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant nor does it require a Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the amendment will not have significant economic impact on a substantial number of small entities. In addition, this rule 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.

The Final Rule

Accordingly, the FAA amends Part 91 of the Federal Aviation Regulations (14 CFR Part 91) by amending Special Federal Aviation Regulation (SFAR) 47 as follows; effective January 1, 1988:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 is revised to read as set forth below and the authority citations following Special Federal Aviation Regulation 47 are removed:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through

1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 21, 1983).

SFAR 47—AMENDED

2. Paragraph 3(j) is amended to read as follows:

(j) Written requests must be received five days prior to requested flight date.

3. Paragraph 5 is amended by deleting the word "1987" and substituting the word "1989" in its place.

Issued at Washington, DC, on December 9, 1987.

T. Allan McArtor,

Administrator.

[FR Doc. 87-28710 Filed 12-14-87; 8:45 am]

BILLING CODE 4910-13-M

federal register

Tuesday
December 15, 1987

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 75

Alteration of VOR Federal Airways and Jet Routes; Expanded East Coast Plan; Phase II; Final Rules

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 87-AWA-46]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-31, V-84 and V-501 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

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 October 23, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-31, V-84 and V-501 located in the vicinity of New York (52 FR 39660). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. While no specific comments were received in this docket, several parties have questioned the agency's environmental review of the proposed actions. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 75 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and an environmental assessment was not required. However, in consideration of the interest expressed in the environmental process, the FAA will conduct an informal review of the environmental implications of the EECP. Additionally, in consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that the action should be delayed pending the outcome of that review.

AOPA has objected to proposals to change various routes for implementation of the EECP. AOPA was concerned that these proposals will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Furthermore, the changes promulgated in this docket enhance direct routings along those segments. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 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 alters the descriptions of VOR Federal Airways V-31, V-84 and V-501 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-31 [Amended]

By removing the words "INT Elmira 357° and Rochester, NY, 125° radials;" and substituting the words "INT Elmira 002° and Rochester, NY, 120° radials;"

V-84 [Amended]

By removing the words "INT Geneseo 091° and Syracuse, NY, 242° radials;" and substituting the words "INT Geneseo 091° and Syracuse, NY, 240° radials;"

V-501 [Amended]

By removing the words "INT Elmira, NY, 357° and Geneseo, NY, 091° radials;" and substituting the words "INT Wellsville 045° and Geneseo 091° radials;"

Issued in Washington, DC, on December 8, 1987.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87-28711 Filed 12-14-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AWA-45]

Alteration of Jet Routes; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Jet Routes J-61 and J-207 located in the vicinity of Wilmington, NC. These jet routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

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 October 23, 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-61 and J-207 located in the vicinity of Wilmington, NC (52 FR 39661). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. While no specific comments were received in this docket, several parties have questioned the agency's environmental review of the proposed actions. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 75 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and an environmental assessment was not required. However, in consideration of the interest expressed in the environmental process, the FAA will conduct an informal review of the environmental implications of the EECP. Additionally, in consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that the action should be delayed pending the outcome of that review.

AOPA has objected to proposals to change various routes for implementation of the EECP. AOPA was concerned that these proposals will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Furthermore, the changes promulgated in this docket enhance direct routings along those segments. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. 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-61 and J-207 located in the vicinity of Wilmington, NC. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

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

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

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97.449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–61 [Amended]

By removing the words "From INT Wilmington, NC, 028°" and substituting the words "From INT Dixon NDB, NC, 023°."

J–207 [Amended]

By removing the words "to Raleigh-Durham, NC." and substituting the words "Raleigh-Durham, NC; to Franklin, VA."

Issued in Washington, DC, on December 8, 1987.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87–28712 Filed 12–14–87; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Tuesday
December 15, 1987

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43 and 91

Inoperative Instruments or Equipment; Supplemental Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43 and 91

[Docket No. 22320; Notice No. 81-14A]

Inoperative Instruments or Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This notice supplements Notice of Proposed Rulemaking No. 81-14, which proposed to permit the operation of powered aircraft with certain inoperative instruments and equipment that are not essential for the safe operation of the aircraft. After further review of the comments from the public, the FAA concluded that provisions in that notice could be accomplished with less paperwork, and the concept could be further modified to conform to other pertinent regulations. This supplemental notice proposes to permit rotorcraft and nonturbine-powered airplanes (for which a master minimum equipment list (master MEL) has not been developed), that are not being utilized in an air carrier operation, to be operated with certain inoperative instruments and equipment. Furthermore, this supplemental notice proposes to permit flight operations with certain inoperative instruments and equipment for small multiengine rotorcraft and nonturbine-powered small multiengine airplanes (for which a master MEL has been developed and that are not being utilized in an air carrier operation) the option of selecting the minimum equipment list concept or complying with the provisions contained in the new proposed regulations.

