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Thursday
January 21, 1988

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

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88–6 of January 19, 1988

Assistance to the Nicaraguan Democratic Resistance

In accordance with Section 111(b)(2)(A) of the Joint Resolution making further continuing appropriations for the fiscal year 1988 and for other purposes (Public Law 100–202), I hereby determine and certify that:

(a) at the time of this certification no cease-fire is in place that was agreed to by the Government of Nicaragua and the Nicaraguan democratic resistance;

(b) the failure to achieve such a cease-fire results from the lack of good faith efforts by the Government of Nicaragua to achieve such a cease-fire; and

(c) the Nicaraguan democratic resistance has engaged in good faith efforts to achieve such a cease-fire.

This determination and certification shall be transmitted to the Speaker of the House of Representatives and the President of the Senate and shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, January 19, 1988.

[FR Doc. 88–1351
Filed 1–20–88; 10:31 am]
Billing code 3195–01–M

Editorial note: For a White House announcement and the text of letters addressed to the Speaker of the House of Representatives and the President of the Senate, both dated Jan. 19, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 3).

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt. No. 268]

Food Stamp Program; Quality Control Arbitration Timeframes

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On March 21, 1986 (51 FR 9821) the Department of Agriculture published proposed regulations to amend the Food Stamp Program's administrative review process. This is the process through which administering State agencies can seek a reconsideration of claims filed against them by the Food and Nutrition Service (FNS). The proposed rule also contained amended arbitration procedures for State agencies to dispute quality control (QC) case findings, including timeframes for requesting and conducting arbitration.

The rule finalizes the timeframes for requesting and conducting QC arbitration. The Department is still considering the other proposals based on the comments received.

EFFECTIVE DATE: This action is effective February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Joseph H. Pinto, Supervisor, Certification Policy and QC Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, or by telephone at (703) 756–3471.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as nonmajor. The annual effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. *10.551*. For the reasons set forth in the Final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. Some requirements will be placed on State agencies. However, the requirements will not have a significant economic impact on local governments.

This rule does not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Action of 1980 (44 U.S.C. 3507).

Background

On March 21, 1986, the Department proposed regulations to modify the arbitration process to (1) require State agencies to submit arbitration requests within 28 calendar days and (2) require the FNS regional arbitrator to make a decision or notify the State agency of the status of the case within 30 days. The Department received 43 comments on the timeframes. Nine commenters opposed the establishment of timeframes. The Department considered these comments but decided not to adopt them because an open-ended arbitration system does not allow for timely establishment of statutorily mandated quality control claims. The other 34 commenters supported the concept of timeframes. Twenty-eight of the commenters, however, requested modifications or changes to the timeframe provisions as proposed.

State Agency 28-Day Timeframes

Twelve commenters requested that the 28 day count begin with the date of receipt of the FNS regional findings, rather than date of transmittal. In the final rule, the Department has adopted this recommendation. The 28-day count for requesting FNS regional arbitration will begin with the date of receipt of the FNS regional office case findings by the State agency. Eight commenters requested different timeframes to submit a request, ranging from 30 days to as long as 120 days. The Department considered these comments but decided to retain the 28 days. The Department believes that 28 days is sufficient. Also, 28 days is consistent with the current Aid to Families with Dependent Children program practices.

Six commenters requested that waivers of the timeframes be allowed for extenuating circumstances. The Department considered this recommendation but decided not to adopt it. The Department considers 28 days to be sufficient for a State agency to prepare its request and submit it since the State agency has already completed its review of the household's circumstances before the Federal review is conducted. The State agency, in preparing its case for arbitration, is simply ensuring that all its verification, documentation, and the supporting material for its findings are included in its submittal for arbitration.

Eight commenters addressed the issue of submittal of full documentation. Four commenters wanted to submit the request for arbitration within 28 days but have additional time to submit the documentation. One commenter wanted the provision requiring full documentation to be deleted. One commenter requested clarification of the phrase "full documentation". Two commenters recommended that States be given 5 to 15 days to respond to requests from the arbitrator for additional information. Full

documentation includes, but is not limited to, the FNS–380 worksheet, verification and documentation of the household's circumstances, applicable policy and waivers and any other material the State considers applicable to support its case findings. As we discussed earlier, the Department believes that 28 days is sufficient to allow a State to prepare its case and submit it. Therefore, the recommendation to allow additional time to submit the documentation was not adopted. However, the Department is allowing States to submit additional information after it has submitted its request, provided it can do so within the 28 day timeframe. The Department has deleted the provision that the arbitrator shall return a request without full documentation. However, there may be instances when the arbitrator will require additional information to clarify an issue(s), and the Department has decided to adopt the recommendation to allow a State additional time beyond the 28 day timeframe to respond to a request for additional information from the arbitrator. This final rule allows a State agency 15 days from receipt of the arbitrator's request to submit the additional information that the arbitrator requested. Only information pertinent to the arbitrator's request will be accepted for review.

The final rule also establishes a 28-day timeframe for the State agency to request FNS national office arbitration on regional arbitration decisions with which the State agency disagrees. The 28 days begins with receipt of the FNS regional arbitrator's decision by the State agency. This timeframe is consistent with the timeframe for requesting FNS regional office arbitration. The provisions regarding the requirement to submit the request with full documentation and the limitation of the arbitrator's review to only the additional information submitted after the 28 day timeframe that the arbitrator requested also apply to requests for national office arbitration.

Currently, States are required to submit arbitration requests to the national office through the FNS regional offices. This requirement was established in FNS Handbook 315, The Federal Quality Control Validation Review Handbook, issued in December 1985. The policy was established to ensure consistency and to facilitate receipt by the national office of both the State agency and the regional office's cases. However, it has occasionally resulted in significant delays in national office receipt of requests and in State's receipt of decisions. To prevent such delays in the future and to expedite the process, this final rule requires State agencies to submit requests for national arbitration directly to the national office. The national office arbitration decision will be sent directly to the State agency.

FNS 30-Day Timeframe

The proposed rule provided that the FNS regional arbitrator would have 30 days to review a case and make a decision or to notify the State agency of the status of the case. Ten comments were received addressing this proposal. Four commenters believed that the State agency request and the FNS arbitration timeframe should be the same. Two commenters believed that the 30 day timeframe should be mandatory, with no provision for an extension. Two commenters recommended that the States be permitted extensions if the arbitrator was permitted extensions. One commenter recommended an alternate timeframe for both requesting arbitration and for the arbitrator to decide the case. One commenter recommended that the 30 day timeframe for the arbitrator begin with receipt of additional requested information. Another commenter recommended that the arbitrator's timeframe be suspended from the time of a request for additional information until the information is received. In the final rule, the Department has maintained the requirement for the FNS regional arbitrator to review a case and make a decision or notify the State agency of the status of the case within 30 days of receipt of the State's request. For the reasons discussed above, the Department has not extended the State's timeframe to match the arbitrator's timeframe. The Department did not reduce the arbitrator's timeframe or eliminate the notice of status provision because the FNS arbitrators have to review arbitration requests from several States. The Department has added a provision to the final rule that suspends the FNS regional arbitrator's timeframe during the period the arbitrator is waiting for additional information requested from the State agency.

Implementation

State agencies shall implement the provisions of this rule for requesting regional office arbitration on February 22, 1988, for all case findings received by the State agency on or after February 22, 1988. The State agency shall implement the provisions of this rule for requesting national office arbitration on February 22, 1988, for all regional arbitration decisions received on or after February 22, 1988. The Department will be proposing timeframes in a separate regulation for cases on which the findings were received prior to the effective date of this rulemaking.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 272 and 275 are amended as follows:

PARTS 272 AND 275—[AMENDED]

1. The authority citation for Parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. In § 272.1, a new paragraph (g)(95) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(95) *Amendment No. 268.* The QC arbitration provisions shall be implemented by State agencies on February 22, 1988, for all cases for which the regional case findings or the regional arbitrator's decision are received on or after February 22, 1988.

3. Section 275.3 is amended by revising paragraph (c)(4) to read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * *

(4) *Arbitration.* Whenever the State agency disagrees with the FNS regional office concerning individual QC case findings and the appropriateness of actions taken to dispose of an individual case, the State agency may request that the dispute be arbitrated on a case-by-case basis. There are two levels of FNS arbitration.

(i) *Regional level.* The first level of arbitration is the FNS regional office. The regional arbitrator shall be an individual who is not directly involved in the validation effort.

(A) The State agency shall request regional office arbitration within 28

calendar days of the date of receipt by the State agency of the regional office case findings. In the event the last day of this time period falls on a Saturday, Sunday, or Federal or State holiday, the period runs to the end of the next work day.

(B) Full documentation of the case and the policy(s) in question should be submitted with the request for arbitration. However, the State agency may submit additional documentation, provided it can do so within the 28 days allowed in § 275.3(c)(4)(i)(A). Further, the State agency has 15 days from the date of receipt of a request to submit any additional information requested by the arbitrator. The regional arbitrator shall only consider information submitted after the 28-day timeframe has ended if it is submitted in response to the arbitrator's request and it is received within the 15-day timeframe.

(C) The regional arbitrator shall have 30 days to review the case and make a decision or to notify the State agency of the status of the case. If the arbitrator requests additional information from the State agency, this 30-day timeframe shall be suspended from the date the arbitrator requests the additional information until the information is received or the State's time period for submittal in § 275.3(c)(4)(i)(B) has expired.

(ii) *National level.* The second level of arbitration is the FNS national office. The Deputy Administrator for Family Nutrition Programs shall designate the national arbitrator.

(A) The State agency shall request national office arbitration within 28 calendar days of the date of receipt by the State agency of the regional arbitrator's decision. In the event the last day of this time period falls on a Saturday, Sunday, or Federal or State holiday, the period runs to the end of the next work day.

(B) The state agency shall submit the case directly to the national arbitrator. Full documentation of the case and the policy(s) in question should be submitted with the request for arbitration. However, the State agency may submit additional documentation, provided it can do so within the 28 days allowed in § 275.3(c)(4)(ii)(A). Further, the State agency has 15 days from the date of receipt of a request to submit any additional information requested by the arbitrator. The national arbitrator shall only consider information submitted after the 28 day timeframe has ended if it is submitted in response to the arbitrator's request and it is received within the 15-day timeframe.

* * * * *

Suzanne S. Harris,

Deputy Assistant Secretary for Food and Consumer Services.

Dated: January 15, 1988.

[FR Doc. 88-1161 Filed 1-20-88; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

7 CFR Part 614

Revisions in the Conservation Operations Reconsideration and Appeal Procedures

AGENCY: Soil Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the provisions for final determinations in administrative appeals to the Chief of the Soil Conservation Service to include a designated officer. The designated officer is needed to ensure that the same individual who has been involved with the rule development can act on all appeals, especially in the absence of the Chief. This should provide for more uniform treatment on all appeals than if various people acting for the Chief made the final appeal decisions.

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Sherman L. Lewis, Director, Conservation Planning Division, Soil Conservation Service, United States Department of Agriculture, P.O. Box 2890, Washington, DC 20013, (202) 382-1845.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment thereon are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.**

Since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. This action is not a rule as defined by the Regulatory Flexibility Act, Pub. L. 97-354, and thus is exempt from the provisions of that Act. This final rule amends the provisions for the final determination in administrative appeals related to decisions made by officials of the Soil Conservation Service pursuant to Title XII of the Food Security Act of 1985, Pub. L. 99-198, 16 U.S.C. 3801 *et seq.* The amendment provides for the use of a designated Soil Conservation Service official for final agency determinations, in lieu of a decision by the Chief of the Soil Conservation Service.

List of Subjects in 7 CFR Part 614

Administrative practice and procedures, Determinations, Reconsiderations, Appeals, Hearings, Soil conservation, Wetland conservation.

Accordingly, 7 CFR Part 614 is amended as follows:

PART 614—RECONSIDERATION AND APPEAL PROCEDURES

1. The authority citation for Part 614 is revised to read as follows:

Authority: 16 U.S.C. 3843(a).

§ 614.2 [Amended]

2. The definition of "Chief" in the second paragraph of § 614.2 is revised to read as follows:

"Chief" means the Chief, Soil Conservation Service (SCS), whose authorities and duties as the highest official in the agency are set forth in § 600.2 of this chapter. For the purposes of this part, the term "Chief" includes an official of the SCS national headquarters designated by the Chief to act for the Chief in making determinations under this part.

3. Section 614.5 is amended by revising paragraph (e) to read as follows:

§ 614.5 [Amended]

* * * * *

(e) Determinations by the Chief, or an official designated by the Chief, are the final decisions of the Department of Agriculture from which there is no further administrative review.

Wilson Scaling,

Chief.

[FR Doc. 88-1068 Filed 1-20-88; 8:45 am]

BILLING CODE 3410-16-M

Agricultural Stabilization and Conservation Service

7 CFR Part 724

Tobacco Allotment and Marketing Quota Regulations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt, as a final rule, a proposed rule which was published in the **Federal Register** on July 20, 1987, (52 FR 27203). The rule amends the regulations at 7 CFR Part 724 to redefine the term "false

identification" to include the use of a tobacco marketing card to market a kind of tobacco other than the kind of tobacco for which the marketing card had been issued when two or more kinds of tobacco are produced on the same farm.

EFFECTIVE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Donald M. Blythe, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447–4281.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major". It has been determined that this rule will not 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 governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

A proposed rule was published in the **Federal Register** on July 20, 1987 (52 FR 27203) which redefines the term "false identification" of tobacco for the purpose of determining marketing quota penalties. The proposed rule provided that false identification of tobacco occurs when a marketing card issued to market a kind of tobacco is used to market another kind of tobacco even though both kinds of tobacco are produced on the same farm. The proposed rule made other minor corrections in the regulations set forth at 7 CFR Part 724. However, none of these changes are considered substantive but are being made only for purposes of accuracy and clarity.

No comments were received in response to the proposed rule. Therefore, it has been determined that the provisions of the proposed rule be adopted as a final rule.

List of Subjects in 7 CFR Part 724

Acreage allotments Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Final Rule

Accordingly, the proposed rule is adopted as a final rule without change. 7 CFR Part 724 is amended as set forth below:

PART 724—[AMENDED]

1. The authority citation for Part 724 continues to read as follows:

Authority: Secs. 301, 313, 314, 316, 318, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 81 Stat. 120, as amended, 52 Stat. 63, as amended, 65, as amended, 66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended; 7 U.S.C. 1301, 1313, 1314, 1314b, 1363, 1372–1377, 1378, unless otherwise noted.

2. Section 724.51 is amended by adding paragraph (j)(4) to read:

§ 724.51 Definitions.

* * * * *

(j) * * *

(4) A tobacco marketing card issued to market a kind of tobacco is used to market another kind of tobacco produced on the same farm.

* * * * *

3. Section 724.91 is amended by revising paragraph (a)(1) to read:

§ 724.91 Producer penalties; false identification; failure to account; canceled allotments.

(a) *Penalties for false identification or failure to account.* (1) If any producer falsely identifies or fails to account for the disposition of any kind of tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number of acres harvested in the current year in excess of the farm acreage allotment for the kind of tobacco shall be deemed to have been marketed as excess tobacco from such farm.

* * * * *

Signed in Washington, DC on January 13, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–981 Filed 1–20–88; 8:45 am]

BILLING CODE 3410–05–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 140

Debt Collection

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is amending its Debt Collection Regulations to make them consistent with those published by the Office of Personnel Management (OPM). The amendments permit SBA to collect debts of employees of other Federal agencies via salary offset and make certain other technical corrections.

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Deputy General Counsel, (202)—653–6642.

SUPPLEMENTARY INFORMATION: SBA proposed these amendments to its debt collection regulation on October 16, 1987. 52 FR 38452. The Office of Personnel Management (OPM) recommended the addition of § 140.2(j) which defines "agency" for the purposes of this part and minor changes to the language in § 140.2(a). Both suggestions were adopted. No other comments were received.

1. Definitions

Former § 140.2(c) excluded intra-agency overpayments due to normal processing delays from the definition of "debt." A reference to these exclusions was at one time included in 5 CFR 550.1103 but was later deleted from the OPM Final Regulation. The exclusions are now deleted from § 140.2(c) for consistency.

SBA is adding a new paragraph (g) to § 140.2 to define "employee". The former SBA Regulations did not define employee, but appeared to be limited to employees of the Small Business Administration. The new definition includes any person whose salary is eligible for offset pursuant to 5 U.S.C. 5514.

Upon the suggestion of OPM, SBA is adding a defintion section for "agency."

2. Section 140.4, General

The term "SBA employee" is deleted in this section. In its place, "employee" is used unless further clarification is required. The word "SBA" or "Agency" is changed to "agency" or "paying agency" where required to permit collection by another agency of debts owed to SBA.

3. Payments Made To Employees at The Time of Separation or Thereafter

SBA is amending § 140.4(a)(4) to clarify which payments due a former employee are subject to salary offset, 5 U.S.C. 5514, and which should be collected under administrative offset, 31 U.S.C. 3716. Salary offset procedures will be used to offset a final salary check and lump sum payments at the end of employment only if regular salary checks were being offset during employment. Other post-employment payments, such as a civil service annuity, must be offset pursuant to administrative offset, even if salary offset was in effect prior to the employee's retirement or other separation.

Under this regulation the employee, or former employee, shall be given only one opportunity to challenge an offset. Salary offset is a subcategory of administrative offset. The procedural rights under this section, salary offset, are more extensive than those under § 140.5, administrative offset. Therefore, a former employee who had a hearing, or an opportunity for hearing prior to salary offset will not be given a § 140.5 administrative offset "review" upon separation.

4. Technical Correction

In paragraph (a)(4)(ii) of § 140.4, the term "retirement" is changed to "retired". "Retired pay" is a term of art which applies to certain members of the armed forces. The Comptroller General has ruled that such retired pay is subject to salary offset. "Retirement pay", on the other hand, is not a technical term and could be misunderstood to mean a civil service annuity which is not subject to salary offset but must be collected through administrative offset.

5. Interest, Penalties, Administrative Costs; Non-Waiver of Rights

SBA is amending § 140.4 by adding two new paragraphs (f) and (g) which permit SBA to assess interest, penalties and administrative costs against debtors. The new paragraphs make § 140.4 consistent with OPM Final Regulation, Pay Administration (General), 5 CFR 550.1104 (n) and (o).

The amendment also provides that an employee's involuntary payment by reason of debt collection efforts under these regulations must not be construed as a waiver of any rights which the employee may have.

6. Procedures When SBA Seeks to Collect a Debt

SBA is amending § 140.4(b) to clarify that this paragraph applies when SBA is attempting to collect debts owed by Federal employees to SBA.

A new paragraph (c) is added to explain how SBA will notify the debtor's paying agency of the debt. The procedures described are those required by OPM.

7. Deductions for the Account of Another Agency From the Salary of an SBA Employee

New paragraph (d) explains the procedures which another agency must follow when requesting SBA to deduct payments from the salary of an SBA employee.

For the purposes of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, SBA certifies that this rule will not be likely to have a significant economic impact on a substantial number of small entities, 5 U.S.C. 605(b), because employees are not considered small entities under the RFA.

Compliance With the Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

SBA certifies that this rule does not constitute a major rule for the purpose of Executive Order 12291, because the changes will not be likely to result in an annual effect on the economy of $100 million or more.

This proposed rule contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S. Chapter 35.

List of Subjects in 13 CFR Part 140

Credit, Practice and procedure, Small business.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), SBA proposes to amend Part 140, Title 13, Code of Federal Regulations, as follows:

PART 140—DEBT COLLECTION

1. The authority citation for Part 140 continues to read as follows:

Authority: Sec. 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

§ 140.2 [Amended]

2. In § 140.2 the last sentence of the introductory text of paragraph (c) and paragraphs (c) (1) and (2) are removed.

3. Section 140.2 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i) and adding a new paragraph (g) to read as follows:

* * * * *

(g) "Employee" for the purposes of § 140.2(f) and § 140.4 means a current civilian employee as defined in 5 U.S.C. 2105; an employee of the U.S. Postal Service or Postal Rate Commission; or a member of the Uniformed Services or Reserve of the Uniformed Services.