DATE: Comments must be received on or before March 14, 1988.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-204), Docket No. 22320, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked "Docket No. 22320." Comments may be inspected at Room 916 between 8:30 a.m. and 5 p.m., Mondays through Fridays (excluding Federal holidays).

FOR FURTHER INFORMATION CONTACT: John Lynch, or Edna French—Manager, Project Development Branch (AFS-850), General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments 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 in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 22320." The postcard will be dated, time stamped, and returned to the commenter.

Availability of Notice

Any person may obtain a copy of this supplemental notice of proposed rulemaking (SNPRM) by submitting a request to the Federal Aviation Administration; Office of Public Affairs; ATTN: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this SNPRM. Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Except as provided for in § 91.30 of the Federal Aviation Regulations (FAR), all instruments and equipment installed in an aircraft (for those aircraft for which a master minimum equipment list (master MEL) has not been developed) must be in operative condition to continue to meet the aircraft's airworthiness requirements. The FAA has recognized that flight could be conducted with certain instruments and equipment inoperative under specified conditions; thus, the minimum equipment list (MEL) concept was adopted. Presently, the MEL concept extends to air carrier, commercial, and general aviation operators of multiengine aircraft, but only if the type of aircraft being operated has a master MEL. Owners or operators of aircraft for which a master MEL has not been developed are required to adhere to § 91.165. This means that all of the aircraft's instruments and equipment must be operative, regardless of whether or not they are essential.

The FAA attempted to provide relief to operators of general aviation multiengine aircraft by issuing Amendment No. 91-157 (44 FR 43714; July 26, 1979). This amendment would have permitted the operation of a multiengine aircraft with certain inoperative instruments or equipment within the limitations of §§ 91.29 and 91.165. After Amendment No. 91-157 was published, the FAA received strong negative reaction from the public. Generally, the commenters objected that the rules were confusing and that the time required for compliance was insufficient, considering there were very few master MEL's that had been developed at the time. Many commenters stated that they use the listing in § 91.33 as the sole standard for determining whether or not an instrument or item of equipment is required to be operational. The FAA intended to provide relief to the general aviation community by issuing Amendment No. 91-157, but the amendment was perceived as being restrictive and excluding single-engine aircraft. Therefore, the FAA issued Amendment No. 91-160 on October 26, 1979 (44 FR 62884; November 1, 1979), suspending indefinitely § 91.30 so that the FAA could study the matter further and make the necessary changes.

After the suspension of § 91.30, operators desiring to use an MEL petitioned for an exemption from § 21.181. This procedure allowed operators to obtain individual approval to operate multiengine aircraft with inoperative instruments and equipment. The FAA was able to gain valuable information on the usefulness and safety aspects of MEL's when used in general aviation-type operations. Even though the time period during suspension of Amendment No. 91-157 was beneficial, the procedure of processing individual grants of exemption was time consuming and costly to both the FAA and the public. Before the FAA reinstated § 91.30 on March 13, 1986 (50

FR 51188; December 13, 1985), over 350 individual petitions for exemption were processed and granted.

On September 16, 1981, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 81–14 (46 FR 52278; October 26, 1981). This notice proposed to permit the operation of powered aircraft with certain inoperative instruments and equipment that are not essential for the safe operation of the aircraft. The proposal included provisions to consolidate MEL requirements that were contained in Parts 121, 125, and 135 into Part 91. It also proposed to broaden the application of these provisions to other aircraft and to allow the operation of aircraft without an MEL with certain instruments or items of equipment inoperative through an approved aircraft flight manual or operating limitations statement. Even though this notice received more favorable response than Amendment No. 91–157, the general aviation community still had concerns and objections, and the FAA decided that the notice needed further changes.