* * * * *

4. Section 140.2 is amended by adding a new paragraph (j) to read as follows:

* * * * *

(j) When used in this part, "Agency" has the meaning given at 5 CFR 550.1103.

5. Section 140.4, paragraph (a) is amended by revising the introductory text of paragraph (a); inserting a paragraph heading to paragraph (a)(4); removing paragraph (a)(4)(i); redesignating paragraph (a)(4) as (a)(4)(i), and revising it; and revising (a)(4)(ii), to read as follows:

§ 140.4 Salary offset.

(a) When SBA determines that an SBA or other Federal employee is indebted to the SBA for debts to which the SBA is entitled to be repaid at the time of the determination, the amount of indebtedness may be collected in monthly installments or at officially established pay intervals, by deduction from the current pay account of the individual.

* * * * *

(4) *Post employment payments.* (i) If an employee terminates employment after salary offset has been initiated, a deduction may be made from final salary payments, from payment for accrued annual leave, or from similar payments due the individual from the Federal government. Deductions against such final payments may exceed 15% of the total payment, up to the amount owed to the Federal government. If the employee terminates employment prior to the completion of salary offset procedures, deductions shall be made pursuant to 31 U.S.C. 3716.

(ii) Where SBA is collecting the indebtedness through deductions from biweekly or monthly retired pay, the Agency may not deduct more than 15 percent of disposable pay for any payment period, except that a greater percentage may be deducted upon the signed written consent of the individual involved.

* * * * *

6. Section 140.4, paragraph (b) is amended by revising the introductory text of paragraph (b)(1), and paragraphs (b)(1)(i), (b)(1)(iii), the introductory text of paragraph (b)(2), and paragraphs (b)(2)(ii) and (b)(2)(iii), (b)(3), (b)(4)(vi) and (b)(5) to read as follows:

* * * * *

(b) *Notice and Opportunity To Be Heard.* (1) Before initiating any proceedings under paragraph (a) of this section to collect any indebtedness of an

employee, SBA shall provide the employee with—

(i) A minimum of 30 days written notice, informing such individual: Of the nature and amount of the indebtedness determined to be due; the intention of the agency to initiate proceedings to collect the debt through deductions from pay;

* * * * *

(iii) An opportunity to enter into a written agreement acceptable to SBA to establish a schedule for the repayment of the debt; and

* * * * *

(2) If there is a statutory provision authorizing waiver, remission or forgiveness of the debt, SBA will give the employee—

* * * * *

(ii) Fifteen days from receipt of such notice in which to request consideration for waiver; and

(iii) A written response, if the employee timely requests a waiver. Such response shall answer the issues raised in the employee's request; state the agency's decision; and if the decision is not in the employee's favor, inform him or her whether there is a right to request a hearing before SBA's Office of Hearings and Appeals, that a hearing will be granted if the employee is entitled to one and timely files a request for a hearing, and that such hearing will be conducted prior to the initiation of deductions.

(3) Any alternative arrangement entered into pursuant to paragraph (b)(1)(iii) of this section shall be signed by both the employee and the SBA and be documented in the SBA's files.

(4) * * *

(vi) If the employee timely requests a waiver under § 140.4(b)(2), the time period in which to file a petition for a hearing is suspended. An employee must then file a petition for a hearing within 15 days after receiving a written response denying the request for a waiver.

(5) An employee loses his or her right to a hearing, and will have his or her disposable pay offset in accordance with the repayment schedule established if the employee fails to file a written petition for a hearing before the deadline established under § 140.4(b)(4).

7. Section 140.4 is amended by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) after the end of paragraph (b) as follows:

* * * * *

(c) Notice to paying agency. Upon completion of the procedures explained in paragraphs (a) and (b) of this section, SBA will provide the following to the paying agency:

(1) The Chief of SBA's Office of Portfolio Management shall certify, for SBA, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that these regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(2) If the collection must be made in installments, the SBA shall advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. SBA may, at its option, state the number and the commencing date of the installments. If SBA does not state such a date, the paying agency shall begin collection the next officially established pay period.

(3) SBA will forward the employee's written consent to the salary offset or signed statement acknowledging receipt of the required procedures. If SBA has not obtained such consent or statement, SBA will advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and give the dates the actions were taken.

(d) Deductions from pay of an SBA employee upon certification of another agency. SBA will make deductions from the pay of its employee upon receipt of a claim from another agency. The head of such agency, or a designee, shall provide the information required in paragraph (c) and certify that the claim satisfies the requirements of 5 U.S.C. 5514, the applicable regulations of the Office of Personnel Management, and the implementing regulations of the creditor agency.

8. The following new paragraphs (f) and (g) are added to § 140.4:

* * * * *

(f) Interest, penalties, and administrative costs. SBA is authorized to collect any assessment of interest, penalties, and administrative costs on debts being collected under this section. The assessment of these charges and the waiving of them must be made in accordance with 4 CFR 102.13.

(g) Non-waiver of rights by payments. An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

Dated: December 17, 1987.

James Abdnor,

Administrator.

[FR Doc. 88-1043 Filed 1-20-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-121-AD; Amdt. 39-5833]

Airworthiness Directives; Airbus Industrie Model A300 B2 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 B2 series airplanes, which requires inspection of the main landing gear (MLG) lower tie rods for cracks, and replacement, if necessary. This amendment is prompted by a report of cracks in the blending radius under the head of a lower tie rod. This condition, if not corrected, could lead to collapse of the main landing gear.

EFFECTIVE DATE: February 28, 1988.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. 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: Robert Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires periodic ultrasonic inspections of the main landing gear lower tie rods on Airbus Model A300 B2 series airplanes, and to replace defective lower tie rods before further flight, was published in the **Federal Register** on October 16, 1987 (52 FR 38457).

Interested parties have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the two comments received.

The first commenter, the Air Transport Association (ATA) of America, had no objections to the proposal.

The second commenter, Airbus Industrie, recommended the proposal be revised to include the requirement that, for airplanes which had accumulated over 10,000 landings, the initial inspection be accomplished within 250 landings. The intent of this suggestion was to include high-time airplanes that might be placed on the U.S. register in the future. The FAA does not concur. Since any Model A300 B2 airplane placed on the U.S register would have to meet the requirements of all applicable AD's, the FAA considers the suggested revision to be unnecessary.

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 following rule.

It is estimated that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $80.

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 the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A final evaluation has been prepared for this regulation and has been placed in the regulatory 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 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:

Airbus Industrie: Applies to Model A300 B2 series airplanes, as listed in Airbus Industrie (AI) Service Bulletin A300–32–369, dated December 12, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG), accomplish the following:

A. Prior to each lower tie rod accumulating 7,000 landings or within the next 500 landings, whichever occurs later, and thereafter at intervals not to exceed 1,500 landings, perform an ultrasonic inspection of the MLG lower tie rods, in accordance with AI Service Bulletin A300–32–369, dated December 12, 1986. Replace defective lower tie rods before further flight.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when aproved by the Manager, Standardization Branch, ANM–113, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Durat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 28, 1988.

Issued in Seattle, Washington, on January 11, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88–1059 Filed 1–20–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–108–AD; Amdt. 39–5832]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing AD's, applicable to certain Boeing Model 737 series airplanes, which currently require inspection for cracking of the forward service doorway aft frame, and repair, if necessary. This amendment combines the inspections required by both AD's and adds inspections of the frame support structure for the lower four door stop fittings. This amendment is prompted by several reports of cracks of the door stop support structure for the door stops on the aft frame. This condition, if not corrected, could result in the loss of pressurization.

EFFECTIVE DATE: February 28, 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 Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection of certain Boeing Model 737 airplanes for cracking, and repair or replacement, as necessary, of the aft frame and the frame support structure of the forward service doorway, was published in the **Federal Register** on September 28, 1987 (52 FR 36276).

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

The Air Transport Association (ATA) of America submitted comments on behalf of three operators. One operator proposed that paragraph C. be revised to include the word "repair." This would allow repaired structure to meet the criteria for terminating action. The FAA agrees and paragraph C. of the final rule has been revised to reflect this change.

Two operators requested that the final rule allow credit for prior inspections performed in accordance with revision 1 of Boeing Alert Service Bulletin 737–53A1108, dated March 12, 1987, and that the final rule allow for phase-in scheduling for airplanes previously inspected. Since the inspections described in Revision 2 of the service bulletin are the same as those in Revision 1, the FAA concurs with the

commenters, and has revised paragraph B. of the final rule to reflect Revision 1.

One operator proposed that a new paragraph be added to specifically address the airplanes that have had the internal inspections performed at stringers S8 and S10 in accordance with paragraph B. of AD 87-01-06. The commenter suggested that the new paragraph require the external visual inspections of paragraph A. of this amendment to be performed at intervals of 800 landings until the inspection required by paragraph B. is acomplished. The FAA does not concur. There are a total of six intercostals and associated stringers that require internal inspection under the provisions of this amendment. The FAA does not consider it appropriate to extend the inspection intervals required by paragraph A. from 250 landings to 800 landings based upon an internal inspection of only two of the six stringers (e.g., S8 and S10), since awareness of the condition of two stringers is not adequate to ensure the structural integrity of the six fittings.

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

It is estimated that 450 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. Operators is estimated to be $108,000.

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, positive or negative, on a substantial number of small entities, because few, if any, Model 737 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 superseding AD 87-01-06, Amendment 39-5509 (52 FR 517; January 7, 1987), and AD 87-10-03, Amendment 39-5621 (52 FR 17935; May 13, 1987), with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Alert Service Bulletin 737-53A1108, Revision 2, dated August 13, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the forward service door support structure, accomplish the following:

A. Prior to the accumulation of 25,000 landings or within the next 125 landings after the effective date of this AD, for airplanes that have not been inspected in accordance with AD's 87-01-06 or 87-10-03, or 250 landings since the last inspection, whichever occurs later, perform a close visual inspection for cracks around the six door stop fittings of the forward service doorway aft frame in accordance with Boeing Alert Bulletin 737-53A1108, Revision 1, dated March 12, 1987, or later FAA-approved revisions. Repeat the inspections at intervals not to exceed 250 landings until the inspection required by paragraph B., below, is accomplished.

If cracks are found, prior to further flight, perform a visual inspection for cracks in the intercostals and stringers, which support these door stops. Parts found cracked must be repaired prior to further flight in accordance with the aforementioned service bulletin.

B. Prior to the accumulation of 25,000 landings or within the next 4,500 landings after the effective date of this AD, whichever occurs later, perform an internal visual inspection for cracks in the intercostals and stringers, which support these door stops, in accordance with Boeing Alert Service Bulletin 737-53A1108, Revision 1, dated March 12, 1987, or later FAA-approved revisions. Repeat this inspection at intervals not to exceed 9,000 landings. Parts found cracked must be repaired before further flight, in accordance with the aforementioned service bulletin.

C. The repetitive inspections required by paragraph B., above, may be terminated after the intercostals and stringers have been reparied and/or modified in accordance with the terminating action specified in Paragraph III of the "Accomplishment Instructions" of Boeing Alert Bulletin 737-53A1108, Revision 1, dated March 12, 1987, or later FAA-approved revisions, or after incorporation of a modification approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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 Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 87-01-06, Amendment 39-5509; and AD 87-10-03, Amendment 39-5621.

This amendment becomes effective February 28, 1988.

Issued in Seattle, Washington, on January 11, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-1056 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-128-AD; Amdt. 39-5834]

Airworthiness Directives; Hamburger Flugzeugbau (HFB) Model 320 Hansa Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to HFB Model 320 Hansa series airplanes, which requires an inspection for corrosion, and replacement, as necessary, of the drive shafts and rotary selectors of the landing flaps and slats of both wings, as well as the bolts and drive shafts of the speed brakes and slats. This amendment is prompted by a report of corrosion found on the bolts on the inner area of the air brake flap drive shaft on an airplane which was being repaired. This condition, if not corrected, could lead to degradation of lateral control.

EFFECTIVE DATE: February 28, 1988.

ADDRESSES: The applicable service information may be obtained from Messerschmitt-Bolkow-Blohm GmbH, Postfach 95 01 09, D-2103 Hamburg 95, Federal Republic of Germany. 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 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires an inspection for corrosion, and replacement, as necessary, of the drive shafts and rotary selectors of the landing flaps and slats of both wings, as well as the bolts and drive shafts of the speed brakes and slats on HFB Model 320 Hansa series airplanes, was published in the **Federal Register** on October 16, 1987 (52 FR 38456).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

It is estimated that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 70 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $42,000.

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; of 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 impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($2,800). 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 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:

Hamburger Flugzeugbau: Applies to Model HFB-320-HANSA series airplanes, Serial Numbers 1021, 1023, 1026, 1030, 1033, 1035, 1040, 1045, and 1050-1057, certified in any category. Compliance required as indicated, unless previously accomplished:

To prevent asymmetric configuration which may cause degradation of lateral control, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect and replace, as necessary, the bolts, drive shafts, and rotary selectors for the wing flaps, slats, and speed brakes, in accordance with Messerschmitt-Bolkow-Blohm GmbH Service Bulletin 27-74, dated July 1, 1986.

B. An alternative 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, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Messerschmitt-Bolkow-Blohm GmbH, Postfach 95 01 09, D-2103 Hamburg 95, Federal Republic of Germany. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 28, 1988.

Issued in Seattle, Washington, on January 11, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-1058 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ANE-43; Amdt. 39-5830]

Airworthiness Directives; Marvel Schebler (Facet Aerospace Products Company) Carburetors, Model MA-3PA, Part Numbers A10-5220, A10-5257, and A10-5267, Manufactured After June 30, 1985, and Used on Textron Lycoming Model O-235-C1C, O-235-H2C, O-235-L2A, O-235-L2C, O-235-N2C, O-235-P1 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal of certain Model MA-3PA carburetors from Textron Lycoming Model O-235-C1C, O-235-H2C, O-235-L2A, O-235-L2C, O-235-N2C, and O-235-P1 engines. This AD has been found necessary since a number of MA-3PA carburetors were improperly manufactured. Inspection of the subject model carburetor revealed a reduced interference fit between the metering sleeve and fuel bowl. This AD is needed to prevent rotation of the metering sleeve and consequent reduction in fuel flow with resultant loss of engine power.

DATES: *Effective*—February 1, 1988.

Compliance Schedule—As prescribed in the body of the AD.

Comments for inclusion in the docket must be received on or before March 15, 1988.

ADDRESSES: Comments on the amendment may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87-ANE-43, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Rules Docket Number 87-ANE-43."

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The affected carburetors may be returned to Facet Aerospace Products Company, 1048 Industrial Park Road, Bristol, Virginia 24201, Attention: William Smith.

Facet Service Bulletin (SB) A1–87, dated October 1987, may be obtained from Facet Aerospace Products Company, 1048 Industrial Park Road, Bristol, Virginia 24201, Attention: Sales Department. A copy of the SB is contained in Rules Docket Number 87–ANE–43 in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Roy Hettenbach, Propulsion Branch, ANE–174, New York Aircraft Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION: Recent reports have indicated a potential product defect with the Marvel Schebler (hereinafter called "Facet") Model MA–3PA carburetor. The manufacturing discrepancy was discovered by Facet quality control personnel, and a product recall was initiated. During a routine test at the Textron Lycoming facility in Williamsport, Pennsylvania, carburetor malfunctioning was encountered. Disassembly inspection of this carburetor indicated the same manufacturing defect. This defect is an oversize hole in the fuel bowl that results in a reduced interference fit between the metering sleeve and the carburetor fuel bowl. This reduced fit will permit rotation of the metering sleeve and result in a reduction in fuel flow to the engine. The affected engine would experience roughness and loss of power which could require an emergency landing of the aircraft. This manufacturing discrepancy has been traced back to July 1, 1985. The number of defective carburetors is 119, limited to Facet Part Numbers A10–5220, A10–5257, and A10–5267 with the specific serial numbers as prescribed in the body of this AD. The Facet product recall has been unsuccessful in that all the owners of these specific carburetors could not be determined.

Since this condition is likely to exist or develop on other Textron Lycoming Model O–235–C1C, O–235–H2C, O–2354–L2A, O–235–L2C, O–235–N2C, and O–235–P1 engines incorporating these MA–3PA carburetors, and AD is being issued which requires a check of all MA–3PA carburetor nameplates to determine the serial number. If the carburetor serial number is one of the affected serial numbers, then the carburetor must be removed. If the carburetor is to be inspected and repaired, it must be returned to the factory for disassembly, testing to determine the metering sleeve retaining force, repair, and flow bench checking.

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

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address identified under the caption of **"ADDRESSES."**

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87–ANE–43." The postcard will be date/time stamped and returned to the commenter.

Conclusion

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

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Marvel Schebler (Facet Aerospace Products Company): Applies to Marvel Schebler (Facet) Model MA–3PA carburetors, Part Numbers A10–5220, A10–5257, and A10–5267 manufactured since June 30, 1985, and having serial numbers as listed herein:

Carburetors and Serial Number

Model: MA–3PA
DD–4–1583 through DD–4–1610,
P/N: A10–5220
DD–4–1613, DD–4–1614, DD–4–1617,
(Lycoming P/N: LW–16072)
DD–4–1619 through DD–4–1622,
Lycoming Engine Models: O–235–C1C,
DD–4–1624 through DD–4–1627,
O–235–L2A, and O–235–L2C
DD–4–1629, DD–4–1632, and DD–4–1633
Model: MA–3PA
DM–3–1818 through DM–3–1826,

P/N: A10-5257 (Lycoming P/N: LW-16677)
Lycoming Engine Models: 0-235-L2C and 0-235-H2C
DM-3-1828, and DM-3-1829
Model: MA-3PA
DT-3-1911 through DT-3-1913,
P/N: A10-5267 (Lycoming P/N: LW-16677)
DT-3-1916, DT-3-1917,
Lycoming Engine Models: 0-235-L2C, 0-235-N2C, and 0-235-P1
DT-3-1920, DT-3-1921, and DT-3-1923 through DT-3-1981

Compliance is required within the next 25 hours time in service or 30 days, whichever occurs first, after the effective date of this AD, for all applicable carburetors, unless already accomplished.

To prevent possible loss of engine power due to a loose metering sleeve, accomplish the following:

(a) Check all Textron Lycoming Model 0-235-C1C, 0-235-L2A, 0-235-L2C, 0-235-H2C, 0-235-N2C, and 0-235-P1 engines incorporating Marvel Schebler (Facet) Model MA-3PA carburetors, Part Numbers A10-5220, A10-5257, and A10-5267 manufactured since June 30, 1985, to determine the carburetor serial number. This serial number can be found on the carburetor nameplate located on the throttle body.

(b) If the serial number is one of those listed, remove the carburetor, tag it as unairworthy, and replace it with a serviceable one prior to further flight. If the serial number is not one of those listed above, no further corrective action is required.

(c) Make an engine logbook entry that this AD has been complied with.

Note (1): Facet Service Bulletin (SB) A1-87, dated October 1987, pertains to this subject and gives instructions for returning the affected carburetors directly to the factory for corrective action.

If being returned to the factory, the owner should package the carburetor to prevent enroute damage and ship directly to Facet Aerospace Products Company, 1048 Industrial Park Road, Bristol, Virginia 24201, USA, Attention: William Smith.

Note (2): To indicate carburetor corrective action has been taken, Facet will have stamped the lower portion of the carburetor nameplate with the number "87," in which case no further action is required.

Note (3): Persons authorized by FAR 43.3(g) may perform the check of paragraph (a) and engine logbook entry of paragraph (c) of this AD if the carburetor serial number is not one of those listed above.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(f) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, Valley Stream, New York, may adjust the compliance time specified in this AD.

This amendment becomes effective on February 1, 1988.

Issued in Burlington, Massachusetts, on January 8, 1988.

Timothy P. Forté,

Acting Director, New England Region.

[FR Doc. 88-1055 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-80-AD; 39-5831]

Airworthiness Directives; McDonnell Douglas Model DC-9, -10, and -30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, which currently requires eddy current inspections, and repair, if necessary, of the non-ventral aft pressure bulkheads. This amendment is prompted by reports of cracks found during an inspection of an aft pressure bulkhead on an airplane with a significantly lower number of accumulated landings than previously reported. This amendment revises the existing AD to require the initial inspection on airplanes with a lower number of accumulated landings than previously required. This action is necessary to detect fatigue cracks that could lead to possible structural failure and loss of cabin pressurization.

DATE: Effective February 28, 1988.

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

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires the inspections for cracks in the web of the aft pressure bulkhead, and replacement, as necessary, on certain McDonnell Douglas DC-9 series airplanes, was published in the **Federal Register** on July 21, 1987 (52 FR 27414). The comment period for the proposal closed September 10, 1987.

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

The two commenters requested that the proposed compliance period be increased from 2,500 landings after the effective date of AD to 3,300 or 4,000 landings. The commenters also advised that the requests are based upon the ability of operators to schedule inspections required by the AD, and to avoid schedule disruptions. The FAA does not agree with the commenters. The FAA has determined that the initial compliance threshold reflected in the rule is appropriate, based on the nature of the failure and the relatively low number of accumulated landings in the web of the aft pressure bulkhead that failed. Safety considerations necessitate that the initial compliance period remain as proposed.

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 following rule.

This AD will not increase the economic burden significantly for any operator, since neither the applicability, the time intervals between inspections, the number of manhours to accomplish the modification, nor the parts used to accomplish the inspection would be changed from that required by the existing AD.

For these reasons discussed above, the FAA has determined that this regulation is not considered 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 impact, positive or negative, on a substantial number of small entities because few, if any, Model DC-9 airplanes are operated by small entities. A final evaluation was prepared for this regulation and has been placed in the regulatory 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 revising paragraph A. of AD 84–07–04, Amendment 39–4838 (49 FR 13015; April 2, 1984), to read as follows:

A. Prior to the accumulation of 37,500 landings, or within the next 2,500 landings after the effective date of this AD, whichever occurs later, perform an initial eddy current inspection of the aft pressure bulkhead webs as shown on McDonnell Douglas Service Sketch 3483 of S/B 53–174, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

This Amendment becomes effective February 28, 1988.

Issued in Seattle, Washington, on January 11, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88–1060 Filed 1–20–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–ASO–13]

Designation of Transition Area, Jackson, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Jackson, Kentucky, transition area to accommodate instrument flight rule (IFR) operations at Julian Carroll Airport. This action lowers the base of controlled airspace from 1200′ to 700′ above the surface in the vicinity of the airport. An instrument approach procedure has been developed to serve the airport and the controlled airspace as required for IFR aeronautical activities.

EFFECTIVE DATE: 0901 UTC, February 23, 1988.

FOR FURTHER INFORMATION CONTACT: Earnest Joyce, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 27, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Jackson, Kentucky, transition area (52 FR 44138). This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Julian Carroll Airport. The operating status of the airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates the Jackson, Kentucky, transition area and lowers the base of controlled airspace in the vicinity of Julian Carroll Airport from 1200′ to 700′ above the surface.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

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—[AMENDED]

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

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

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Jackson, Kentucky (New)

That airspace extending upward from 700′ above the surface within a 6.5 mile radius of the Julian Carroll Airport Lat. 37°35′19″N., Long. 83°19′03″W. Within 2.5 miles either side of the 348° radial from Hazard VOR Lat. 30°23′23″N, Long. 83°15′59″W., extending from the 6.5 mile radius to 7.5 miles south of the airport.

Issued in East Point, Georgia, on December 29, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–4910–13 Filed 1–20–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 372 and 374

[Docket No. 71160–7260]

Clarification of Emergency License Procedure

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations are amended to clarify the procedures for submitting emergency license applications, reexport authorization requests, and amendment requests for prompt handling to the Office of Export Licensing. This rule provides instructions and information regarding the submission of applications by private courier service, and through the U.S. Postal Express Mail Service. Current provisions in the Regulations authorizing emergency amendment requests by telephone and through Commerce District Offices are removed.

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Export Administration, U.S. Department

of Commerce, Washington, DC 20230 (Telephone (202) 377–3856).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These collections have been approved by the Office of Management and Budget under control numbers 0065–0001, 0625–0003, and 0625–0009.

List of Subjects in 15 CFR Parts 372 and 374

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 372 and 374 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 372—[AMENDED]

1. The authority citation for 15 CFR Part 372 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 374—[AMENDED]

2. The authority citation for 15 CFR Part 374 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*) and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

3. Section 372.4 is amended by revising paragraphs (h)(1) and (h)(3) and adding a new paragraph (h)(6) to read as follows:

§ 372.4 How to apply for a validated license.

* * * * *

(h) *Emergency clearance.* (1) When an exporter believes that an emergency situation necessitates expedited processing of an application, he should contact the Exporter Assistance Staff of the Office of Export Licensing (Telephone: 202–377–4811; telex: 892536; telefax: 202–377–3322). An "emergency" is defined as an unforeseeable situation over which the exporter has no control. Since a signed application must be submitted to the Office of Export Licensing before any action can be taken, the exporter should use one of the following emergency procedures for submitting the application form to OEL:

(i) Hand-carry the application directly to—

Processing Unit, Office of Export Licensing, Room 2705, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

The best way to ensure prompt delivery, other than by company personnel hand carrying, is to use those private courier services that guarantee overnight delivery. Delivery must be made to the Processing Unit within the Office of Export Licensing. C.O.D. submissions will not be accepted. "Attention: Exporter Assistance Staff—Emergency Clearance Required" should be marked on the envelope. The Exporter Assistance Staff will review daily the applications for which emergency processing is requested and determine whether such processing is justified.

(ii) Submit by U.S. Postal Express Mail Service to—

Processing Unit, Room 2705, Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

with "Attention: Exporter Assistance Staff—Emergency Clearance Required" marked on the envelope. Express service guarantees next day delivery to the designated mail drop before close of business on that day.

(iii) Submit reexport and amendment requests according to procedures outlined in paragraphs (h)(1) (i) and (ii) of this section.

(iv) Submit applications for short supply commodities according to the procedure outlined in § 377.1(c)(3).

* * * * *

(3) The Exporter Assistance Staff will evaluate the exporter's application and determine whether emergency handling is warranted. Applicants should therefore include in a covering letter headed "Emergency Handling Request" the justification for the request supported, where appropriate, by copies of orders, communications, letters of credit, or other documentation to show that a valid emergency exists. In certain cases, the exporter may be *required* to submit copies of orders, communications, letters of credit, or other documentation to show that a valid emergency exists. The letter should also include a statement that the exporter understands that a license issued under the emergency procedure is valid only until the end of the month following the month in which it is issued and may not be extended. Frequent emergency requests will be given particularly close scrutiny, since the Office of Export Licensing will not permit this emergency procedure to become a substitute for timely filing of license applications by exporters. Exporters who follow the emergency procedure will be informed by the Exporter Assistance Staff if their application does not warrant emergency handling. Otherwise, applicants can assume that their request for emergency handling has been granted.

* * * * *

(6) Emergency license procedures described in paragraph (h) of this section are not applicable to special licenses. Due to the comprehensive nature of Distribution, Project, or Service Supply Licenses or licenses issued under the Aircraft and Vessel Repair Station procedure, requests for

emergency handling of those licenses will be denied. Any request for expedited treatment of Humanitarian or GTE Licenses should be directed to the Special Licensing Division of the Office of Export Licensing (telephone: 377–4196; telex: 892536; telefax: 377–4096).

4. Paragraph (h)(5) of § 372.11 is revised to read as follows:

§ 372.11 Amending export licenses.

(h) * * *

(5) *Emergency requests and clearances.* Under emergency conditions, an amendment request may be made by submitting the completed Form ITA–685P in accordance with the instructions in § 372.4(h). The Exporter Assistance Staff will advise exporters who follow this procedure if the amendment is *not* receiving emergency handling. Otherwise, the applicants can assume that their request for emergency handling has been granted.

* * * * *

5. Section 374.3 is amended by adding a paragraph (b)(4) to read as follows:

§ 374.3 How to request reexport authorization.

* * * * *

(b) * * *

(4) *Emergency request and clearances.* Under emergency conditions, a reexport authorization request may be made by submitting either the completed Form ITA–699P or a Reexport Request letter. For exporters who follow these emergency procedures, the Exporter Assistance Staff will advise the applicants if their reexport authorization request does not warrant emergency handling. Otherwise, the applicants can assume that their request for emergency handling has been granted.

* * * * *

Dated: January 14, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–1164 Filed 1–20–88; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 399

[Docket No. 71161–7261]

Validated License Controls on Controllable-Pitch Propellers and Hub Assemblies

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which specfies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain controllable-pitch propellers and hub assemblies described in paragraph (e)(2) of the "List of Equipment Controlled by ECCN 1416A" in ECCN 1416A on the CCL (Supplement No. 1 to § 399.1). This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Controllable-pitch propellers and hub assemblies rated at 40,000 hp capacity and below no longer require a validated license for export except to Country Groups S and Z; such propellers and hub assemblies are now controlled under ECCS 6399G on the CCL.

Notice of the foreign availability determination on this equipment was published on September 11, 1987 (52 FR 34976). Regulations that eliminated the validated license requirements for exports and reexports of this equipment to free world destinations were published on September 22, 1987 (52 FR 35538).

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Donald J. Brychczynski, Office of Foreign Availability, Department of Commerce, Telephone: (202) 377–3564.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final regulatory flexibility analysis has to be or will be prepared.

4. This rule involves a collection of information that is subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 et seq.); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 et seq.); and E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1416A is amended by revising the *"Validated License Required"* paragraph and paragraph (e)(2) under the "List of Equipment Controlled by ECCN 1416A" to read as follows:

1416A Vessels, surface-effect vehicles, water-screw propellers and hub assemblies, water-screw propeller systems, moisture and particulate separator systems and specially designed components.

* * * * *

Validated License Required: Country Groups QSTVWYZ.

* * * * *

(e) * * *

(2) Controllable-pitch propellers and hub assemblies rated at greater than 40,000 hp;

* * * * *

Dated: January 15, 1988.

Dan Hoydysh,

Director, Office of Technology and Policy Analysis.

[FR Doc. 88-1167 Filed 1-20-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HSQ-137-F]

Medicare Program; End Stage Renal Disease Program; Responsibilities of Network Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises final regulations published on August 26, 1986 (51 FR 30356) pertaining to the End Stage Renal Disease (ESRD) networks and organizations to reflect certain provisions of the ESRD program amendments contained in sections 9335 (d) through (h) of the Omnibus Budget Reconciliation Act of 1986. These regulations revise the responsibilities of network organizations.

DATE: These final regulations will be effective on February 22, 1988, except 42 CFR 405.2112 (f) and (j), which must be approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. When approval is obtained, a notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Spencer Colburn, (301) 594-3413.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Amendments of 1972 (Pub. L. 92-603) extended Medicare coverage to individuals with end stage renal disease (ESRD) who require dialysis or transplantation. At that time, the broad array of professionals and facilities involved in the treatment of persons with ESRD indicated the need for a system to promote effective coordination. We believed that the integration of hospitals and other health facilities into organized networks was the most effective way to assure the delivery of needed ESRD care. Therefore, on July 1, 1975, we established ESRD networks through final regulations published on June 3, 1976 (41 FR 22502).

Subsequently, the End-Stage Renal Disease Amendments of 1978 (Pub. L. 95-292) amended title XVIII of the Social Security Act (the Act) by adding section 1881. Section 1881(c) of the Act statutorily authorizes the establishment of ESRD network areas and network organizations, consistent with criteria the Secretary finds appropriate to assure the effective and efficient administration of ESRD program benefits. The amendments made to section 1881(c) of the Act did not include all of the provisions related to networks which had been included in the final regulations published on June 3, 1976 (41 FR 22502). The regulations were more prescriptive than the statute.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99-272) was enacted. Section 9214 of Pub. L. 99-272 requires the Secretary to maintain renal disease network organizations as authorized under section 1881(c) of the Act and not merge the network organizations into other organizations or entities. The statute permits the Secretary to consolidate network organizations, but only if such consolidation does not result in fewer than 14 such organizations being permitted to exist.

Consistent with section 9214 of Pub. L. 99-272, we published a notice of proposed rulemaking on April 15, 1986 (51 FR 12714), and final regulations on August 26, 1986 (51 FR 30356). These regulations permit the Secretary to redesignate and reorganize the existing 32 ESRD networks administratively. At the same time we published the final rule, we also published a final notice (51 FR 30434) that provided for 14 networks and set forth the geographic areas of the new network organizations (area designations) under the ESRD program.

For more detailed explanations of each of the above **Federal Register** documents, refer to the preambles to those documents.

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Pub. L. 99-509) was enacted. Sections 9335 (d) through (h) of Pub. L. 99-509 amend, in several ways, section 1881(c) of the Act. The specific provisions that will be implemented by these regulations require ESRD network organizations to—

- Establish a network council of renal dialysis and transplant facilities located in each area and a medical review board (section 9335(d)(1)) with at least one patient representative as a member of each network council and each medical review board (section 9335(e));
- Encourage participation in vocational rehabilitation programs and develop criteria and standards relating to such encouragement (section 9335 (f) (1), (2), and (4); and (h));
- Report to the Secretary on facilities and provides that are not providing appropriate medical care (section 9335(f)(3));
- Implement a procedure for evaluating and resolving patient grievances (section 9335(f)(5));
- Conduct onsite reviews of individual ESRD facilities as directed by the Secretary or medical review board and utilize standards of care established by the network organization to assure proper medical care (section 9335(f)(5));
- Collect, validate, and analyze ESRD program data (section 9335(f)(5)); and
- Provide data to the national ESRD data registry established under section 1881(c)(7) of the Act (section 9335(f)(5)).

In addition, the statute requires that the medical review board include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and at least one patient representative (sections 9335(d) (1) and (e)). It also encourages facility cooperation with network organizations by requiring that ESRD facilities and providers follow the recommendations of the medical review board (section 9335(g)).

On May 12, 1987, we published a proposed rule in the **Federal Register** (52 FR 17777) to implement the above provisions of Pub. L. 99-509. The provisions of the proposed rule appeared in section II of the preamble to the proposed rule (52 FR 17778) and are reprinted in section III of this final rule as the provisions of these final regulations.

Section 9335(d) of Pub. L. 99-509 contains other provisions that amend section 1881(c) of the Act relating to the ESRD networks. Specifically, those provisions require the Secretary to—

- Establish at least 17 ESRD network areas not later than May 1, 1987.
- Designate, not later than July 1, 1987, a network administrative organization for each area that will establish a network council of renal dialysis and transplant facilities located in the area and a medical review board.
- Consult with professional and patient organizations regarding the redesignation of network areas and publish in the **Federal Register** a description of each network area and the criteria on the basis of which network determinations were made.
- Publish in the **Federal Register** the criteria, standards and procedures to evaluate an applicant organization's

ability to perform or actual performance of required network functions.

• Evaluate each applicant network organization based on quality and scope of services and not accord more than 20 percent of the weight of the evaluation to the element of price.

• Terminate an agreement with a network administrative organization (network organization) only if he finds, after applying published standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If an agreement is to be terminated, the Secretary must select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.

Additionally, if the Secretary designates a network organization for an area that was not previously designated for that area, the statute requires the Secretary to offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.

To implement these provisions of Pub. L. 99–509, we published a proposed notice on April 9, 1987 (52 FR 11550) and a final notice on October 2, 1987 (52 FR 37018).

II. Analysis of and Responses to Public Comments

We received 16 timely comments on the proposed notice. Comments were submitted by 5 of the 32 existing ESRD networks, the Renal Physicians Association, the National Renal Administrators Association, the American Nephrology Nurses' Association, the National Dialysis Association, the National Kidney Foundation, 1 hospital, 2 ESRD facilities, 1 ESRD patient, 1 State health department, and 1 State renal administrators' organization. The specific comments and our responses follow.

A. Vocational Rehabilitation

Comment: Several commenters expressed concern about the network role in vocational rehabilitation. The commenters suggested that the term vocational rehabilitation should be broadly interpreted to encompass quality of life factors for those whom vocational rehabilitation is not feasible. The commenters suggested that rehabilitation should not be focused solely on the ability of an individual to work but also should address independent living (the physical, social, and psychological state of the patient) services.

Several commenters do not believe that the networks are the proper organizations to direct the rehabilitation effort but that the network role should be to educate the vocational rehabilitation agencies about the special needs of the ESRD patients. One commenter stated that the rehabilitation effort of the networks will effect the dialysis units and require them to accommodate more patients on the early morning and evening shifts, which may be difficult for smaller units to manage. Another commenter pointed out that the ability of a facility to function in the placement of patients is dependent upon a number of factors; for example, the case mix of the facility, the locally available vocational rehabilitation programs, and whether the available programs are attuned to the needs of ESRD patients. Therefore, the commenter suggested that the comparative performance of facilities account for those important factors and that the networks place an emphasis on educating providers, physicians, and patients about the use of vocational rehabilitation programs. Finally, one commenter stated that patients should not be denied access to care because of his or her ability to participate in vocational rehabilitation programs or to become gainfully employed.

Response: The role of the network to encourage vocational rehabilitation is required by sections 9335(f) (1), (2), and (4) and 9335(h) of Pub. L. 99–509, and we must enforce that requirement. We fully agree with Congress that the vocational rehabilitation effort by the networks will serve to improve the quality of life for the ESRD beneficiaries. Each network contract will require the network organization to develop the criteria and standards and methods for encouraging vocational rehabilitation within the network area. The networks will have the latitude to define the criteria appropriate for their network area and apply their standards accordingly. We believe that these definitions will account for the ESRD population's potential for rehabilitation and that each network will develop innovative techniques and skills for encouraging vocational rehabilitation programs and for coordinating resources within the network area.

B. Onsite Review

Comment: Several commenters were concerned that expanding the network role to include onsite reviews would be duplicative of the role of other organizations, such as the State survey agency, and would be unnecessarily costly to the facilities and the networks. These commenters believe that this requirement is administratively burdensome and intrusive to the facilities. One commenter suggested that the various survey agencies coordinate their activities to assure that the providers are not required to spend an inordinate amount of time responding to review activities. One commenter stated that onsite review should be conducted only on an as needed basis and only on new facilities.

Response: The authority to conduct onsite reviews was established by section 9335(f)(5) of Pub. L. 99–509. Accordingly, these final regulations will require each network organization to develop criteria and standards for assessing the need for onsite reviews and to conduct onsite reviews in response to those criteria. We do not intend to restrict the authority of the networks in this important area. In addition, we do not believe that the network role in conducting onsite reviews will duplicate the role of any other agency. The responsibility of the networks is clearly stated in the law and regulations and the activities of the networks will be closely monitored through the contract administration process to assure that the networks fulfill their legal obligations.

C. Network Representation

Comment: One commenter stated that there is no criteria in the regulations specifying membership requirements for the network council or the medical review board. The commenter suggested that the network council should consist of representatives of all providers in the network area; the council should include representatives of the various disciplines responsible for ESRD care (for example, nurses, dietitians, nephrologists, social workers); patient representation should be expanded to account for up to ⅓ of the network council membership; the constitution of the network council should be part of the bylaws of the network organization; and two or more committees, at a minimum, the executive committee and the medical review board, should be elected by the network council to carry out the design and approval of the technical content of network policy. Other commenters suggested that the process used by the networks in appointing members on the various committees should be closely monitored.

Response: We initially deleted the prescriptive requirements for the network committees in regulations published in the **Federal Register** on August 28, 1986 (51 FR 30356). The

preamble to those regulations discusses, in detail, our rationale for deleting the membership requirements. We still do not believe that it is necessary to retain prescriptive requirements in regulations. These regulations specify only the minimum legal requirements. There is nothing that would preclude the individual network organizations from exceeding these requirements and including additional professionals on the various committees and medical review board. Nevertheless, the mechanism for identifying potential medical review board and committee members and their actual appointment is subject to approval by us through the contracting process. We believe that the contract review process will assure the integrity of the various network panels and committees.