The FAA issued the termination of the suspension of Amendment No. 91–157 (Amdt. No. 91–192; 50 FR 51188; December 13, 1985) on December 6, 1985. This amendment permits operators of multiengine aircraft, under specific conditions, to operate their aircraft with certain instruments and equipment inoperative. The FAA, in making the decision to reinstate § 91.30, determined the reasons for suspending the rule no longer existed. As was the case when Amendment No. 91–157 was first published on July 26, 1979, aircraft for which a master MEL had not been developed were excluded. The FAA decided that to provide immediate relief to operators of multiengine aircraft, it would terminate the suspension of Amendment No. 91–157 and take additional time to resolve the problems of the other aircraft.

After the FAA reinstated § 91.30, the Aircraft Owners and Pilots Association (AOPA) petitioned the FAA on behalf of its members, requesting the FAA to develop alternatives to the MEL concept. AOPA stated that noncomplex aircraft operated in accordance with Part 91 should be provided an alternative to the MEL concept. AOPA also stated that the MEL concept would create an enormous paperwork burden on both the general aviation public and the FAA's Flight Standards District Offices (FSDO's) without any enhancement of air safety. As a result of AOPA's petition and comments from the public concerning the reinstatement of § 91.30, the FAA decided that, prior to initiating any further rulemaking projects involving this subject matter, it would solicit ideas and opinions from the public. A notice of meeting announcement was published in the **Federal Register** on May 22, 1986 (51 FR 18800) for the purpose of soliciting public participation for this ongoing rulemaking project. On June 17, 1986, this public meeting was held at the FAA Headquarters in Washington, DC. The meeting was attended by 24 industry personnel. A transcript of the meeting is contained in Docket No. 22320. One of the principal comments expressed by the attendees was that it is totally unacceptable for the FAA to require all instruments and equipments to be operative at all times. Furthermore, the attendees disagreed with the FAA's interpretation of § 91.165 that the rule requires all instruments and equipment to be operative at all times. Also, another principal comment expressed was that the MEL approval process is too burdensome for Part 91 operators and the FAA. The attendees stated that the FSDO's are already backlogged with other priority work, and past experience has shown the minimum time to complete the MEL approval process is 6 months, after (and if) the FSDO accepted the MEL application. The commenters stated that the general aviation operators have for years operated safely using the instrument and equipment listings in § 91.33 as their sole reference for determining whether an instrument or item of equipment was required to be operational. The attendees requested that the FAA develop rules to permit the operation of an aircraft with inoperative instruments and equipment that conforms to the way operators now utilize § 91.33.

At the time § 91.30 was reinstated, the FAA was devising an alternative to the MEL concept for aircraft for which a master MEL had not been developed. This concept would have permitted only rotorcraft and nonturbine-powered airplanes (for which a master MEL had not been developed and the aircraft are not being utilized in an air carrier operation) to be operated with certain inoperative instruments and equipment without an approved MEL. The FAA determined that this concept could be broadened to include even those multiengine aircraft for which master MEL's have been developed. By extending this concept to the operators of these multiengine aircraft, the FAA would be providing a reasonable alternative to the MEL concept.

Supplemental Proposal

The FAA proposes to permit operators of rotorcraft and nonturbine-powered airplanes, for which a master MEL has not been developed and which are not being utilized in an air carrier operation, to operate the aircraft with certain inoperative instruments and equipment not essential for the safe operation of the aircraft. Also, the FAA proposes to permit operators of small multiengine rotorcraft and nonturbine-powered small multiengine airplanes for which a master MEL has been developed and that are not being utilized in an air carrier operation to choose between operating in accordance with an approved MEL or complying with the provisions in proposed § 91.30(d). Consistent with this proposal, the FAA also proposes, by revising §§ 43.11(b) and 91.165, to permit an aircraft to be returned to service with inoperative instruments and equipment.

In Amendment No. 91–157, the FAA proposed incorporating all the MEL rules into § 91.30, including the MEL rules for Part 121 and 135 operators. However, the FAA has decided against proposing this again in this SNPRM, but will address this issue for Part 121 and 135 operators in a separate rulemaking project.

Under the MEL concept, MEL's do not cover the obviously required parts of the aircraft, such as the wings, flaps, engines, landing gear, rubber, windshields/windows, propellers, brakes, and other similar parts. To operate an aircraft with maintenance discrepancies in those basic parts or other similar parts would be contrary to safe operating practices and procedures. Nor was the FAA's intent to include in the MEL's those nonessential items, such as galley equipment, entertainment systems, passenger convenience items, and other similar items which have no effect on the operational and mechanical conduct of the flight and aircraft. Both the FAA and the aircraft manufacturers, in developing the master MEL's, concluded that the instruments and equipment included in the MEL's should be those that relate to the safe conduct of the flight operation (given the specific flight conditions) and the mechanics of the aircraft.