D. Network Funding

Comment: Several commenters requested that the funding mechanism be revised to account for transplant patients and to include transplant centers in the funding formula. Other commenters suggest that the funding levels will not be sufficient to perform the required activities.

Response: Section 9335(j) of Pub. L. 99-509 amended section 1881(b)(7) of the Act and specifies the funding mechanism for the network organizations. We have no administrative authority to modify the funding formula. In the Request for Proposals, we specified the maximum funding available for each area based upon the current estimates of patient population. Each network contract proposal will be evaluated for technical content and proposed cost. Each network price proposal will be assigned point values according to the following formula:

$$20 - \frac{\text{(Price of proposal—lowest priced proposal)}}{\text{Lowest priced proposal}} \times 20$$

The points assigned for price of the proposal will not exceed 20 percent of the total evaluation score. If there are no significant technical or financial and management differences, price alone may be the determining factor for source selection. This process will take advantage of competitive factors to assure that the network tasks will be performed.

E. Facility Payments

Comment: One commenter stated that since facilities will now be required to participate in vocational rehabilitation activities, the composite rate payments for dialysis facilities should be increased.

Response: The dialysis composite rate payment is a prospectively set payment based on actual dialysis facility cost experience for the entire dialysis service taken as a whole. As facility cost experience changes in response to market variations and changes in technology and treatment protocols, these changes are reflected in subsequent composite rate payments. There is always a lag between prospectively set payments and actual cost experience. Sometimes this may be to the financial benefit of the dialysis facilities; at other times, it may be to the financial benefit of the program. At this time, we do not have data on the increased costs, if any, of vocational rehabilitation activities nor on the extent to which facilities are already furnishing these services under the current composite rate.

F. Random Case Reviews

Comment: Several commenters expressed concern about networks conducting case reviews. Those commenters believe that networks should gather data and evaluate trend data to identify facility problems. Other commenters stated that the networks should conduct quality assurance studies as opposed to conducting case reviews.

Response: We believe that case review is the best method to assure that networks are performing their statutory responsibility to evaluate the appropriateness of care within the network area. The evaluation of trend data is certainly an acceptable technique but will best be accomplished on a national level by the ESRD registry. The networks will have the opportunity to evaluate trend data from the national program management and medical information system and to identify local aberrations from the national data. The strength of the networks will be access to facility records from which to supplement data on specific issues. Therefore, we reject the comment and networks will be required to conduct case reviews.

G. Network Oversight

Comment: Several commenters were concerned about avenues of administrative redress, given the ability of networks to recommend sanctions against ESRD providers.

Response: The administrative procedures for implementing alternative sanctions against ESRD facilities that fail to participate in network activities and pursue network goals are being prepared as a separate final rule. (We published a proposed rule regarding alternative sanctions against ESRD facilities on April 9, 1987 (52 FR 11517)). We will apply those sanctions on the basis of recommendations from the network organizations.

III. Provisions of the Final Regulations

We made no changes to the regulations that appeared in the proposed rule. We have reprinted those regulations exactly as they were published in the May 12, 1987 Federal Register in this final rule. These final regulations implement the provisions of section 9335 of Pub. L. 99-509 that are described in the "Background" section of this preamble. As a result of these statutory provisions, we will add the following requirements of the network organizations:

- Relating to vocational rehabilition programs, network organizations must encourage the participation of patients, providers of services, and renal disease facilities; develop criteria and standards relating to encouraging participation in vocational rehabilitation programs; and include in their reports to HCFA, the comparative performance of facilities regarding the placement of patients in appropriate settings for vocational rehabilitation programs.
- Network organizations must appoint a network council and a medical review board that each include at least one patient representative.
- Network organizations must conduct on-site reviews of facilities and providers as necessary, as determined by the medical review board or HCFA, using standards of care developed by the network organizations.
- Network organizations must identify in their annual reports to HCFA those facilities that consistently fail to follow the recommendations of the medical review board.
- Network organizations must collect, validate, and analyze all data needed to prepare their annual reports to HCFA, the Secretary's report to Congress on the ESRD program, and to assure the maintenance of the registry established under section 1881(c)(7) of the Act.

Also, these regulations will require that the medical review board, in addition to at least one patient representative, include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and qualified to evaluate the quality and appropriateness of care delivered to ESRD patients.

Section 405.2112(h) requires network organizations to appoint a network coordinating council, executive committee, and medical review board

for each network area. Section 9335(d)(1) of Pub. L. 99–509 specifies that network organizations must establish a network coordinating council and medical review board for each network area. The statute does not require an executive committee; therefore, we will remove the requirement for establishing an executive committee from § 405.2112(h). Also, we will revise the reference to a "network coordinating council" that appears in § 405.2112(h) to conform with the statutory language that refers to a "network council".

IV. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any "major rule" that is likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, government agencies or geographic regions, or meet other threshold criteria that are specified in that order. In addition, consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for final regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Although the network areas and organizations are a creation of the government and are funded by us solely to fulfill the requirements of the law, they are small organizational entities under the Regulatory Flexibility Act.

We have determined that this rule is not a major rule under the terms of E.O. 12291. Therefore, a regulatory impact analysis is not required. In addition, we have determined and the Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

V. Information Collection Requirements

Sections 405.2112 (f) and (j) of this final rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). When OMB approval of these sections is obtained, a notice will be published in the **Federal Register**. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, ATTN: Allison Herron, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Chapter IV is amended as set forth below:

Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for Part 405 Subpart U is revised to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted

2. Section 405.2112 is revised to read as follows:

§ 405.2112 ESRD network organizations.

HCFA will designate an administrative governing body (network organization) for each network. The functions of a network organization include but are not limited to the following:

(a) Developing network goals for placing patients in settings for self-care and transplantation.

(b) Encouraging the use of medically appropriate treatment settings most compatible with patient rehabilitation and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs.

(c) Developing criteria and standards relating to the quality and appropriateness of patient care and, with respect to working with patients, facilities, and providers of services, for encouraging participation in vocational rehabilitation programs.

(d) Evaluating the procedures used by facilities in the network in assessing patients for placement in appropriate treatment modalities.

(e) Making recommendations to member facilities as needed to achieve network goals.

(f) On or before July 1 of each year, submitting to HCFA an annual report that contains the following information:

(1) A statement of the network goals.

(2) The comparative performance of facilities regarding the placement of patients in appropriate settings for—

(i) Self-care;

(ii) Transplants; and

(iii) Vocational rehabilitation programs.

(3) Identification of those facilities that consistently fail to cooperate with the goals specified under paragraph (f)(1) of this section or to follow the recommendations of the medical review board.

(4) Identification of facilities and providers that are not providing appropriate medical care.

(5) Recommendations with respect to the need for additional or alternative services in the network including self-dialysis training, transplantation and organ procurement.

(g) Evaluating and resolving patient grievances.

(h) Appointing a network council and a medical review board (each including at least one patient representative) and supporting and coordinating the activities of each.

(i) Conducting on-site reviews of facilities and providers as necessary, as determined by the medical review board or HCFA, using standards of care as specified under paragraph (c) of this section.

(j) Collecting, validating, and analyzing such data as necessary to prepare the reports required under paragraph (f) of this section and the Secretary's report to Congress on the ESRD program and to assure the maintenance of the registry established under section 1881(c)(7) of the Act.

3. Section 405.2113 is amended by revising paragraph (a) to read as follows:

§ 405.2113 Medical review board.

(a) *General.* The medical review board must be composed of physicians, nurses, and social workers engaged in treatment relating to ESRD and qualified to evaluate the quality and appropriateness of care delivered to ESRD patients, and at least one patient representative.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: October 15, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 12, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88–1155 Filed 1–20–88; 8:45 am]

BILLING CODE 4120–01–M

42 CFR Parts 412, 413, and 418

[BERC-436-FC]

Medicare Program;

Periodic Interim Payments for Hospitals and Other Providers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule implements section 9311(a) of the Omnibus Budget Reconciliation Act of 1986, which sets forth the circumstances under which the periodic interim payment (PIP) method is available for services furnished by hospitals and other providers. Generally, inpatient hospital services furnished by hospitals excluded from the prospective payment system, as well as skilled nursing facility services, home health services, and hospice care services may be paid for on a PIP basis. With certain exceptions, inpatient hospital services furnished by prospective payment hospitals are not eligible for payment on a PIP basis.

DATES:

Effective Date: This final rule is effective on February 22, 1988.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 22, 1988.

ADDRESS: Mail Comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-436-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-436-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: John Eppinger, (301) 594-5354.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, the prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Prior to implementation of the prospective payment system, all providers of health care services (for example, hospitals, skilled nursing facilities, and home health agencies) were reimbursed based on the lesser of the reasonable cost of services furnished to Medicare beneficiaries or the provider's customary charges for those services.

Since actual reasonable cost cannot be determined until the end of a provider's cost reporting period, an interim rate of payment, approximating actual cost as closely as possible, is determined by the intermediaries for each provider and interim payments are made on that basis during the year. These interim payments are required by section 1815(a) of the Act, which states that we must pay providers at least monthly during the cost reporting period, pending a final determination of cost on the basis of a submitted cost report and any necessary adjustments. After receipt of the provider's cost report, the intermediary determines what the actual payment for the period should have been and a retroactive adjustment is made. The regulations that implement these policies are located at 42 CFR 413.64.

There are two methods of interim payment for inpatient hospital services for hospitals excluded from the prospective payment system. One method is based on actual bills submitted by the hospital. Under this method, interim payments are calculated by applying a predetermined per diem amount to the number of Medicare patient days reflected on actual bills or by applying a predetermined percentage to the charges reflected on the actual bills submitted. The predetermined per diem amount or percentage factor applied to billed patient days or charges represents an estimate of the hospital's previous year's costs, adjusted to ensure that the current year's rate of payment is as close as possible to the current year's costs.

Under the second method, referred to as the periodic interim payment (PIP) method, interim payments are not based on individual bills. Instead, payment is based on the estimated annual costs attributable to estimated Medicare utilization of a hospital, and equal biweekly payments are made to hospitals without regard to the submission of individual bills. PIP has been available for inpatient hospital services since 1968. It was offered to qualified hospitals as an alternative to regular interim reimbursement, which requires submission of a bill to receive payment.

With either of these interim payment methods, any overestimation or underestimation of the hospital's actual costs, to the extent not adjusted during the year, is adjusted at the time of cost report settlement.

Under the prospective payment system, hospitals are paid, for most of the Part A inpatient services they furnish, a prospectively determined amount for each discharge based on actual bills submitted. This amount constitutes final payment for each discharge claimed. Although no form of interim payment is necessary for hospitals operating under the prospective payment system, we extended the option to these hospitals to elect to receive PIP when the prospective payment system was implemented in order to avoid cash flow problems in the early stages of the system. Thus, prospective payment hospitals that met the qualifications for receiving PIP could elect to receive this type of interim payment, which would be based on their estimated annual prospective payment amounts. The PIP payment is made two weeks after the end of a biweekly period of services. In these circumstances, year-end reconciliation is required.

Payment for capital-related costs and those direct medical education costs that are payable to prospective payment hospitals on a reasonable cost basis is made on an interim payment basis pending a year-end reconciliation based on a cost report. These interim payments are determined by estimating the reimbursable amount for the year based on the previous year's experience and on information for the current year and dividing that amount into 29 equal payments made biweekly. In addition, the indirect teaching adjustment, if appropriate, is paid on a biweekly interim basis subject to final settlement. These payments are not considered as part of the PIP method of payment and are not affected by this rule. These payments will continue to be made on a biweekly basis.

Although the PIP method of interim payment is not based on actual bills submitted, a PIP hospital must continue to submit bills for subsequent intermediary verification of the accuracy of the rate. The rate is

reviewed at least twice per year for hospitals paid under the prospective payment system and at least quarterly for hospitals reimbursed on a reasonable cost basis. If necessary, as determined by the reviews, the rate is adjusted. Interim payments may be further adjusted based on cumulative payment data for the year.

In August 15, 1986, we published a final rule in the **Federal Register** (51 FR 29386) concerning interim payments. In that rule, we took the following actions, which were to be effective on July 1, 1987:

- We eliminated PIP as an optional method of payment for inpatient hospital services furnished to Medicare beneficiaries, except for services furnished by rural hospital with fewer than 100 beds (See §§ 413.64(h)(1)(ii) and (k)(2)(i) and (ii).)
- In order to alleviate the cash flow problems that certain hospitals encounter, we provided for one interim payment to hospitals subject to the prospective payment system for each case in which a patient remains in the hospital more than 30 covered days. (See § 413.64(k)(5).) Under this provision any interim payment made was to be applied against the final payment made for the discharge.
- We also eliminated PIP for hospitals receiving payment under a demonstration project authorized by section 402(a) of the Social Security Amendments of 1967 (Pub. L. 90–248) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603), and for those hospitals paid under State reimbursement control systems authorized by section 1886(c) of the Act and approved by HCFA. However, under this provision, these hospitals were to be permitted to use a form of interim payment similar to PIP if that type of payment is specifically approved by HCFA as a part of the demonstration or control system. (See § 413.64(h)(1)(ii)(C).)
- We provided that payment for direct medical education and other inpatient hospital costs excluded from the prospective payment system was to continue to be made biweekly on an interim payment basis. We amended §§ 405.454(j) and (m) to make these changes.

These sections were subsequently redesignated as §§ 413.64(h) and (k) respectively in a final rule with comment period published on September 30, 1986 (51 FR 34790).

We issued the August 15, 1986 final rule because evidence indicated that the PIP method had increasingly become a burden for the intermediaries and that it resulted in the expenditures of considerable resources in attempting to identify and correct overpayments and underpayments. We stated that eliminating PIP for all hospitals (that is, those paid on the basis of reasonable costs and those subject to prospective payment) would allow intermediate to utilize their resources more effectively to better control payments to hospitals and all other providers. Furthermore, we stated that the elimination of PIP would encourage hospitals to submit their bills on a more timely basis since hospitals receiving PIP have less incentive to bill timely than hospitals not receiving PIP.

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. Section 9311(a) of Pub. L. 99–509 added a new paragraph (e) to section 1815 of the Act that provides for the following—

- Payment must be made available for inpatient hospital services furnished by a prospective payment hospital, including distinct part psychiatric or rehabilitation units, on a PIP basis (rather than on the basis of bills actually submitted) in the following cases:

—The hospital's fiscal intermediary fails to meet the requirements of section 1816(c)(2) of the Act concerning the prompt payment of claims for three consecutive calendar months (see discussion below), the hospital requests payment on a PIP basis, and the hospital meets the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986. The hospital can continue to recieve PIP payments until its fiscal intermediary meets the prompt payment of claims requirements for three consecutive calendar months.

—The hospital has a disproportionate share adjustment percentage (as established in section 1886(d)(5)(F)(iv) of the Act) of at least 5.1 percent as computed for purposes of establishing the average standardized amounts for discharges occurring during Federal fiscal year (FY) 1987 and the hospital requests payment on a PIP basis. Hospitals meeting this criterion can receive PIP only if they were being paid on a PIP basis as of June 30, 1987 and the hospital continues to meet the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986.

—The hospital is located in a rural area, has 100 or fewer beds, and the hospital requests payment on a PIP basis. Again, hospitals meeting this criterion can receive PIP only if they were being paid on a PIP basis as of June 30, 1987 and the hospital continues to meet the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986.

- Payment on a PIP basis must be made available under the standards established in § 405.454(j) (redesignated as § 413.64(h)), as in effect on October 1, 1986, for the following services if the provider elects to receive and qualifies for PIP payment:

—Inpatient hospital services of a hospital excluded from the prospective payment system.

—Inpatient hospital services of a hospital receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c) of the Act, if payment on a PIP basis is an integral part of that reimbursement system.

—Skilled nursing facility services.

—Home health services.

—Hospice care.

- The Secretary may make appropriate accelerated payments to hospitals subject to the prospective payment system that have significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation.

Section 9311(b) of Pub. L. 99–509 added a new section 1816(c)(2) to the Act to provide for the following——

- Agreements between HCFA and intermediaries must provide that at least 95 percent of "clean" claims for which payment is not made on a PIP basis must be paid within the following time periods:

—For claims received in the 12-month period beginning October 1, 1986, 30 calendar days.

—For claims received in the 12-month period beginning October 1, 1987, 26 calendar days.

—For claims received in the 12-month period beginning October 1, 1988, 25 calendar days.

—For claims received in the 12-month period beginning October 1, 1989 and any succeeding 12-month period, 24 calendar days.

- A clean claim means a claim that has no defect or impropriety (including a lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made.
- If payment of a clean claim is not made within the applicable time period, interest must be paid (at the rate used for purposes of paying interest for failure to make prompt payments under 31 U.S.C. 3902(a)) for the period begining on the day after the required payment

date and ending on the date on which payment is made.

II. Changes to the Regulations Governing PIP

In effect, except for the provision dealing with one interim payment to prospective payment hospitals experiencing unusually long lengths of stay (discussed below), section 9311 of Pub. L. 99–509 overrides the August 15, 1986 final rule and requires the publication of revised regulations. Our implementation of section 9311(a) of Pub. L. 99–509 is discussed in detail below.

A. Payment to Hospitals Subject to the Prospective Payment System

Section 1815(e)(1)(A) of the Act, as added by section 9311(a)(1) of Pub. L. 99–509, requires that payment on a PIP basis must be made available to a hospital subject to the prospective payment system, including a distinct part psychiatric or rehabilitation unit of the hospital, if——

- The hospital's intermediary does not meet the prompt payment of claims requirements of section 1816(c)(2) of the Act for three consecutive calendar months (see discussion above);
- The hospital requests payment on a PIP basis; and
- The hospital meets the requirements for receiving PIP that were in effect on October 1, 1986, as set forth in regulations at § 405.454(j). (Those regulations are now codified at § 413.64(h), and we are amending that provision as appropriate to conform to the former § 405.454(j).)

The hospital can continue to receive PIP until the intermediary meets the requirements of section 1816(c)(2) of the Act for three consecutive calendar months.

Section 9311(a)(2) of Pub. L. 99–509 specifies that the amendment made by section 9311(a)(1) of Pub. L. 99–509 is effective for claims received on or after July 1, 1987. Under this provision, once a prospective payment hospital is receiving PIP, it will not be removed from PIP until the earlier of the end of the first period of three consecutive calendar months during each of which the intermediary has met the prompt payment requirements or the date the hospital no longer meets the requirements to qualify for PIP that are set forth in § 413.64(h). For example, if a hospital is receiving PIP, and its intermediary meets the prompt payment requirements for two months and then fails to meet the requirements for the third month, the intermediary would have to meet the requirements for the next three consecutive calendar months in order to remove the hospital from PIP.

In the same manner, in the case of a hospital not on PIP, an intermediary must fail to meet the prompt payment requirements for three consecutive calendar months before a hospital could request PIP under this provision. That is, if an intermediary has been meeting the prompt payment requirements, fails to meet the requirements for two months, and then meets them again in the third month, its hospitals could not receive PIP unless the intermediary fails to meet the prompt payment requirements for another three consecutive calendar months.

In addition, section 9311(a)(3) of Pub. L. 99–509 provides that, for a hospital that was receiving payment on a PIP basis as of June 30, 1987, and that has requested continuation of payment on that basis, PIP must be continued (provided the hospital continues to meet the requirements for receiving PIP) until at least the end of the first period of three consecutive calendar months, beginning no earlier than April 1987, during all of which the intermediary met the prompt payment of claims requirements of section 1816(c)(2) of the Act. Therefore, unless an intermediary has met the prompt payment requirements for each of April, May, and June of 1987, a prospective payment hospital that was receiving PIP as of June 30, 1987, could continue to receive PIP beginning on July 1, 1987. The hospital may continue on PIP until the intermediary meets the prompt payment requirements for three consecutive calendar months.

For example, if an intermediary has met the prompt payment requirements for April, May, and July and meets them in August and September of 1987, but not for June 1987, a hospital receiving PIP as of June 30, 1987, will continue to receive PIP, upon its request, for discharges occurring through September 30, 1987. However, if an intermediary did not meet the prompt payment requirements in April 1987, but meets it in May, June, and July 1987, the same hospital will be eligible to continue receiving PIP only for discharges occurring through July 31, 1987.

For those hospitals that were not receiving PIP as of June 30, 1987, we are also using April 1987 as the beginning month for determining whether they were eligible for PIP beginning on July 1, 1987. Therefore, if a hospital was not receiving PIP as of June 30, 1987, that hospital was eligible to request PIP after June 1987 only if its intermediary failed to meet the prompt payment requirements for each of April, May, and June 1987 and the hospital meets the requirements of § 413.64(h) for receiving PIP. If the intermediary met the requirements in any one of these months, the hospital does not have an opportunity to request PIP until after its intermediary fails to meet the prompt payment requirements for three consecutive calendar months. (We discuss below the manner in which intermediaries will notify their hospitals of the availability of PIP and how the hospitals can request PIP.)

In the case of hospitals that were receiving PIP on June 30, 1987, and that wanted to continue PIP after that date, the law is not specific as to when the hospital must have made its request to continue PIP. However, based on our reading of section 9311(a)(3) of Pub. L. 99–509, which addresses hospitals on PIP as of June 30, 1987, that want to continue on PIP, we believe Congress intended that hospitals would notify their intermediaries prior to July 1, 1987, in order to ensure that PIP, in fact, continued on that date. In Program Memorandum A–87–4 (issued in May 1987), HCFA directed those intermediaries that anticipated that they would not meet the prompt payment requirements in April, May, and June to inform their hospitals of the date prior to July 1, 1987, by which the hospitals must notify the intermediaries of their request to continue PIP. Without this notification, we expect that intermediaries will have terminated PIP to those hospitals for discharges occurring on or after July 1, 1987. If an intermediary failed to meet the prompt payment requirements for April, May, and June, PIP will have continued uninterrupted for hospitals that timely submitted their requests to continue PIP.

In the case of a hospital not on PIP, an intermediary will notify its prospective payment hospitals of their eligibility for PIP under the provisions of section 1815(e)(1)(A) of the Act if it has not been in compliance with the prompt payment provisions for three consecutive calendar months. An intermediary will notify its hospitals within seven working days after the end of the third consecutive calendar month in which it has failed to meet the prompt payment requirements. After the intermediary receives a hospital's request for PIP, it will process the request under its usual procedures for provider requests for PIP. However, if the hospital's request is received by the intermediary by the 15th day of the month (or the first regular business day after the 15th), the intermediary will initiate PIP for a qualifying hospital effective with discharges occurring on or after the first day of the following month (that is, the

second month after the third consecutive calendar month in which the intermediary failed to meet the prompt payment requirements). Subsequent notification will not be given while the intermediary continues not to be in compliance.

When the intermediary has again met the prompt payment requirements for three consecutive calendar months, the hospitals will receive notice concurrent with their removal from PIP, which will be effective with discharges occurring the first day of the month following the third consecutive month in which the requirements were met.

Sections 1815(e)(1) (B) and (C) of the Act require that PIP be continued for two classes of hospitals subject to the prospective payment system regardless of their intermediaries' ability to meet the prompt payment requirements. Under section 1815(e)(1)(B) of the Act, payment must be made on a PIP basis to hospitals that were receiving PIP as of June 30, 1987, have a disproportionate share adjustment percentage of at least 5.1 percent as computed for purposes of establishing the average standardized amounts for discharges occurring in FY 1987, continue to meet the requirements for receiving PIP set forth in § 413.64(h) as in effect on October 1, 1986, and request payment on a PIP basis. Similarly, section 1815(e)(1)(C) of the Act specifies that payment must be made on a PIP basis to hospitals that were receiving PIP as of June 30, 1987, are located in a rural area and have 100 or fewer beds, continue to meet the requirements for receiving PIP set forth in § 413.64(h) as in effect on October 1, 1986, and request payment on a PIP basis.

For both of these types of hospitals, the opportunity to continue PIP is available only once. As in the case with hospitals addressed in section 9311(a)(3) of Pub. L. 99-509, the law is not specific as to when these hospitals must request to continue PIP. However, our reading of sections 1815(e)(1) (B) and (C) of the Act and of the accompanying conference agreement (H.R. Rep. No. 1012, 99th Cong., 2d Sess. 299 (1986)) clearly indicates that Congress believed that these types of hospitals should have the opportunity to continue PIP only if they were receiving such payments on June 30, 1987. Therefore, we believe that it intended that hospitals that meet these criteria would notify their intermediaries prior to July 1, 1987, in order to ensure that PIP, in fact, was continued on that date. In Program Memorandum A-87-4, HCFA also directed intermediaries to inform these hospitals of the date prior to July 1, 1987, by which they must have received the hospitals' notification requesting to continue PIP. Without this notification, we expect that intermediaries will have terminated PIP to those hospitals for discharges occurring on or after July 1, 1987.

The conference agreement also speaks of the availability of continuing PIP after June 30, 1987 for these types of hospitals "during the cost reporting period beginning in fiscal year 1987," that is, beginning on or after October 1, 1986 and before October 1, 1987. Read literally, this could be interpreted as permitting the hospital, depending on its specific cost reporting period, to request PIP or, in the case of section 1815(e)(1)(C) of the Act, to qualify as a rural hospital with 100 or fewer beds, long after June 30, 1987. However, if the hospital was receiving PIP on June 30, 1987, PIP would have been eliminated on July 1, either because the hospital did not request PIP or because it did not qualify under section 1815(e)(1)(C) of the Act. Therefore, a later request would not be a request to continue PIP but rather one to initiate it. We believe it would be inconsistent with the express terms of the statute to permit these hospitals to continue PIP. Thus, we have not adopted the conference agreement language that these hospitals can request PIP or can qualify under 1815(e)(1)(C) "during the cost reporting period beginning in fiscal year 1987" to the extent that such event occurs after July 1, 1987.

Hospitals with a disproportionate share adjustment percentage of at least 5.1 percent have already been identified during the calculation of the average standardized amounts for discharges occurring during FY 1987. The hospitals' intermediaries have notified those hospitals of which they are aware of their eligibility to request to continue to receive PIP under the disproportionate share provision.

Although we believe that the statute and accompanying conference agreement language clearly state that hospitals meeting the 5.1 percent criterion are to be identified from the data base used by HCFA in the calculation of the average standardized amounts for discharges occurring in FY 1987, we also believe that Congress intended that we be equitable in our selection of those hospitals that meet the criterion.

The percentage of Medicaid patient days to total patient days used in determining a hospital's disproportionate share adjustment percentage was based on Medicaid data from 1984 hospital cost reports. To ensure the most accurate standardization of the rates for discharges occurring in FY 1987, we made every attempt to secure the most accurate and complete Medicaid data possible within the timeframe available to us to develop the rates.

However, we have found that in some cases, despite our efforts, data applicable to 1984 were not entered into our data base for purposes of the computation of the rates. In some of these cases, the data had been properly submitted by the hospital, but was inadvertently excluded from the data base. In other cases, hospitals did not submit the data to HCFA.

We believe that data that are applicable to 1984 should be considered in determining if a hospital has a disproportionate share adjustment percentage of at least 5.1, even if they were not included in the calculation of the FY 1987 rates. Therefore, intermediaries are considering any previously unsubmitted 1984 Medicaid data that are received from hospitals in their determination of whether or not a hospital qualifies for PIP under this provision. A hospital that qualifies for PIP as a disproportionate share hospital will not lose its eligibility to receive PIP unless the hospital no longer meets the requirements of § 413.64(h) or the hospital requests to be removed from PIP.

A hospital qualifies as a rural hospital if it is located in any area outside of a metropolitan statistical area or New England County metropolitan area, as defined by the Executive Office of Management and Budget. See § 412.62(f). The hospitals' intermediaries have also notified those hospitals that are eligible to request PIP under this provision.

If a hospital that is eligible to receive PIP under section 1815(e)(1) (B) or (C) of the Act has not requested PIP by the date prior to July 1, 1987 specified by its intermediary or is receiving PIP on that date but is later removed from PIP at its own request or as a result of not meeting the requirements for receiving PIP, its opportunity to receive PIP at some later time will be the same as for other prospective payment hospitals; that is, eligibility for receiving PIP will be dependent on its intermediary's failure to meet the prompt payment requirements for three consecutive calendar months.

With regard to the count of beds in rural hospitals, a bed means a general routine or intensive care adult or pediatric bed maintained in a patient care area for inpatient lodging. It does not include beds assigned to newborns, to custodial or domiciliary care, to units excluded from the prospective payment system, to hospital-based skilled nursing

facilities, or to areas maintained and utilized for only a portion of a patient's stay. See § 3600.1A5 of the Medicare Intermediary Manual (HCFA Pub. 13–3), added by transmittal No. 1337, July 1987. This is the definition that is currently used for making bed size determinations for other provisions of the prospective payment system. See §§ 412.106(a)(3) and 412.118(b).

A hospital requesting PIP under this provision must attest in writing that, as of July 1, 1987, it is a rural hospital with 100 or fewer beds as defined above. The intermediary will verify a hospital's attestation as necessary. Hospitals that are determined not to be rural hospitals, or to exceed 100 beds, do not qualify even if they previously were believed by the intermediary to qualify under this provision. Rural hospitals that only meet the criteria after July 1, 1987 will not be eligible for this one-time opportunity to receive PIP. Hospitals that receive PIP under this provision that at some later date no longer qualify as a rural hospital or no longer have 100 or fewer beds will be removed from PIP under this provision.

We are redesignating and revising § 413.64 (k)(1) through (k)(5) as a new § 412.116 to implement the provisions of section 1815(e)(1) of the Act. In addition, § 413.64(k)(6), which deals with reductions in capital payments under section 1886(g)(3) of the Act, is revised and redesignated as a new § 412.113(a)(2). (We have made a technical change in § 412.113(a)(1) to reflect the fact that hospitals subject to the prospective payment system continue to be paid in part on the basis of a hospital-specific portion.)

Section 1815(e)(3) of the Act specifies that, in the case of a hospital subject to the prospective payment system that has signficant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary may make available appropriate accelerated payments. Accelerated payments are currently available to all providers that have experienced financial difficulties due to a delay by the intermediary in making payments or in exceptional situations in which the provider has experienced a temporary delay in preparing and submitting bills to the intermediary beyond its normal billing cycle as set forth in regulations at § 413.64(g). However, we are adding a provision to § 412.116 to specify that accelerated payments are available to hospitals subject to the prospective payment system.

Since we began making accelerated payments to providers, it has been our policy that these payments should not be available to providers receiving PIP since problems related to bill processing and bill payment do not occur for a provider on PIP. To the best of our knowledge, this policy has been consistently applied to providers requesting accelerated payments.

We believe that the addition of section 1815(e)(3) to the Act, in specifying the availability of accelerated payments to hospitals subject to the prospective payment system, was not intended to alter our policy of making accelerated payments available only to providers not receiving PIP that meet the criteria in § 413.64(g). This belief is supported by the language of section 1815(e)(3) of the Act which states that " . . . the Secretary *may* make available appropriate accelerated payments (emphasis added)." Since Congress did not state that the Secretary *must* make accelerated payments available, we are permitted to continue our existing policy. Accordingly, as a part of this rule, we are clarifying in the regulations (§§ 412.116 and 413.64(g)) that accelerated payments are available only for providers not on PIP.

As discussed above, in the August 15, 1986 final rule, which would have eliminated PIP for all hospitals effective July 1, 1987, we provided for a special one-time interim payment to be made to prospective payment hospitals for unusually long lengths of stay. (See § 413.64(k)(5).) If requested by the hospital, the special payment (equal to the hospital's Federal rate multiplied by the appropriate diagnosis-related group weighting factor) was to be made if a beneficiary's length of stay exceeds 30 days. Any interim payment was to be applied against the final payment made for the discharge.

The amendments made by section 9311(a) of Pub. L. 99–509 did not include any provision for interim payments to prospective payment hospitals that are not on PIP. We believe that Congress was well aware of the provisions of the August 15, 1986 final rule and, in fact, Congress adopted portions of that rule in developing the PIP provisions of section 9311 of Pub. L. 99–509. There is no discussion in the conference agreement, nor in either the House bill or Senate amendment upon which the conference agreement was based, concerning the need for an interim payment for long stays for prospective payment hospitals not receiving PIP. We believe that it is clear that, in light of the changes it was making to PIP, Congress did not believe such a provision was necessary. Therefore, we are deleting this provision from the regulations.

B. Payment to Hospitals Excluded from the Prospective Payment System and Other Providers

Section 1815(e)(2) of the Act requires that PIP be available under the standards established in § 413.64(h) as in effect on October 1, 1986, for the following services if the provider elects to receive and qualifies for PIP:

- Inpatient hospital services of a hospital that is excluded from the prospective payment system.
- Inpatient hospital services of a hospital that is receiving payment under a State reimbursement control system under section 1814(b)(3) or 1886(c) of the Act if payment on a PIP basis is an integral part of the system.
- Home health services.
- Extended care services.
- Hospice care.

Section 413.64(h) currently provides for payment of PIP for skilled nursing facility (SNF) services, home health agency (HHA) services, and inpatient hospital services furnished in hospitals receiving payment in accordance with a State demonstration project or reimbursement control system in which payment on a PIP basis is specifically approved by HCFA as a part of the system. Therefore, we are revising that section of the regulations to add hospitals excluded from the prospective payment system. We are adding a new § 418.307 to the hospice regulations to specify that PIP is available for hospice care effective with claims received on or after July 1, 1987.

Section 9311(a) of Pub. L. 99–509 does not make any provision for payment of PIP to hospitals that are receiving payment under a State reimbursement control system under section 1814(b)(3) or 1886(c) of the Act in which PIP is not an integral part of the system. However, because we do not believe that these hospitals should be disadvantaged, we are providing in the regulations (§ 413.64(h)(ii)) that these hospitals are eligible to receive PIP under the same circumstances as prospective payment hospitals (that is, the provisions of section 1815(e)(1) of the Act as set forth in § 412.116) or as hospitals excluded from the prospective payment system (§ 413.64(h)(i)). Thus, a hospital, which would otherwise be subject to the prospective payment system, whose State reimbursement control system does not include PIP as an integral part will be eligible to receive PIP if its intermediary fails to meet the prompt payment requirements of section 1816(c)(2) of the Act for three consecutive calendar months or if the hospital meets the disproportionate

share or small rural hospital criterion. The intermediaries will notify all eligible hospitals whose State reimbursement control system does not meet the requirements for receiving PIP under § 413.64(h)(ii) of their eligibility to receive PIP under the provisions of section 1815(e)(1) of the Act or § 413.64(h)(i). We have determined that of the two States currently operating under this type of system, PIP is an integral part of the reimbursement system in New Jersey and is not an integral part of the system in Maryland.

III. Regulatory Impact Analysis

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- 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.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals, SNFs, HHAs, and hospices as small entities.

Since this rule, except for a few technical provisions, merely conforms the regulations to the statutory requirements, we have determined that a regulatory impact analysis is not required. Further, we have determined, ary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

IV. Other Required Information

A. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** for substantive rules to provide a period for public comment. However, we may waive that procedure if we find good cause that notice and comment are impractical, unnecessary, or contrary to public interest.

As discussed in detail above, we published a final rule on August 15, 1986 that, effective with services furnished on or after July 1, 1987, eliminated payment on a PIP basis for all hospitals except rural hospitals with fewer than 100 beds and hospitals receiving payment under a demonstration project or State reimbursement control system in which a form of interim payment similar to PIP is specifically approved as a part of the demonstration or control system. Section 9311(a) of Pub. L. 99–509 restores PIP as an option for all hospitals excluded from the prospective payment system effective with claims received on or after July 1, 1987. In addition, PIP will, for the first time, be available for hospice care. Section 9311(a) of Pub. L. 99–509 also provides for payment to be made on a PIP basis to prospective payment hosptials whose intermediaries do not meet the prompt payment requirements of section 1816(c)(2) of the Act, as well as to certain disproportionate share hospitals and small rural hospitals.

The regulations published in final in this rule implement the statutory provisions as Congress intended. The regulations are beneficial to hospitals excluded from the prospective payment system since they allow these hospitals to continue receiving payment on a PIP basis.

The regulations are also of benefit to prospective payment hospitals in that they allow two classes of those hospitals to continue receiving PIP and the remainder to receive PIP when their intermediaries fail to make prompt payment. Additionally, we have already notified the intermediaries in a program memorandum (as discussed above) to take certain actions to implement section 9311 of Pub. L. 99–509. Finally, we had already had the benefit of public comments concerning the availability of PIP to providers in response to the proposal to eliminate PIP that we published on June 3, 1986 (51 FR 19970). For these reasons, we believe that it would be contrary to the public interest to delay implementation of the statutory provisions until the process of publishing both proposed and final rules can be completed. Therefore, we find good cause to waive proposed rulemaking and to issue these regulations as final. Nonetheless, we are providing a 60-day period for public comment as indicated in the beginning of this preamble.

Because of the large number of items of correspondence we normally receive concerning regulations, we are not able to acknowledge or respond to the comments individually. However, if we decide that changes are necessary as a result of our consideration of timely comments, we will issue a final rule and respond to the comments in the preamble of that rule.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511) requires that any information collection requirements included in a regulatory document must be submitted to and approved by the Executive Office of Management and Budget (EOMB) before the public is required to comply with those requirements. The requirements of these regulations do not impose any information collection requirements that must be approved under the Paperwork Reduction Act. Therefore, they need not be reviewed by EOMB for that purpose.

List of Subjects

42 CFR Part 412

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Programs

I. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1122, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395g(e), 1395hh, and 1395ww).

B. The table of contents of Part 412 is amended by adding the title of new § 412.116 to Subpart H to read as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

Sec.

* * * * *

412.116 Method of payment.

* * * * *

C. Subpart H is amended as follows:

1. In § 412.113, paragraph (a) is redesignated as paragraph (a)(1) and is revised and a new paragraph (a)(2) is added to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

(a) *Capital related costs.* (1) *Payment.* Subject to the reductions described in paragraph (a)(2) of this section, payment for capital-related costs (as described in § 413.130 of this chapter) will be determined on a reasonable cost basis. The capital-related costs for each hospital must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the hospital's prospective payment rate under §§ 412.70 through 412.73.

(2) *Reduction to capital-related payments.*

(i) Except for sole community hospitals as defined in § 412.92, the amount of capital-related payments (including a return on equity capital as provided under § 413.157 of this chapter) is reduced by—

(A) Three and one-half percent for payments attributable to portions of cost reporting periods occurring during Federal FY 1987;

(B) Seven percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during Federal FY 1988; and

(C) Ten percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during Federal FY 1989.

(ii) If a hospital's cost reporting period encompasses more than one Federal fiscal year, the reductions to capital-related payments are determined on a prorated monthly basis.

* * * * *

2. A new § 412.116 is added to read as follows:

§ 412.116 Method of Payment.

(a) *General rule.* Unless the provisions of paragraphs (b) through (d) of this section apply, hospitals are paid for each discharge based on the submission of a discharge bill. Payments for inpatient hospital services furnished by an excluded distinct part psychiatric or a rehabilitation unit of a hospital are made as described in § 413.64(a), (c), (d), and (e) of this chapter.

(b) *Periodic interim payments*—(1) *Criteria for receiving periodic interim payments.*

Effective with claims received on or after July 1, 1987, a hospital that meets the criteria in § 413.64(h) of this chapter may request in writing to receive periodic interim payments as described in this paragraph. A hospital that is receiving periodic interim payments also receives payment on this basis for inpatient hospital services furnished by its excluded distinct part psychiatric or rehabilitation unit.

(i) *Failure of intermediary to make prompt payment.* Beginning with claims received in April 1987, the hospital's fiscal intermediary does not meet the requirements of section 1816(c)(2) of the Act, which provides for prompt payment of claims under Medicare Part A, for three consecutive calendar months. The hospital may continue to receive periodic interim payments until the intermediary meets the requirements of section 1816 (c)(2) of the Act for three consecutive calendar months. For purposes of this paragraph, a hospital that is receiving periodic interim payments as of June 30, 1987 and meets the requirements of § 413.64(h) of this chapter may continue to receive payment on this basis until the hospital's intermediary meets the requirements of section 1816(c)(2) of the Act for three consecutive calendar months beginning with April 1987.