The FAA, in developing the present proposals, and specifically § 91.30(d), utilized the same philosophy and rationale that went into the development of the MEL concept. The FAA, in developing these proposals, determined that operators of rotorcraft and nonturbine-powered airplanes operated in accordance with Part 91 are in need of relief from the strict, application of § 91.165. In the past, many aircraft operators have honestly, but erroneously, used the listing in § 91.33 as the sole standard of determining their

aircraft's airworthiness status. The FAA has decided to propose a regulatory method to permit the operation of these aircraft with inoperative instruments and equipment when those instruments are equipment would not be essential for the safe operation of the flight. The intent of these proposals is to permit operation of an aircraft with inoperative instruments and equipment within the framework of a controlled and sound program of maintenance inspections, repairs, and parts replacements. Therefore, the FAA proposes to conform §§ 43.11, 91.30, and 91.165 to these reasonable operational practices and procedures which the aviation public has requested.

Section 91.30(a) would be revised to define the procedural requirements for operating with an approved MEL and to also establish the exception provisions for operating without an approved MEL.

Section 91.30(c) would be revised to permit the use of MEL's under Part 91 operations for those aircraft with approved MEL's issued under Part 125, without need for further FAA approval. An aircraft which has an MEL approved in accordance with § 125.201 would be permitted to use that MEL in Part 91 operations without need for further FAA approval.

A new § 91.30(d) would permit rotorcraft and nonturbine-powered airplanes (for which a master MEL has not been developed and that are operated in accordance with Part 91) to be operated with certain inoperative instruments and equipment not essential for the safe operation of the aircraft. Furthermore, paragraph (d) would permit Part 91 operators of small multiengine rotorcraft and nonturbine-powered small multiengine airplanes (for which a master MEL has been developed) the option of operating in accordance with an approved MEL or operating in accordance with the provisions of paragraph (d). Basically, the only instruments and equipment which would be permitted to be inoperative under the provisions of the new proposed paragraph (d), and only for certain situations, would be unneeded communication and navigation radios, nonessential passenger convenience equipment, aircraft lighting, optional installed instruments and equipment (e.g., LORAN C, inertial navigation equipment, weather radar, flight recorders, etc.), and those instruments and equipment not required by § 91.33, for the kind of flight operation being conducted.

Proposed § 91.30(d)(2)(i) would prohibit the operation of an aircraft with inoperative instruments and equipment defined in the aircraft's applicable airworthiness certification regulation and type certificate data. All aircraft are manufactured to conform to certain airworthiness certification regulations (e.g., Part 3 of the Civil Air Regulations or Part 23 of the FAR, etc.). These airworthiness certification regulations establish certain instruments and equipment that are "required instruments and equipment" for VFR-day type certification. These required instruments and equipment are listed throughout the applicable airworthiness certification regulations and on the aircraft's Type Certificate Data. This proposed rule will not permit aircraft to be operated with inoperative instruments or equipment which are required by the aircraft's applicable airworthiness certification regulation, or if the instruments or equipment is required by Type Certificate Data. A Type Certificate Data is developed for all aircraft type designs, and contains a listing of an aircraft's required instruments and equipment that must be in an operative condition prior to conducting a flight.

Proposed § 91.30(d)(2)(ii) would prohibit the operation of an aircraft with inoperative instruments and equipment indicated as *required* on the aircraft's equipment list or on the "kinds of operations" equipment list for the kind of flight operation being conducted. The applicable airworthiness certification regulations (e.g., §§ 23.1525, 23.1583, etc.) require each aircraft manufacturer, prior to an aircraft being certificated, to establish a "kinds of operation" limitation "by the category in which it is eligible for certification and by the installed equipment." In accordance with § 23.1525, the aircraft manufacturers are required to develop an equipment listing that specifies what instruments and equipment are required for all kinds of flight operations (noted as "R" on the equipment listing) and what instruments and equipment are optional (noted as an "O" on the equipment listing). Normally, these equipment listings are located in the Limitations, Normal Operating Procedures, or Weight and Balance sections of the Aircraft Flight Manual/ Pilot Operators Manual. Section 23.1583(h) states that prior to an aircraft being certificated, the aircraft manufacturer must establish an equipment listing for "the kinds of operation (such as VFR, IFR, day, or night) in which the airplane may or may not be used, must be furnished. Any installed equipment that affects any operating limitation must be listed and identified as to operational function." Similar requirements are also established in the other airworthiness certification regulations.