(ii) *Hospitals that serve a disproportionate share of low-income patients.* The hospital is receiving periodic interim payments as of June 30, 1987 and has a disproportionate share payment adjustment factor of at least 5.1 percent as determined under § 412.106(c) for purposes of establishing the average standardized amounts for discharges occurring on or after October 1, 1986 and before October 1, 1987. The hospital's request must be made by a date prior to July 1, 1987, specified by the intermediary.

(iii) *Small rural hospitals.* The hospital is receiving periodic interim payments as of June 30, 1987, makes its request by a date prior to July 1, 1987, specified by the intermediary, and, on July 1, 1987, the hospital—

(A) Is located in a rural area as defined in § 412.62(f); and

(B) Has 100 or fewer beds available for use.

(2) *Frequency of payment.* The intermediary estimates a hospital's prospective payments as described in paragraph (b)(3) of this section and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year. Each payment is made two weeks after the end of a biweekly period of service, as described in § 413.64(h)(5) of this chapter. These payments are subject to final settlement.

(3) *Amount of payment.* (i) The biweekly interim payment amount is based on the total estimated Medicare discharges for the reporting period multiplied by the hospital's estimated average prospective payment amount as described in paragraph (b)(3)(ii) of this paragraph. These interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if a hospital receives interim payments for less than a full reporting period.

(ii) For purposes of determining periodic interim payments under this paragraph, a hospital's estimated average prospective payment amount is computed as follows:

(A) If a hospital has no payment experience under the prospective payment system, the intermediary computes the hospital's estimated average prospective payment amount by multiplying its payment rates as determined under § 412.70(c), but without adjustment by a DRG weighting factor, by the hospital's case-mix index, and subtracting from this amount estimated deductibles and coinsurance.

(B) If a hospital has payment experience under the prospective payment system, the intermediary computes a hospital's estimated average prospective payment amount based on that payment experience, adjusted for projected changes, and subtracts from this amount estimated deductibles and coinsurance.

(4) Termination of periodic interim payments.—(i) *Request by the hospital.* A hospital receiving periodic interim payments may convert to payments on a per discharge basis at any time.

(ii) *Removal by the intermediary.* An intermediary terminates periodic interim payments if—

(A) A hospital no longer meets the requirements of § 413.64(h);

(B) A hospital is receiving payment under the criterion in paragraph (b)(1)(i) of this section and the intemediary meets the prompt payment requirements of section 1816(c)(2) of the Act for three consecutive calendar months; or

(C) A hospital that is receiving payment under the criterion set forth in paragraph (b)(1)(iii) of this section no longer meets the criterion.

(iii) *Limitation on reelection.* If a hospital that is receiving periodic interim payments under the criterion set forth in paragraph (b)(1)(ii) or (b)(1)(iii) of this section is removed from that method of payment either by its own request or by the intermediary, it may reelect to receive periodic interim payments only under the criterion set

forth in paragraph (b)(1)(i) of this section.

(c) *Special interim payments for certain costs.* For capital-related costs and the direct costs of medical education, which are not included in prospective payments but are reimbursed as specified in §§ 413.130 and 413.85 of this chapter, respectively, interim payments are made subject to final cost settlement. Interim payments for capital-related items and the estimated cost of approved medical education programs (applicable to inpatient costs payable under Part A and for kidney acquisition costs in hospitals approved as renal transplantation centers) are determined by estimating the reimbursable amount for the year based on the previous year's experience and on substantiated information for the current year and divided into 26 equal biweekly payments. Each payment is made two weeks after the end of a biweekly period of services, as described in § 413.64(h)(5) of this chapter. The interim payments are reviewed by the intermediary at least twice during the reporting period and adjusted if necessary.

(d) *Special interim payments for the indirect costs of medical education.* Payments for the indirect costs of medical education (described in § 412.118) are paid based on an estimate of the total for the Federal portion of the diagnosis-related group revenue to be received in the current period. The total estimated annual amount of the adjustment is divided into 26 equal biweekly payments and included with other inpatient costs reimbursed on a reasonable cost basis. This estimate is subject to year-end adjustment. Each payment is made two weeks after the end of the biweekly period of services. The interim payments are reviewed by the intermediary at least twice during their reporting period and adjusted if necessary.

(e) *Outlier payments.* Payments for outlier cases (described in Subpart F of this part) are not made on an interim basis.

(f) *Accelerated payments*—(1) *General rule.* Upon request, an accelerated payment may be made to a hospital that is not receiving periodic interim payments under paragraph (b) of this section if the hospital is experiencing financial difficulties because of the following:

(i) There is a delay by the intermediary in making payment to the hospital.

(ii) Due to an exceptional situation, there is a temporary delay in the hospital's preparation and submittal of bills to the intermediary beyond its normal billing cycle.

(2) *Approval of payment.* A hospital's request for an accelerated payment must be approved by the intermediary and HCFA.

(3) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(4) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as hospital bills are processed or by direct payment by the hospital.

II. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT: PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

B. In § 413.64, paragraph (a) is amended by removing the title of paragraph (a)(1), removing paragraph (a)(2), and redesignating paragraph (a)(1) as (a); paragraphs (g) and (h)(1) are revised; and paragraphs (k)(1) through (k)(6) are removed:

§ 413.64 Payments to providers: Specific rules.

* * * * *

(g) *Accelerated payments to providers.* Upon request, an accelerated payment may be made to a provider of services that is not receiving periodic interim payments under paragraph (h) of this section if the provider has experienced financial difficulties due to a delay by the intermediary in making payments or in exceptional situations, in which the provider has experienced a temporary delay in preparing and submitting bills to the intermediary beyond its normal billing cycle. Any such payment must be approved first by the intermediary and then by HCFA. The amount of the payment is computed as a percentage of the net reimbursement for unbilled or unpaid covered services. Recovery of the accelerated payment may be made by recoupment as provider bills are processed or by direct payment.

(h) *Periodic interim payment method of reimbursement.*

(1) In addition to the other methods of interim payment on individual provider billings for covered services, effective with claims recieved on or after July 1, 1987, the periodic interim payment (PIP) method is available for the following:

(i) Part A inpatient hospital services furnished in hospitals that are excluded from the prospective payment system under Subpart B of Part 412 of this chapter.

(ii) Part A services furnished in hospitals receiving payment in accordance with a demonstration project authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)), or a State reimbursement control system approved under section 1886(c) of the Act and Subpart C of Part 403 of this chapter, if that type of payment is specifically approved by HCFA as an integral part of the demonstration or control system. If that type of payment is not an integral part of the demonstration or control system, PIP is available for the hospital under paragraph (h)(1)(i) of this section for hospitals excluded from the prospective payment system or under § 412.116(b) of this chapter for prospective payment hospitals.

(iii) Part A SNF services.

(iv) Part A and Part B HHA services.

* * * * *

III. Part 418 is amended as follows:

PART 418—HOSPICE CARE

A. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1811–1814, 1815(e), 1861–1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1395f, 1395g(e), 1395x–1395cc, and 1395hh).

B. The table of contents of Part 418 is amended by adding the title of a new § 418.307 to Subpart E to read as follows:

Subpart E—Reimbursement Methods

Sec.

* * * * *

418.307 Periodic interim payments.

* * * * *

C. In Subpart E, a new § 418.307 is added to read as follows:

§ 418.307 Periodic interim payments.

Subject to the provisions of § 413.64(h) of this chapter, a hospice may elect to receive periodic interim payments effective with claims received on or after July 1, 1987.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program.)

Dated: July 23, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 23, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88-1156 Filed 1-20-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-303; RM-5744]

Radio Broadcasting Services; Santa Rosa, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 269B1 for Channel 269A at Santa Rosa, California, and modifies the Class A license of Station KVRE-FM, in response to a petition filed by Visionary Radio Euphonics, Inc. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This a summary of the Commission's Report and Order, MM Docket No. 87-303, adopted December 21, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California by revising Channel 269B1 for Channel 269A at Santa Rosa.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1085 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-470; RM-5540, RM-5762, and RM-5763]

Radio Broadcasting Services; Lake Lorraine and Niceville, FL, and Evergreen, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 262A to Niceville, Florida, as its first FM service in response to the counterproposal of Emerald Coast Broadcasting. The counterproposal of Wolff Broadcasting, licensee of Station WEGN-FM, Evergreen, Alabama (RM-5763), to upgrade its Class A facility to Channel 227C2 is being treated in a separate proceeding (Docket 87-451). The request of Mac Carter for Channel 262C2 at Georgiana, Alabama, which conflicts with the Niceville proposal for Channel 262A, was not timely filed as a counterproposal and therefore cannot be accepted for consideration in this proceeding. Separately, a Further Notice in this proceeding is being issued in order to request additional information on the community status of Lake Lorraine, Florida, for Channel 227A. With this action, this proceeding is terminated.

DATES: *Effective* February 22, 1988. The window period for filing applications will open on February 23, 1988, and close on March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-470, adopted December 8, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

Section 73.202 [Amended]

2. Section 73.202(b), of the rules is amended for Niceville, Florida, by adding Channel 262A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1082 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-198; RM-5711; RM-6060; RM-6061; RM-6062]

Radio Broadcasting Services; Baldwinsville, Crogan, McGraw, and Ellisburg, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Buckley Broadcasting Corporation of New York, substitutes Channel 221B1 for Channel 221A at Baldwinsville, New York, and modifies its license for Station WSEN to specify operation on the higher powered channels. Channel 221B1 can be allocated to Baldwinsville in compliance with the Commission's minimum distance separation requirements and can be used at Station WSEN's present transmitter location. Canadian concurrence in the allotment has been received. The counterproposals of Grover H. Hubbell to allocate Channel 221A to Crogan, New York, Channel 222A to McGraw, New York, and Channel 222A to Ellisburg, New York, have been dismissed due to a lack of continuing interest. With this action, this proceeding is terminated.

EFFECTIVE DATES: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-198, adopted December 17, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M

Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by revising the entry for Baldwinsville, New York, by adding Channel 221B1 and deleting Channel 221A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1086 Filed 1–20–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–324; RM–5395, RM–5589]

Radio Broadcasting Services; Burnet and Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A to Burnet, Texas, and Channel 250C2 to Mason, Texas, at the request of Broadcasters Unlimited, Inc., and Bruce G. Hughes, respectively. A second FM service could be provided to Burnet and a first FM service to Mason. Channel 223A requires a site restriction of 9.2 kilometers (5.7 miles) northwest of Burnet and a site restriction of 10.6 kilometers (6.1 miles) is required for Channel 250C2 at Mason. Mexican concurrence has been obtained. With this action, this proceeding is terminated.

DATES: *Effective* February 22, 1988. The window period for filing applications will open on February 23, 1988, and close on March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–324, adopted December 21, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, by adding Channel 223A to Burnet, Texas, and Channel 250C2 to Mason, Texas.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88–1084 Filed 1–20–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–234, RM–5745]

Radio Broadcasting Services; Palestine, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C2 for Channel 252A at Palestine, Texas, and modifies the license of Station KNET–FM to specify operation on the new frequency, as requested by Hawthorne Broadcasting Company, Inc. The substitution could provide Palestine with its first wide coverage area FM service. With this action, this proceeding is terminated.

EFFECTIVE DATES: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–234, adopted December 14, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio braodcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by deleting Channel 252A and adding Channel 252C2 at Palestine.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88–1087 Filed 1–20–88; 8:45 am]

BILLING CODE 6712-01-M

VETERANS ADMINISTRATION

48 CFR Parts 836 and 852

Acquisition Regulations; Construction Contracting Procedures

AGENCY: Veterans Administration.

ACTION: Interim final rule.

SUMMARY: The Veterans Administration (VA) is issuing an interim final regulation to the VA Acquisition Regulation (VAAR) to update and clarify construction contracting procedures and clauses. The regulation is being published as an interim final rule in order to provide required detailed agency procedures, guidance, and necessary clauses for VA contracting officers' use. However, this regulation will not become a final regulation until assessment of all comments.

EFFECTIVE DATE: This interim final regulation is effective January 21, 1988. Written comments must be submitted on or before February 22, 1988, for consideration in the final regulation. Comments will be available for public inspection until March 1, 1988.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 pm., Monday through Friday (except holidays) until March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marsha J. Grogan, Policy and Interagency Service (91A), Office of Procurement and Supply, 810 Vermont Avenue NW., Washington DC 20420, (202) 233–3784.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule updates and clarifies construction contracting procedures and clauses. Various changes to the VAAR contain new and revised coverage on such topics as:

Construction project cost ranges,

Architect/engineer board membership,

Performance of work by the contractor—Network Analysis System (NAS),

Guarantee and payment provisions for new or replacement elevators, automatic transport systems, or any other type of system in which guarantee period services are required,

Special notes to bidders clarifying information about:

—Contractor qualification and experience requirement,

—VA specifications and drawings,

—Contractor time extension requests due to severe weather.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this interim final rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this interim final rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change in itself will not have a significant economic impact on a substantial number of small entities because the provisions implement the requirements of the FAR. The provisions are primarily internal procedures which will not impact the private sector.

IV. Paperwork Reduction Act

This interim final rule requires no additional information collection or recordkeeping requirements upon the public.

List of Subjects in 48 CFR Parts 836 and 852

Government procurement.

Approved: January 13, 1988.

Thomas K. Turnage,

Administrator.

Chapter 8 of Title 48 Code of Federal Regulations is amended as set forth below:

1. The authority citation for Parts 836 and 852 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

2. In Subpart 836.2, section 836.204 is added to read as follows:

836.204 Disclosure of the magnitude of construction projects.

In lieu of the estimated price ranges described in FAR 36.204, the magnitude of VA projects should be identified in advance notices and solicitations in terms of one of the following price ranges:

(a) Less than $25,000;
(b) Between $25,000 and $100,000;
(c) Between $100,000 and $250,000;
(d) Between $250,000 and $500,000;
(e) Between $500,000 and $1,000,000;
(f) Between $1,000,000 and $2,000,000;
(g) Between $2,000,000 and $5,000,000;
(h) Between $5,000,000 and $10,000,000;
(i) Between $10,000,000 and $20,000,000;
(j) Between $20,000,000 and $50,000,000;
(k) Between $50,000,000 and $100,000,000;
(l) More than $100,000,000.

(This section has been promulgated as a deviation to the FAR as provided in FAR subpart 1.4.)

836.602–2, 836.602–3, 836.602–4, 836.602–5 [Amended]

3. In Subpart 836.6, sections 836.602–2, 836.602–3, 836.602–4, and 836.602–5 are amended by removing the word "station" wherever it appears, and adding in its place, the word "facility."

4. In section 836.602–2, paragraphs (a) and (b) are revised to read as follows:

836.602–2 Evaluation boards.

* * * * *

(a) The evaluation board will be chaired by the Director of the Architect-Engineer Evaluation Staff, or the Area Project Manager (or Deputy Area Project Manager) will be designated to act when necessary. The board's members as appointed by the Director, Office of Facilities, will include the appropriate Area Project Manager and as many qualified professional architects or engineers from the Office of Facilities technical services as may be considered appropriate for the particular project. Additional members from the Office of Facilities or from other VA departments and staff offices will be designated for projects when appropriate.

(b) The evaluation board for a VA field facility will consist of no less than two members, one of whom will be the Chief, Supply Service, and the other the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, an additional engineer will be appointed to the board. The chairperson of the board will be the senior engineer.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Following the clause in section 852.236–72, Alternate I is added to read as follows:

852.237–72 Performance of work by the contractor.

* * * * *

Alternate I (Jan. 1988). For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(b) The contractor shall submit, simultaneously with the cost per activity of the construction schedule required by Section 01311, NETWORK ANALYSIS SYSTEM, a responsibility code for all activities of the network for which the contractor's forces will perform the work. The cost of these activities will be used in determining the portions of the total contract work to be executed by the contractor's forces for the purpose of this article.

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at contracting officers' discretion, authorize a change in such activities of said work.

6. Following the clause in section 852.236–75, Supplement I is added to read as follows:

852.236–72 Guaranty.

* * * * *

Supplement I (Jan. 1988). If the specifications include guarantee period services, add the following paragraph (g) and redesignate paragraph (g) in the basic text as paragraph (h).

(g) Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR section 52.249–10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the

separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor's refusal or failure to complete the work within this specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

852.236-81 [Amended]

7. In section 852.236-81, the clause is amended by removing the word "three" wherever it appears, and adding in its place the word "six."

8. In section 852.236-82, in the clause, paragraph (a)(1), the first sentence in paragraph (b), and paragraph (f) are revised, and Supplement I is added following the clause, to read as follows:

852.236-82 Payments under fixed-price construction contracts (without NAS).

* * * * *

(a) * * *

(1) The contracting officer may retain funds:

* * * * *

(b) The contractor shall submit a schedule of cost to the contracting officer for approval within 30 calendar days after date of receipt of notice to proceed. * * *

* * * * *

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

Supplement I (Jan. 1988). If the specifications include guarantee period services, include the following paragraphs (6) (i) and (ii) as an addition to the basic clause in paragraph (b):

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of notice to proceed, the guarantee period performance program which shall include an itemized accounting of the number of workhours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the estimated costs including employee fringe benefits and what the contractor reasonably expects to pay over the guarantee period service, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee service shall be prorated on an annual basis and paid in equal monthly payments by the VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld, and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payment and Default clauses.

9. In section 852.236-83, in the clause, paragraphs (a)(1), the introductory text of (b), (b)(3), the last sentence in paragraph (c), and paragraph (f) are revised, and Supplement I is added following the clause, to read as follows:

852.236-83 Payments under fixed-price construction contracts (including NAS).

* * * * *

(a) * * *

(1) The contracting officer may retain funds:

* * * * *

(b) The contractor shall submit a schedule of costs in accordance with the requirements of Section Network Analysis System (NAS) to the contracting officer for approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed.

* * * * *

(3) Insurance and similar items shall be prorated and included in each activity cost of the critical path method (CPM) network.

* * * * *

(c) * * * The unit costs shall be those used by the contractor in preparing the bid and will not be binding as pertaining to any contract changes.

* * * * *

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

Supplement I (Jan. 1988). If the specifications include guarantee period services, include the following paragraphs (6) (i), (ii), and (iii) as an addition to the basic clause in paragraph (b):

(6)(i) The contractor shall show on the critical path method (CPM) network the total cost of the guarantee period services in accordance with the guarantee period service section(s) of the specifications. This cost shall be priced out when submitting the CPM cost loaded network. The cost submitted shall be subject to the approval of the contracting officer. The activity on the CPM shall have money only and not activity time.

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of workhours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established costs including employee fringe benefits and what the contractor reasonably expects to pay over the guarantee period service, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by the VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payment and Default clauses.

10. In section 852.236-84, introductory text is added to read as follows:

852.236-84 Schedule of work progress.

This clause is to be used on projects which do not include a section entitled "Network Analysis System (NAS)." The cost-loaded activity network serves the same general purpose as the schedule of work progress.

* * * * *

11. In section 852.236-88, in the clause in paragraph (b), the first sentence in paragraph (j) is revised to read as follows:

852.236-88 Contract changes.

* * * * *

(b) * * *

(j) Overhead and contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security police, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made therefor. * * *

* * * * *

12. Section 852.236-91 is added to read as follows:

852.236-91 Special notes

Special Notes (Jan. 1988)

(a) Signing of the bid shall be deemed to be a certification by the bidder that:

(1) Bidder is a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration or repair of buildings, structures, communication facilities, or other engineering projects, including furnishing and installing of necessary equipment; or

(2) If newly entering into a construction activity, bidder has made all necessary arrangements for personnel, construction equipment, and required licenses to perform construction work; and

(3) Upon request, prior to award, bidder will promptly furnish to the Government a statement of facts in detail as to bidder's

previous experience (including recent and current contracts), organization (including company officers), technical qualifications, financial resources and facilities available to perform the contemplated work.