Proposed § 91.30(d)(2)(iii) would prohibit the operation of an aircraft with inoperative instruments and equipment of the kinds listed in § 91.33, or any other Part 91 rule (i.e., §§ 91.24, 91.90, etc.), required for the specific flight operation being conducted. Pursuant to § 91.30(d), an aircraft could be operated with inoperative instruments and equipment of the kind identified in § 91.33 provided the instruments and equipment are not required for the kind of operation (i.e., VFR night, instrument flight rules (IFR), etc.) being conducted. After the inoperative instrument or item of equipment is found, the operator would be expected to consult § 91.33 for the operational requirements for that instrument or item of equipment.

Proposed § 91.30(d)(2)(iv) would prohibit the operation of an aircraft with inoperative instruments and equipment that are required to be operational by an airworthiness directive (AD). Any instrument or item of equipment required to be operational by an AD must be repaired or replaced prior to flight. As an example, AD 82–06–10 requires that Cessna 210 aircraft must have two operational vacuum pumps in order to operate the aircraft in IFR. In this example, one inoperative vacuum pump will ground the aircraft for IFR operations.

Proposed § 91.30(d)(3)(i) would permit the operator the option to remove the instrument or item of equipment from the aircraft, in lieu of deactivating and placarding it, as proposed in § 91.30(d)(3)(ii).

Proposed § 91.30(d)(3)(ii) would require that inoperative instruments or equipment be deactivated and the instrument or cockpit control of the item of equipment placarded to ensure that future users and maintenance personnel are aware of a discrepancy in the instrument or item of equipment. The operator, after ensuring that the inoperative instrument or item of equipment is not the kind identified in proposed paragraph (d)(2), would placard the instrument or cockpit control of the item of equipment, "Inoperative."

Proposed § 91.30(d)(4) would require an operator electing to operate an aircraft with inoperative instruments and equipment, in accordance with the provisions of proposed § 91.30(d), or a person authorized by § 43.3, to make a determination that the inoperative instrument or equipment does not constitute a hazard to the aircraft.

A statement is included at the end of § 91.30(d) to provide the regulatory

approval which permits aircraft to be operated with inoperative instruments or equipment under the provisions of this paragraph without the operator being required to obtain a Supplement Type Certificate. The FAA has determined that an aircraft with inoperable instruments or equipment as permitted under the provisions of this proposed rule, is considered to be in a "properly altered condition" acceptable to the Administrator.

Section 91.165 would be revised by rewording and rearranging the text and adding a new paragraph. The intent of this revision is to establish a time period in which the owner or operator of each aircraft would be required to have any inoperative instrument or item of equipment repaired, replaced, removed, or inspected, as appropriate. Also, this revision requires the owner or operator to be responsible for ensuring that maintenance personnel have made the appropriate entries in the aircraft's maintenance records and properly placarded the inoperative instruments and equipment.

Procedurally, the maintenance personnel, after completing the inspection of the aircraft, would be required to deactivate the inoperative instrument or equipment or remove it from the aircraft (if appropriate), and make a determination that the inoperative instrument or equipment will not affect the operation of any other installed instrument or equipment. Next, the maintenance personnel would place a placard on the instrument or the cockpit control of the item of equipment marking it "Inoperative" (except when already placarded). The maintenance personnel would then make an entry in the aircraft maintenance records in accordance with § 43.9, stating the preventive maintenance or maintenance procedure performed.

A new sentence would be added to § 43.11(b) to provide for an aircraft to be returned to service with inoperative instruments or items of equipment. The person approving the aircraft for return to service after any annual, 100-hour, progressive, or unscheduled inspection with inoperative instruments or equipment would be required to placard the inoperative instruments or equipment and include it in the list of discrepancies. Subsequent inspections would require a reevaluation of the conditions and an update of the entry in the aircraft records.

The combination of the provisions in proposed §§ 43.11(b), 91.30, and 91.165 would permit Part 91 operators of rotorcraft and nonturbine-powered airplanes to operate their aircraft with inoperative instruments and equipment under certain conditions without an approved MEL. These provisions are intended to extend and broaden the concept of conducting operations with inoperative instruments and equipment.

Regulatory Evaluation

Regulatory Evaluation Summary

The FAA conducted a regulatory evaluation for this supplemental notice which is included in the regulatory docket. The FAA determined that these proposed rules are consistent with the objective of Executive Order 12291 as part of the President's regulatory reform program to reduce regulatory burdens on the public.

Benefits

This notice supplements NPRM No. 81–14, which proposed to permit the operation of powered aircraft with certain inoperative instruments and equipment that are not essential for the safe operation of the aircraft. After further review of the comments from the public, the FAA concluded that provisions in that notice could be further modified to conform pertinent regulations to the demands of the aviation public. This supplemental notice proposes to permit rotorcraft and nonturbine-powered small airplanes that are operated in accordance with the general operating rules to be operated with certain inoperative instruments and equipment. Furthermore, this supplemental notice proposes to permit those general aviation operators of small multiengine rotorcraft and nonturbine-powered small multiengine airplanes (for which a master MEL has been developed) the option of selecting the minimum equipment list concept or complying with the provisions contained in the new proposed rules.

These proposed rules would provide relief to general aviation operators of rotorcraft and nonturbine-powered small airplanes from current rules that prohibit the operation of these aircraft with inoperative instruments or items of equipment. General aviation operators would be permitted to operate their aircraft with certain instruments and equipment inoperative when not needed for a particular kind of operation (e.g., night lighting equipment would not be required to be operable during day VFR operations) in accordance with § 91.33.

Costs

General aviation operators of rotorcraft and nonturbine-powered small airplanes who use §§ 91.30 and 91.33 as the basis for operating with inoperative instruments or items of equipment would incur negligible costs. These costs relate to having the maintenance person who is returning an aircraft to service after an annual, 100-hour, or progressive inspection make a determination and an entry in the aircraft maintenance records that the inoperative instrument or equipment does not affect the intended function of any other instrument or item of equipment, or otherwise affect the airworthiness of the aircraft, and placard the aircraft and the inoperative instrument or item of equipment. The time and labor cost to inspect the inoperative instrument or item of equipment, record the information in the aircraft maintenance records, placard the aircraft and the inoperative instruments or equipment during the inspection would be negligible, and this process already conforms to standard maintenance practices. Therefore, this requirement would impose negligible costs on these operators. These proposed rules impose no new requirements on general aviation operators of airplanes for which master MEL's have been developed. These operators would have the option of operating in accordance with the MEL concept or the provisions in the new proposed § 91.30(d).

In addition, this proposed rule would not result in increased costs for the Federal Government, because it should not create any additional paperwork. Operators of aircraft for which an MEL has not been developed would not be subject to any stricter requirements pertaining to operational instruments than the operators of aircraft with approved MEL's.

The proposed revision to § 91.30 would provide cost savings to some operators by reducing aircraft downtime and eliminating the cost to repair the inoperative instruments or equipment not needed for a particular kind of flight operation. Many general aviation operators have indicated to the FAA that they were not aware that an aircraft could be rendered unairworthy with inoperative instruments or items of equipment not needed for a particular kind of flight operation. Therefore, while the proposals are technically "relieving," they would not significantly reduce actual operating costs for such operators.

International Trade Impact Statement

These proposed rule changes will not affect international trade involving aviation products or services. Furthermore, no comments on Notice 81–14 concerning international trade were received. Therefore, the FAA certifies that these proposals, if adopted,

would not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the United States and would not eliminate existing or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of entities."

As noted in the evaluation, this proposed change to the airworthiness rules, while basically relieving in its sanctioning of operations with certain inoperative instruments or items of equipment, may impose some negligible costs on operators. This would be the result of having the aircraft and inoperative item inspected and placarded, and the information recorded in the maintenance manuals. This proposal would affect small private businesses, fixed-base operators, and small corporate operators and, overall, would be minimally beneficial. Thus, the change could not be construed to cause "significant economic impact on a substantial number of small entities," within the meaning of the RFA.

Therefore, it is certified that the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in §§ 43.11 and 91.30 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Numbers 2121–0020 and 2120–0522, respectively.