(b) Unless otherwise provided in this contract, where the use of optional materials or construction is permitted the same standard of workmanship, fabrication and installation shall be required irrespective of which option is selected. The contractor shall make any change or adjustment in connecting work or otherwise necessitated by the use of such optional material or construction, without additional cost to the Government.

(c) When approval is given for a system component having functional or physical characteristics different from those indicated or specified, it is the responsibility of the contractor to furnish and install related components with characteristics and capacities compatible with the approved substitute component as required for systems to function as noted on drawings and specifications. There shall be no additional cost to the Government.

(d) In some instances it may have been impracticable to detail all items in specifications or on drawings because of variances in manufacturers' methods of achieving specified results. In such instances the contractor will be required to furnish all labor, materials, drawings, services and connections necessary to produce systems or equipment which are completely installed, functional, and ready for operation by facility personnel in accordance with their use.

(e) Claims by the contractor for delay attributed to unusually severe weather must be supported by climatological data covering the period and the same period for the 10 preceding years. When the weather in question exceeds in intensity or frequency the 10 year average, the excess experienced shall be considered "unusually severe." Comparison shall be on a monthly basis. Whether or not unusually severe whether in fact delays the work will depend upon the effect of weather on the branches of work being performed during the time under consideration.

(End of Clause)

[FR Doc. 88-1080 Filed 1-20-88; 8:45 am]

BILLING CODE 8320-10-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190 and 192

[Docket No. PS-99, Amdt. Nos. 190-1 and 192-58]

Pipeline Safety Standards and Procedures; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Final rule.

SUMMARY: This final rule amends the gas pipeline safety standards by making a number of editorial and other minor changes based on a petition for rulemaking submitted by the New England Gas Association and RSPA's review of the standards. The changes clarify the intent of the standards. In addition, the pipeline safety enforcement procedures are modified to reflect changes in agency practices regarding payment of civil penalties.

EFFECTIVE DATE: This amendment takes effect February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Bernard L. Liebler, (202) 366-2392, regarding the changes to safety standards; Barbara Betsock, (202) 366-4400, regarding the changes to enforcement procedures; or the Dockets Unit, (202) 366-5046, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

The New England Gas Association (NEGA), by letter of June 19, 1981, recommended 79 unrelated changes, additions and deletions to Part 192. NEGA contended that the proposals would clarify the intent of the regulations and reduce the cost of compliance without compromising pipeline safety. RSPA considered the NEGA letter a Petition for Rulemaking (P-15).

A preliminary review of the NEGA proposals culminated in a letter to NEGA dated Feburary 28, 1984. This letter explained that three of the problems addressed by NEGA had been eliminated by rulemaking. The letter explained further that under Executive Order 12291 rulemaking actions must be based on a demonstrated need and on the costs and benefits of the contemplated action.

In response NEGA resubmitted a slightly modified list of 71 recommendations. By this final rule, RSPA partially grants the NEGA petition and makes additional minor changes to Part 192 based on its review of the standards.

NEGA Proposed Changes to Safety Standards

As NEGA proposed, the acronym "MAOP" has been added to the definition of "maximum allowable operating pressure" in § 192.3. NEGA argued that, "The letters MAOP are often used in these standards and should be contained in the definition." Contrary to this assertion, a review of the regulations did not reveal a single use of the acronym. However, this NEGA misconception is extremely common, and we believe reflective of the almost universal use of the acronym MAOP in the gas industry and RSPA. Since the acronym could be applied to the phrase "maximum actual operating pressure," albeit rarely and unintentionally, it will clarify the regulations to associate MAOP unambiguously with "maximum allowable operating pressure."

In § 192.59(a)(1), referring to the standards of manufacture of new plastic pipe, NEGA recommended the following be deleted: "except that before March 21, 1975, it may be manufactured in accordance with any listed edition of a listed specification." This language was inserted in 1975 when this section was revised to require the use of the "latest listed edition of a listed specification" for the manufacture of plastic pipe. (Amdt. 192-19, 40 FR 10472, March 6, 1975) The purpose of the language NEGA proposed to delete was to permit operators to use stockpiled pipe manufactured prior to the effective date of the amendment.

Twelve years have passed since this wording was inserted. It no longer serves a useful purpose, and RSPA agrees that it should be deleted. In addition, the concept of a "latest listed edition" is no longer valid because editions of listed specifications (those set forth in Section I of Appendix B) are no longer listed in sequence. Also, § 192.7(c) was amended previously to provide that an earlier edition of a specification may be used for materials manufactured according to that edition, provided that it was listed at the time of such manufacture. Therefore, RSPA has revised § 192.59(a)(1) to read, "It is manufactured in accordance with a listed specification." Section 192.59(b)(1), concerning used plastic pipe, has been amended similarly.

RSPA agrees with NEGA's proposed revision of § 192.161(f), concering branch connections. The word "detrimental" has been inserted between "prevent" and "lateral," so that only "detrimental" movement at branch connections has to be prevented. The revised text of this section makes it consistent with the intent of the regulation.

To express better the intent of § 192.177(a)(1), governing the location of bottle-type holders, the word "storage" has been deleted from "storage site." With this change, a bottle-type holder may be located at any "site" that meets the standards.

RSPA also has revised the lead-in text of § 192.355(b), as NEGA recommended, by deleting, "The outside terminal of each service regulator vent and relief vent must—" and substituting, "Service

regulator vents and relief vents must terminate outdoors, and the outdoor terminal must—." The current wording could be misinterpreted as being conditional, meaning if the vent terminates outside, it must comply with the requirements of § 192.355(b). This has never been the intent. This section was based on USAS B31.8—1968, a voluntary consensus standard covering gas piping. Paragraph 848.33 of the current edition of this standard, ANSI ASME B31.8—1986, includes the following, "All service regulator vents and relief vents, where required, shall terminate in the outside air * * *" RSPA believes that the foregoing reflects current and acceptable industry practice as well as the original intent of § 192.355(b).

Other Changes to Safety Standards

RSPA has made several additional clarifying changes not addressed in the NEGA petition. The first corrects a typographical error by replacing "conjection" with "conjunction" in § 192.281(e)(2).

RSPA has clarified § 192.191(b), concerning plastic fittings. The note that appears below the table in § 192.191(b) states that the pressures shown are the same as would be determined by applying the design formula for plastic pipe in § 192.121 and the limitations of § 192.123. This is no longer true. The design formula that appears in § 192.121 was amended previously to apply a uniform design factor of 0.32 to all plastic pipe regardless of class location. Thus, the table is superfluous and misleading, implying a differentiation in class location requirements beyond the 100-psig limitation for Classes 3 and 4 locations and distribution systems under § 192.123(a).

RSPA has deleted the current § 192.191(b) and replaced it with the following: "Thermoplastic fittings for plastic pipe must conform to ASTM D2513." This removes the existing conflict with §§ 192.121 and 192.123, and addresses thermoplastic fittings in a manner consistent with current practice and level of public safety. The 1981 edition of the ASTM D2513 document, "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings," has been incorporated by reference in Part 192 for other purposes related to the use of plastic pipe (see §§ 192.59 (listed specification), 192.63, 192.281, and 192.283). Because the 1981 edition is the applicable edition incorporated by reference in Part 192 (§ 192.7) and operators have it available, it will serve for purposes of the new § 192.191(b) until updated through a separate rulemaking.

The remaining changes relate to confusion regarding required test pressures. Currently, leak test requirements for pipelines (other than service lines and plastic pipelines) to be operated "at or below 100 p.s.i.g." are addressed in § 192.509. Required test pressures for establishing the MAOP of steel pipelines to be operated "at 100 p.s.i.g. or more" are addressed in § 192.619(a)(2)(ii). These sections set forth confusing requirements for 100-psig steel mains. Section 192.509(b) requires a minimum test pressure of 90 psig for mains to be operated at 1 psig or more, while § 192.619(a)(2)(ii) requires a minimum test pressure for mains in Class 1 locations of 110 psig, and higher in other class locations. Operators often avoid the more stringent requirement of § 192.619(a)(2)(ii) by setting the MAOP of steel mains at 99 psig and conducting a 90-psig leak test. It is obviously not the intent of the standards to make 100 psig a unique operating pressure.

RSPA has removed the confusion in the following way. The titles and lead-in text of §§ 192.507 and 192.509 have been revised to change their statements of applicability. As amended, the test requirements of § 192.507 apply to pipelines operating at a hoop stress of less than 30 percent of SMYS and "at or above 100 p.s.i.g.," instead of the current "above 100 p.s.i.g.," bringing steel pipelines to be operated at 100 psig under § 192.507. The words "at or" have been deleted from "at or below 100 p.s.i.g." in the lead-in text of § 192.509, thus removing 100-psig pipelines from the requirements of that section.

The result of these changes is that test requirements for pipelines to be operated at 100 psig are clearly addressed in § 192.507 and the confusion over the current test requirements of §§ 192.509(b) and 192.619(a)(2)(ii) is eliminated. Compliance is simplified, while no operational changes are required.

Although Subpart J prescribes the pressure test requirements for new, replaced, and relocated pipelines, the minimum test pressures needed to substantiate a proposed MAOP are prescribed in Subpart L in § 192.619. To make this separation of related requirements easier to comprehend, the words "and with § 192.619" have been inserted after the words "in accordance with this subpart" in § 192.503(a)(1). This change explicitly directs the operator to the test pressure requirements, thus eliminating potential confusion without requiring operational changes.

Section 192.625(g), which pertains to interim standards for odorization of gas, in transmission lines, has had no legal effect since final standards became effective under § 192.625(b) on January 1, 1977. It is therefore removed.

Enforcement Procedures

Under RSPA's procedures governing the assessment and collection of civil penalties for violation of a pipeline safety regulation, order, or statute, the person charged with the violation may pay the proposed civil penalty and close the case. (§ 190.209(a)(1)). RSPA considers such action by a respondent to be an admission of violation by the respondent. It is therefore relevant to the determination of the amount of any future civil penalty assessment under § 190.225. That section requires consideration of a "respondent's history of prior offenses." To make this clear, § 190.209(a)(1) is revised by adding the phrase "with prejudice to the respondent" after the words "close the case."

Under § 190.227(a), civil penalty payments are no longer remitted to the Chief Counsel's office. Certified checks or money orders are made payable to the "Department of Transportation" and sent to Chief General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Impact Assessment

This final rule is considered to be nonmajor under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Because it includes no substantive revisions that could be expected to require significant changes in operator procedures or compliance burdens, and because the economic impact would be slight, a full regulatory evaluation is not required.

The agency certifies under section 605 of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule makes a number of editorial and other clarifying changes to Part 192 and does not impose any substantive new safety requirements. The changes were considered in September 1987 by the Department's gas pipeline advisory committee, the Technical Pipeline Safety Standards Committee, which approved them without comment or modification. Each change makes the regulations more easily understood or states more clearly

the original intent which has been evident in practice but not stated as lucidly as possible. For example, the change to § 192.355(b) makes clear that service regulator vents and relief vents must terminate outside. This has always been the intent of the requirement, but the existing language allows an interpretation that such an outside terminal is optional. Because of the minor and principally editorial nature of the changes, and because they will not effect either implementation or enforcement activities, prior notice and opportunity for public comment are unnecessary. Therefore, in accordance with the Administrative Procedure Act, the changes are final.

In addition, because the two changes to Part 190 modify agency rules of practice and procedure, the Administrative Procedure Act does not require prior notice and opportunity for public comment on the changes.

List of Subjects

49 CFR Part 190

Pipeline safety, Penalty, Enforcement procedures.

49 CFR Part 192

Pipeline safety, Plastic pipe, Plastic fittings, Supports and anchors, Service regulators.

In view of the foregoing, RSPA amends 49 CFR Parts 190 and 192 as follows:

PART 190—[AMENDED]

1. The authority citation for Part 190 is revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009 and 2010; 49 CFR 1.53 and Appendix A to Part 1.

2. Section 190.209(a)(1) is revised to read as follows:

§ 190.209 Response options.

* * * * *

(a) * * *

(1) Pay the proposed civil penalty as provided in § 190.227 and close the case with prejudice to the respondent;

* * * * *

3. Section 190.227(a) is revised to read as follows:

§ 190.227 Payment of penalty.

(a) Payment of a civil penalty proposed, assessed, or compromised under this subpart must be made by certified check or money order payable to the "Department of Transportation." Except as provided by § 190.209, such payment is sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 2228, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

* * * * *

PART 192—[AMENDED]

4. The authority citation for Part 192 is revised to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

5. In § 192.3, the definition of "Maximum allowable operating pressure" is revised to read as follows:

§ 192.3 Definitions.

* * * * *

"Maximum allowable operating pressure (MAOP)" means the maximum pressure at which a pipeline or segment of a pipeline may be operated under this part.

* * * * *

6. In § 129.59, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 192.59 Plastic pipe.

(a) * * *

(1) It is manufactured in accordance with a listed specification; and

* * * * *

(b) * * *

(1) It was manufactured in accordance with a listed specification;

* * * * *

7. The text of § 192.161(f) is revised to read as follows:

§ 192.161 Supports and anchors.

* * * * *

(f) Except for offshore pipelines, each underground pipeline that is being connected to new branches must have a firm foundation for both the header and the branch to prevent detrimental lateral and vertical movement.

§ 192.177 [Removed]

8. In § 192.177(a)(1), the word "storage" is removed.

9. Section 192.191(b) is revised to read as follows:

§ 192.191 Design pressure of plastic fittings.

* * * * *

(b) Thermoplastic fittings for plastic pipe must conform to ASTM D 2513.

§ 192.281 [Amended]

10. Section 192.281(e)(2) is corrected by removing the word "conjection" and inserting the word "conjunction" in its place.

11. In § 192.355(b) the introductory text is revised to read as follows:

§ 192.355 Customer meters and regulators: Protection from damage.

* * * * *

(b) *Service regulator vents and relief vents.* Service regulator vents and relief vents must terminate outdoors, and the outdoor terminal must—

* * * * *

12. Section 192.503(a)(1) is revised to read as follows:

§ 192.503 General requirements.

(a) * * *

(1) It has been tested in accordance with this subpart and § 192.619 to substantiate the maximum allowable operating pressure; and

* * * * *

13. In § 192.507 the title and introductory text are revised to read as follows:

§ 192.507 Test requirements for pipelines to operate at a hoop stress less than 30 percent of SMYS and at or above 100 p.s.i.g.

Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated at a hoop stress less than 30 percent of SMYS and at or above 100 p.s.i.g. must be tested in accordance with the following:

* * * * *

14. In § 192.509 the title and introductory text are revised to read as follows:

§ 192.509 Test requirements for pipelines to operate below 100 p.s.i.g.

Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated below 100 p.s.i.g. must be leak tested in accordance with the following:

* * * * *

§ 192.625 [Removed]

15. Section 192.625(g) is removed.

Issued in Washington, DC on January 15, 1988.

M. Cynthia Douglass,

Administrator, Research & Special Programs Administration.

[FR Doc. 88–1173 Filed 1–20–88; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. T86–01; Notice 4]

Insurer Reporting Requirements; List of Insurers Required To File Reports in October 1987

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires each passenger motor vehicle insurer to file annual reports with this agency, unless the insurer is exempted by this agency from filing such reports. This law specifies that NHTSA can exempt those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State. To carry out these statutory provisions, NHTSA has exempted all those insurance companies that are statutorily eligible to be exempted and published a listing of the unexempted companies, i.e., those insurance companies that are required to file annual reports.

The list of unexempted companies is subject to slight changes from time to time since a company's eligibility for exemption from the reporting requirements may vary annually, as its national and State-by-State market shares change. To address this situation, NHTSA publishes annual updates of the list of insurance companies that are required to file annual reports. The listings in these updates are based on the most current market share information available to the agency. Any insurance company omitted from this list is *not* required to file a report for the 1986 calendar year. Those insurance companies included on the list at the end of this rule were statutorily required to file reports for the 1986 calendar year not later than October 25, 1987. However, NHTSA recognizes that the statutory date for filing those reports has passed. Because this final listing is published after the statutory date has passed, the agency will accept as timely insurer reports for the 1986 calendar year that are filed within 30 days after this listing is published.

DATES: *Effective date:* This rule is effective January 21, 1988.

Deadline for submitting petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA not later than February 22, 1988.

ADDRESS: Any petitions for reconsideration must be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Barbara A. Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4807).

SUPPLEMENTARY INFORMATION:

Background: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The term "insurer" is defined very broadly for the purposes of section 612, consisting of two broad groups of entities. One of these broad groups is included in the definition of "insurer" by virtue of section 612(a)(3). That section specifies that for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by insurers of passenger motor vehicles. The requirements for this group of insurers are not addressed in or affected by this rule.

The other broad group is included within the term "insurer" by virtue of section 2(12) of the Act (15 U.S.C. 1901(12)). That section provides that every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer, regardless of the size of the business. Section 612(a)(5) provides that the agency shall exempt small insurers included in this second broad group from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 612(a)(5)(C) as an insurer whose premiums account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also provides that if an insurance company satisfies this definition of a "small insurer", but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurers' market shares nationally and in each State. The A.M. Best data were chosen because they are both accurate and timely, and because its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemption from these reporting requirements. This determination was based on two separate considerations. First, NHTSA determined that the reports from only those insurance companies that were statutorily required to file reports would provide the agency with representative data, both nationally and on a State-by-State basis. Second, NHTSA determined that the data in the insurer reports provided by the insurance companies that were ineligible for an exemption would be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act.

Accordingly, the agency included an Appendix A and Appendix B in the final rule for insurer reports published January 2, 1987 (52 FR 59). The 20 insurance companies listed in Appendix A had premiums that accounted for one percent or more of all motor vehicle insurance premiums paid nationally. Hence, those companies were required to report on their operations for every State in which they did business. The 11 insurance companies listed in Appendix B had premiums that accounted for ten percent or more of the total motor vehicle insurance premiums within a particular State or States. Such companies were required to report on their operations only for those States in which their premiums accounted for ten percent or more of the total premiums.

The Proposal: The market shares for each of the insurance companies listed in the January 2, 1987, final rule were derived from the A.M. Best data for 1984, the most recent year for which the A.M. Best data were available as of the date the final rule was published. However, the A.M. Best data for 1985 became available after January 2. In the January final rule, NHTSA stated, "The agency will update these appendices annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies." 52 FR 62.

In accordance with that pledge, the agency published a proposed updated listing of subject insurance companies on May 28, 1987 (52 FR 19898). This proposal used the most current A.M. Best data to determine which insurance companies are statutorily required to file reports by October 25, 1987. This notice proposed that all insurance companies that were statutorily eligible for an exemption from these reporting requirements should be exempted.

The Comment and the Agency's Decision: Only one comment was filed in response to the proposed rule. The Sentry Insurance Group (Sentry) was listed in proposed Appendix A as an insurance company that was required to file an annual report this year for each State in which it did business. This

proposal was based on A.M. Best data showing that Sentry had a 1.0 percent market share nationally, and was therefore statutorily ineligible for an exemption. Sentry commented that its review of the A.M. Best data showed that Sentry had only 0.984 percent of the national market. Sentry stated that if this number were to be rounded, it should be rounded to 0.98 percent. If it were so rounded, Sentry asserted that it would be not be required to file a report in October 1987, because it would have a national market share of less than one percent.

A.M. Best reported to NHTSA that Sentry had a 1.0 percent market share nationally. In response to Sentry's allegations, NHTSA contacted A.M. Best officials and asked them whether Sentry's comment was accurate. After further examining their raw data, those officials stated that Sentry's assertion that its market share was actually 0.984 percent was mathematically correct, but statistically invalid. Those officials stated that A.M. Best has always rounded market share percentages to the nearest one tenth of a percentage point. According to those officials, A.M. Best has always followed this practice in order to account for the uncertainties and previous rounding of numbers used in these statistical calculations. In accordance with this longstanding practice, which A.M. Best applies to all insurance companies, Sentry's market share of 0.984 percent was rounded to 1.0 percent by A.M. Best and reported as such to the agency.