Conclusion

The overall effect of the proposed changes is expected to be minimally beneficial, because the proposed rules would relax current requirements pertaining to inoperative instruments and equipment, while imposing only negligible costs on these general aviation operators. These proposals will permit rotorcraft and nonturbine-powered airplanes (operated in accordance with Part 91) to be operated with certain instruments and equipment inoperative when they are not essential for the safe operation of the aircraft. As previously stated, there may be unnecessary maintenance and operational costs required by the current rules in Part 91. Operators of these kinds of aircraft will benefit from the relief that will be permitted if these proposals are adopted, and the additional costs, if any, are minimal. Accordingly, it has been determined that these proposals do not involve a rule change which is major under Executive Order 12291 or significant under Department of Transportation Policies and Procedures (44 FR 11034; February 26, 1979). Although numerous small operators may be impacted by these proposed rules, the impact, if any, would be minimal since the costs of operating pursuant to § 91.30 do not exceed the FAA's criteria for "significant economic impact." For the reasons stated above, and in accordance with the Regulatory Flexibility Act, I certify that these amendments will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 43

Air carriers, Air transportation, Aircraft, Aviation safety, Safety, Maintenance, Preventive maintenance.

14 CFR Part 91

Aviation safety, Safety, Aircraft, Pilots, Airworthiness directives, Flight rules general, Visual flight rules, Instrument flight rules.

The Proposed Amendment

Accordingly, the FAA proposes to amend Parts 43 and 91 of the Federal Aviation Regulations (14 CFR Parts 43 and 91) as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 43.11 by revising the section heading and paragraph (b) to read as follows:

§ 43.11 Content, form, and disposition of records for inspections conducted under Parts 91 and 125 and §§ 135.411(a)(1) and 135.419 of this chapter.

* * * * *

(b) *Listing of discrepancies and placards.* If the person performing any inspection required by Part 91 or 125 or § 135.41(a)(1) of this chapter finds that the aircraft is unairworthy or does not meet the applicable type certificate data, airworthiness directives, or other approved data upon which its airworthiness depends, that person must give the owner or lessee a signed and dated list of those discrepancies. For those items permitted to be inoperative under § 91.30(d)(2), there shall be a placard, that meets the aircraft's airworthiness certification regulations, placed on each inoperative instrument and the cockpit control of each item of inoperative equipment, marking it "Inoperative," and a signed and dated list of those discrepancies shall be given to the owner or lessee.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4. By amending § 91.30 by revising the section heading, the introductory text of paragraph (a), and paragraph (c); by redesignating paragraph (d) as (e); and by adding a new paragraph (d) to read as follows:

§ 91.30 Inoperative instruments and equipment.

(a) Except as provided in paragraphs (c) and (d) of this section, no person may operate an aircraft with inoperative instruments or equipment installed unless the following conditions are met:

* * * * *

(c) A person authorized to use an approved Minimum Equipment List issued for a specific aircraft under Part 121, 125, or 135 of this chapter may use that Minimum Equipment List in connection with operations conducted with that aircraft under this part without additional approval requirements.

(d) Flight operations may be conducted under this part with inoperative instruments and equipment without an approved Minimum Equipment List provided—

(1) The flight operation is conducted in a rotorcraft or nonturbine-powered airplane (for which a Master Minimum Equipment List has not been developed), or in a small multiengine rotorcraft or nonturbine-powered small multiengine airplane (for which a Master Minimum Equipment List has been developed); and

(2) The inoperative instruments and equipment are not—

(i) Part of the VFR-day type certification instruments and equipment

prescribed in the applicable airworthiness regulations under which the aircraft was certificated, and are not otherwise required by the aircraft's Type Certificate Data;

(ii) Indicated as required on the aircraft's equipment list, or on the Kinds of Operations Equipment List for the kind of flight operation being conducted;

(iii) Required by § 91.33 or any other rule of this part for the specific kind of flight operation being conducted; or

(iv) Required to be operational by an airworthiness directive; and

(3) The inoperative instruments and equipment are—

(i) Removed from the aircraft and, if appropriate, the cockpit control placarded, and the maintenance recorded in accordance with § 43.9 of this chapter by a person authorized in § 43.3 of this chapter; or

(ii) Deactivated and placarded "Inoperative" in accordance with § 43.11 of this chapter. If deactivation of the inoperative instrument or equipment involves preventive maintenance or maintenance, it must be accomplished by a person authorized by § 43.3 of this chapter, and recorded in accordance with § 43.9 of this chapter; and

(4) A determination is made by the operator or a person authorized by § 43.3 that the inoperative instrument or equipment does not constitute a hazard to the aircraft.

An aircraft with inoperative instruments or equipment as provided in paragraph (d) of this section is considered to be in a properly altered condition acceptable to the Administrator.

* * * * *

5. By revising § 91.165 to read as follows:

§ 91.165 Maintenance required.

Each owner or operator of an aircraft—

(a) Shall have that aircraft inspected as prescribed in Subpart C of this part and shall between required inspections, except as provided in paragraph (b) of this section, have any discrepancies repaired as prescribed in Part 43 of this chapter;

(b) Shall have any inoperative instrument or item of equipment, permitted to be inoperative by § 91.30(d)(2) of this part, repaired, replaced, removed, or inspected at the next required inspection;

(c) Shall ensure that a person authorized by § 43.3 makes the appropriate entries in the aircraft maintenance records stating that the aircraft has been approved for return to service; and

(d) When listed discrepancies include inoperative instruments or equipment, shall ensure that a placard has been installed as required by § 43.11 of this chapter.

Issued in Washington, DC, December 9, 1987.

William T. Brennan,

Acting Director of Flight Standards.

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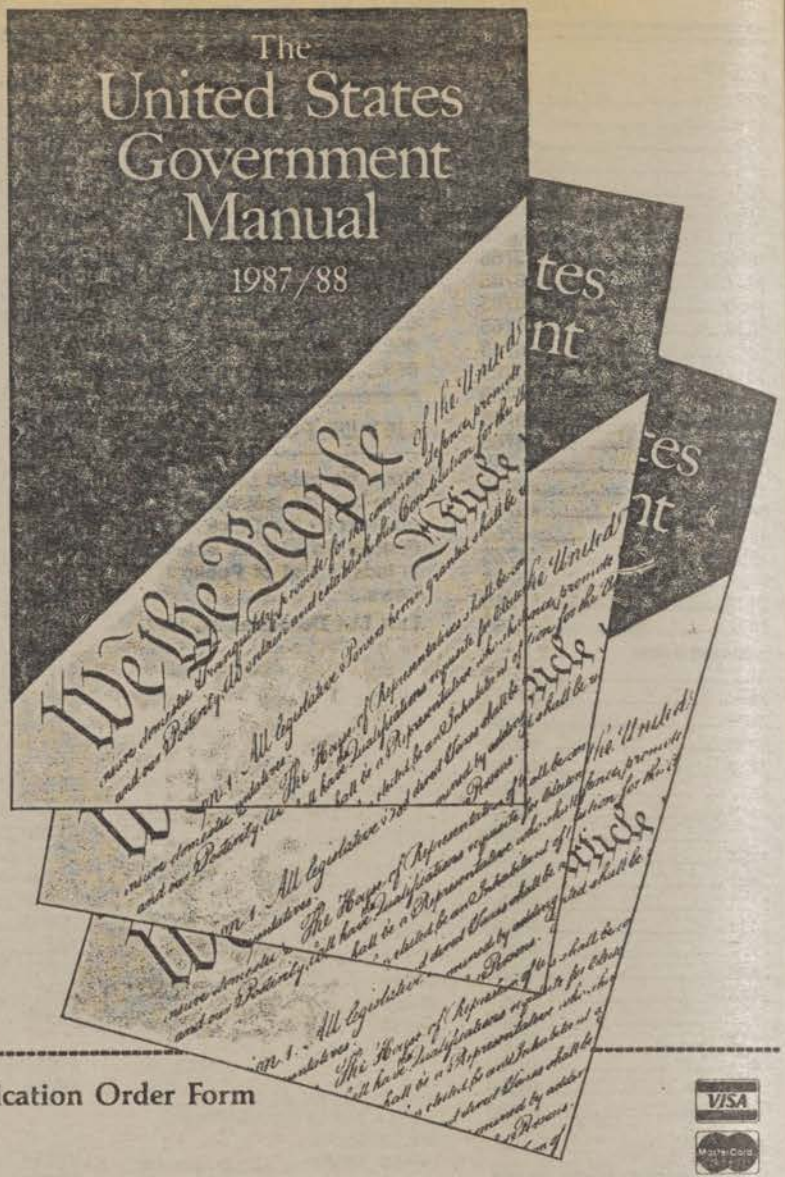

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