The A.M. Best practice is consistent with the general principle of statistics that an impression of numerical accuracy should be avoided, if such accuracy does not actually exist. This subject is discussed in John Griffin's *Statistics, Methods and Applications*, Holt, Rinehart and Winston, Appendix B (1962). Such spurious accuracy would be illustrated by an attempt to express the estimated population of a city in 1987 to a precise number in the final digit. It is not possible for such an estimate to be that accurate. Accordingly, persons making estimates must round off the estimate to the degree of accuracy of the least precise figure used in computing the estimate.

To illustrate this, let us suppose that a business were attempting to estimate its sales in four different States, and then determine what percentage of that four State area was represented by the sales in State B. Assume that the sales figures for the States were:

State A	25,000
State B	1,400,000
State C	12,000
State D	3,450,000

The total for these numbers 4,887,000. However, this total is an improper expression of accuracy. Since the least precise sales figure is expressed to the nearest hundred thousand in State B, the four State estimated total would also be expressed to the nearest hundred thousand, as 4.9 million.

If one then divides the sales figure in State B (1,400,000) by estimated total sales in the four States (4,900,000), the result is 28.57142857142 percent. This expression of the result of a very clear illustration of spurious accuracy. Applying proper statistical principles, the percentage calculated here cannot have more significant digits than are found in any one of the numbers that are divided. In this example, both the divisor and the dividend have only two significant digits. Therefore, the quotient could not have more than two significant digits and the result should be shown as 29 percent.

A.M. Best follows similar rounding procedures when it calculates the market shares for insurance companies. To avoid spurious accuracy in its reported percentages, A. M. Best has determined that its market share percentages should be expressed only to the nearest one tenth of a percentage point. This determination by A.M. Best appears consistent with sound statistical practices.

Therefore, the agency is not persuaded that there is a need for it to recalculate the market share information reported to it by A.M. Best, by asking A.M. Best to furnish its raw data for all insurance companies with a 1.0 percent share of the national market. When NHTSA announced its intention to base its market share determinations on the A.M. Best data, the A.M. Best practice of rounding off market shares to the nearest one tenth of a percentage point was known by all insurance companies. The agency will recalculate the A.M. Best estimates *only* if there is some reason to believe that the estimates are based on a mathematical error, unreasonable statistical practices or assumptions, or are arbitarily applied to only some insurance companies. In this case, none of these factors are present. Therefore, NHTSA does not believe it is necessary or appropriate for it to recalculate A.M. Best's reported market share information. Accordingly, Sentry Insurance Group appears in this final version of Appendix A, based on the A.M. Best report.

No other comments were received on the proposed listings. For the reasons set forth above and in the preamble to the proposed listing, this final rule adopts the proposed listings for both Appendix A and Appendix B.

NHTSA finds for good cause that this rule should be effective immediately upon publication in the **Federal Register**, instead of 30 days thereafter. As noted earlier in this preamble, section 612 of the cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers that were not exempted from these reporting requirements to file a report for the 1986 calendar year no later than October 25, 1987. This statutory obligation makes it imperative that this listing of the insurance companies that are *not* exempted from filing those reports become effective as soon as possible. As also noted above, NHTSA will consider reports by the listed insurance companies to be timely filled, if such reports are received by the agency not later than 30 days after the publication of this rule.

Regulatory Impacts: NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption are expressly required to file reports.

NHTSA does not believe that this rule reflecting more current A.M. Best data affects the impacts described in the final regulatory evaluation prepared for Part 544. Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the final regulatory evaluation for Part 544, the agency estimates that it will cost the one insurance company added to Appendix A about $100,000 to file its initial report, while saving about $50,000 for the company deleted from Appendix A. The two companies that are deleted from Appendix A, but added to Appendix B, will save about $30,000 each as a result of this change. The three companies deleted from Appendix B will save about $20,000 each, while the company required to report on one State instead of two will save about $10,000. Thus, the net total impact of these changes is estimated to be a savings of about $80,000 for insurance companies. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

As noted above, a full regulatory evaluation was prepared for the final rule establishing Part 544. Interested persons may wish to examine that

evaluation in connection with this rule. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act. I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule simply applies more current information to determine which insurance companies are statutorily eligible to be exempted from these reporting requirements. NHTSA believes that any insurance company that does not qualify as a "small insurer" within the meaning of section 612 of the Act would also not qualify as a small entity within the meaning of the Regulatory Flexibility Act. Those insurance companies that did not qualify as small insurers under the older data, but do qualify under the newer data, would realize some savings, as discussed above. However, the economic impact would not be substantial, nor are there a substantial number of these companies.

In accordance with the National Environmental Policy Act, the agency has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for Part 544 continues to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to Part 544 is revised to read as follows:

Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

State Farm Group
Allstate Insurance Group
Farmers Insurance Group
Nationwide Group
Aetna Life & Casualty Group
Liberty Mutual Group
Travelers Insurance Group
USAA Group
Hartford Insurance Group
CIGNA Group
Geico Corporation Group
Continental Group
United States F & G Group
Fireman's Fund Group
California State Auto Association
Interinsurance Exchange Auto Club of Southern California
Sentry Insurance Group
Lincoln National Group

3. Appendix B to Part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alabama Farm Bureau Group (Alabama)
Island Insurance Group (Hawaii)
Kentucky Farm Bureau Group (Kentucky)
American General Group (Maine)
Commercial Union Assurance Group (Maine)
American Family Group (North Dakota, South Dakota, and Wisconsin)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Group (Mississippi)
Amica Mutual Insurance Company (Rhode Island)
American International Group (Vermont)

Issued on January 15, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-1170 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Commercial Fishing Operations Permit; California Sea Lions

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

ACTION: Continuation of regulation and Reauthorization of general permit.

SUMMARY: On June 17, 1986, the National Marine Fisheries Service (NMFS) issued a General Permit to the Sportfishing Association of California under Category 6 of the general permit regulations (50 CFR 216.24). This permit authorized operators of commercial passenger fishing vessels (CPFV) to harass California sea lions when they were interfering with active sportfishing operations. The Permit is subject to annual reauthorization based on the NMFS' analysis of the effectiveness of approved harassment devices in deterring sea lions from interfering with sportfishing operations.

The NMFS conducted an analysis of activities conducted under the permit and found that the rate of sea lion interactions with CPFV operations has declined since environmental conditions stabilized subsequent to the 1983-84 El Nino event. Consequently, CPFV operators have not made substantial use of the permit. There were occasional interactions and the use of small numbers of seal bombs and cracker shells was reported. The NMFS concludes that the use of authorized harassment devices under the general permit presents no disadvantage to the sea lions.

Based on its findings, the NMFS is reauthorizing the general permit for gear category 6 issued to the Sportfishing Association of California for the period January 1, 1988 through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. (213-514-6199).

SUPPLEMENTARY INFORMATION: On December 4, 1985, (50 FR 49696) NMFS issued a final rule modifying the regulatory definition of "commercial fishing operation" to include commercial passenger fishing vessels (CPFVs). This modification created a new gear category (category 6) and established procedures for operators and owners of CPFVs to apply, under the authority of the Marine Mammal Protection Act, to harass marine mammals in the course of fishing operations. On June 16, 1986, the NMFS issued a General Permit to the Sportfishing Association of California (SAC) (51 FR 23457, June 27, 1986). Conditions appended to the permit placed certain restrictions on the taking. These included: limiting the techniques authorized for harassing California sea lions away from fishing operations to specific non-lethal devices; broadly specifying the geographic areas where devices may be used; and requiring that any harassment of sea lions be reported to the Regional Director. The authorization to harass sea lions granted by the General Permit is extended to individual vessel owners and operators through a Certificate of Inclusion issued to those individuals that complete an application with the Southwest Region.

The purpose of this report is to assess the effectiveness of the CPFV regulations and the SAC General Permit in both alleviating and monitoring these marine mammal-fishery interactions.

Permits Issued and Reports Received

During 1986, 39 Certificates of Inclusion were issued, 17 to vessel owners and 22 to operators. During 1987, 25 certificates (14 owners and 11 operators) were issued. Since issuance of the General Permit, the NMFS has received logs from only two certificate holders, reporting that devices were

used on a total of 18 days. These logs report the use of 52 cracker shells and 10 seal bombs. In 36 reported interactions, the approved device(s) had the following effect on the sea lion present: 14—animal left the area; 18—had no effect on the animal; 4—device had mixed or uncertain effect on the animal. None of the reports received indicate any sea lions were harmed by the explosive devices, and no reports were received from other sources (e.g. passengers or CDFG biologists) that would indicate that the program had been disadvantageous to sea lions.

The low number of reports received may reflect: (1) A failure to report the use of these devices; (2) an unexpectedly low rate of sportfishery-marine mammal interactions; or most likely (3) some combination of these factors. In June, 1987, the Southwest Region discussed the apparently low reporting rate with the President of the SAC. Although he agreed to encourage certificate holders to comply fully with the established reporting requirements, no reports have been received in the Region since January 5, 1987.

Interactions between marine mammals and sportfishermen occurred frequently during the summers of the El Nino years (1983–85) when fishermen were targeting on surface fisheries, for species such as yellowtail and bonito. Since the summer of 1986, the rate of interaction appears to have dropped off (Doyle Hanan, CDFG, per comm). This is likely the result of a return of the sportfisheries to mid-water and bottom dwelling species such as kelp bass, rockfish, and halibut. In general, the same areas were fished by CPFVs during both periods so there is no geographic shift in fishing effort that would account for the decline in the rate of interaction.

Although a cause and effect relationship can not be demonstrated with any certainty, it is possible that interactions were high during the El Nino years because sea lion prey was less available and sea lions sought out CPFV catch as an alternative. When normal oceanographic conditions returned, sea lions reverted to their normal prey and interactions with CPFVs declined. However, it is likely that the above speculation at best accounts for only a portion of the failure to report interactions or use of devices since January, 1987.

Conclusions and Recommendations

Due to the low level of reported interactions, the NMFS is unable to evaluate the effectiveness of the mechanisms provided by the CPFV regulations and General Permit to deter interactions between sportfishermen and California sea lions.

The program appears to present no disadvantage to sea lions and there has been no adverse reaction from the public that has been exposed to the use of the devices. Therefore, the NMFS should continue the CPFV Category 6 program through the end of 1988 to provide additional time to assess its effectiveness. The Southwest Region, NMFS should cooperate with the SAC to ensure that reports of interactions and use of the harassment devices are submitted. At the end of the 1988 permit year, the data collected will be reviewed and a decision whether to continue the program will be made.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88–1096 Filed 1–20–88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 13
Thursday, January 21, 1988

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

Federal Crop Insurance Corporation

7 CFR Part 451

[Amdt. No. 1; Doc. No. 4749S]

Canning and Processing Peach Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Canning and Processing Peach Crop Insurance Regulations (7 CFR Part 451), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Canning and Processing Peach Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.122, Stonefruit Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than February 22, 1988, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday throught Friday.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 15, 1990.

E. Ray Fosse, Manager, FCIC, (10 has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more: (b) major increases in costs of prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

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

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

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

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endoursement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is publised as a section to Part 401, effective for as subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 451 will be effective only through the end of the 1987 crop year, FCIC hearing proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Stonefruit Endorsement will be published as an endorsement to 7 CFR Part 401 (401.122, Stonefruit Endorsement), and become effective for the 1988 and succeeding crop year. Upon final publication, the provisions of the Canning and Processing Peach Crop Insurance Regulations, now contained in 7 CFR 451, would be superseded. Therefore, FCIC proposed to amend the subpart heading to provide that 7 CFR Part 451 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 451

Crop Insurance, Canning and processing peach.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Subpart heading to the Canning and Processing Peach Crop Insurance Regulations (7 CFR Part 451), as follows:

PART 451—[AMENDED]

1. The authority citation for 7 CFR Part 451 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516.

2. The Subpart heading in 7 CFR Part 451 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC, on January 14, 1988.

Edward D. Hews

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–1175 Filed 1–20–88; 8:45 am]

BILLING CODE 3410-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[FRL-3317-7]

Standards for Remedial Actions at Inactive Uranium Processing Sites

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of closure date for the hearing record.

SUMMARY: The Environmental Protection Agency proposed regulations to correct and prevent contamination of ground water beneath and in the vicinity of inactive uranium processing sites by uranium tailings on September 24, 1987 (52 FR 36000). A public hearing was held in Durango, Colorado, on October 29, 1987. At the hearing, we announced that the hearing record would remain open for additional comments until January 8, 1988. This notice extends that date.

DATES: The hearing record will remain open until January 29, 1988. Comments received on or before that date will be fully considered by the Agency in preparing its final rulemaking.

ADDRESS: Comments should be submitted (in duplicate if possible) to: Central Dockets Section (LE–130), U.S. Environmental Protection Agency, Attn: Docket No. R–87–01, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Kurt L. Feldmann, Guides and Criteria Branch (ANR–460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460; telephone number (202) 475–9620.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 88–1113 Filed–1–20–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. T86–01; Notice 5]

Insurer Reporting Requirements; List of Insurers Required To File Reports in October 1988

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires insurers to file annual reports with this agency, unless NHTSA exempts an insurer from filing such reports. This law also specifies that NHTSA can exempt only those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State. To carry out these statutory provisions, NHTSA has exempted all those insurance companies that are statutorily eligible to be exempted and published a listing of those insurance companies that are required to file annual reports.

However, an insurance company's eligibility for exemption from the reporting requirements may vary annually, as its national and State-by-State market shares change. To address this situation, NHTSA has stated that it will publish annual updates of the list of insurance companies that are required to file annual reports. The listing of insurance companies in this notice is derived from more current market share information than was previously available to the agency. If these listings are adopted as a final rule, those insurance companies included on the list would be required to file reports for the 1987 calendar year not later than October 25, 1988. Any insurance company not on the final list is *not* required to file a report for the 1987 calendar year.

DATES: Comments on this notice must be received by this agency not later than March 7, 1988.

The final rule on this subject will be effective 30 days after the rule is published in the **Federal Register**.

ADDRESS: Comments on this notice should refer to Docket No. T86–01; Notice 5, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8:00 a.m. to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara A. Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4807).

SUPPLEMENTARY INFORMATION: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The term "insurer" is defined very broadly for the purposes of section 612, consisting of two broad groups of entities. One of these broad groups is included in the definition of "insurer" by virtue of section 612(a)(3). That section specifies that for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by insurers of passenger motor vehicles. The requirements for this group of insurers are not addressed in or affected by this proposal.

The other broad group is included within the term "insurer" by virtue of section 2(12) of the Act (15 U.S.C. 1901(12)). That section provides that every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer, regardless of the size of the business. Section 612(a)(5) provides that the agency shall exempt small insurers included in this second broad group from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 612(a)(5)(C) as one whose premiums account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also provides that if an insurance company satisfies this definition of a "small insurer", but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurers' market shares nationally and in each State. The A.M. Best data were chosen because they are both accurate and timely, and its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemption from these reporting requirements. This determination was based on the fact that the reports from only those insurance companies that were statutorily required to file reports would provide the agency with representative data, both nationally and on a State-by-State basis, and that the data in the insurer reports provided by the insurance companies that were ineligible for an exemption would be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act.

Accordingly, the agency included an Appendix A and Appendix B in the final rule for insurer reports published January 2, 1987 (52 FR 59). The 20 insurance companies listed in Appendix A had premiums that accounted for one percent or more of all motor vehicle insurance premiums paid nationally. Hence, those companies were required to report on their operations for every State in which they did business. The 11 insurance companies listed in Appendix B had premiums that accounted for ten percent or more of the total motor vehicle insurance premiums within a particular State or States. Such companies were required to report on their operations only for those States in which their premiums accounted for ten percent or more of the total premiums.

The market shares for each of the insurance companies were derived from the A.M. Best data for 1984, the most recent year for which the A.M. Best data were available as of the date the final rule was published. Since that time, A.M. Best data for more recent calendar years have become available. In the final rule, NHTSA stated, "The agency will update these appendices annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies." 52 FR 62. This rulemaking action implements that pledge. The agency would like to emphasize that this rulemaking does not affect its prior determination that those insurance companies that are statutorily eligible to be exempted from these reporting requirements should, in fact, be exempted therefrom. Instead, this rulemaking simply uses more current data to determine which insurance companies are eligible for such exemptions.

The 1986 calendar year A.M. Best data for market shares shows that five insurance groups (American International Group, CNA Insurance Group, American Family Group, Progressive Group, and Crum & Forster Companies) that did not have at least one percent of the national market for motor vehicle insurance premiums now have at least that amount. Accordingly, those five insurance groups would be added to Appendix A. These additions mean that each of these five groups will be required to file a report not later than October 25, 1988, setting forth the information required by Part 544 for each State in which it did business in the 1987 calendar year. Conversely, three insurers that had a one percent national market share in the older A.M. Best data (Interinsurance Exchange Auto Club of Southern California, Sentry Insurance Group, and Lincoln National) have fallen below the one percent threshhold in the newer data, so their names would be deleted from Appendix A. This means that those insurance groups would not be required to file reports in October 1988.

Additionally, three insurance groups would be deleted from Appendix B, the listing of insurers required to report for particular States because they have a 10 percent or greater market share in those States. Two of the deleted groups (American International Group and American Family Group) were deleted because they now have at least a 1.0 percent national market share. Accordingly, those groups must report on their activities in every State in which they did business, pursuant to section 612 of the Cost Savings Act. American General had been required to report on its activities in the State of Maine, because it had a ten percent market share in that State. The more recent A.M. Best data indicate that American General has fallen below that threshold level in Maine and does not have a ten percent market share in any other State. Therefore, American General's name would be deleted from Appendix B, and it would not be required to file a report in October, 1988.

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, this listing would ensure that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption would be expressly required to file reports.

NHTSA does not believe that this proposed rulemaking to reflect more current A.M. Best data would affect the impacts described in the final regulatory evaluation prepared for Part 544. Accordingly, a separate regulatory evaluation has not been prepared for this proposal. Using the cost estimates in the final regulatory evaluation for Part 544, the agency estimates that it would cost the five insurance companies that would be added to Appendix a about $100,000 each to file an initial report, while saving about $50,000 each for the three companies that would be deleted from Appendix A. The company that would be deleted from Appendix B would save about $20,000. Thus, the net total impact of these changes is estimated to be a cost increase of about $330,000 for insurance companies. This is well below the threshhold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

As noted above, a full regulatory evaluation was prepared for the final rule establishing Part 544. Interested persons may wish to examine that evaluation in connection with this proposal. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

The agency has also considered the effects of this proposed rulemaking under the Regulatory Flexibility Act. I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. This proposed action simply applies more current information to determine which insurance companies are statutorily eligible to be exempted from these reporting requirements. NHTSA believes that any insurance company that does not qualify as a "small insurer" within the meaning of section 612 of the Act would also not qualify as a small entity within the meaning of the Regulatory Flexibility Act. Those insurance companies that did not qualify as small insurers under the older data, but do qualify under the newer data, would realize some savings,

as discussed above. However, the economic impact would not be substantial, nor is there a substantial number of these companies.

In accordance with the National Environmental Policy Act, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed that 49 CFR Part 544 be amended as follows:

PART 544—[AMENDED]

1. The authority citation for Part 544 would continue to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to Part 544 would be revised to read as follows:

Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

State Farm Group
Allstate Insurance Group
Farmers Insurance Group
Nationwide Group
Aetna Life & Casualty Group
Liberty Mutual Group
Travelers Insurance Group
Hartford Insurance Group
USAA Group
United States F & G Group
Geico Corporation Group
American International Group
CIGNA Group
Continental Group
Fireman's Fund Group
CNA Insurance Group
California State Auto Association
American Family Group
Progressive Group
Crum & Forster Companies

3. Appendix B to Part 544 would be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alabama Farm Bureau Group (Alabama)
Island Insurance Group (Hawaii)
Kentucky Farm Bureau Group (Kentucky)
Commercial Union Assurance Group (Maine)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Group (Mississippi)
Amica Mutual Insurance Company (Rhode Island)

Issued on January 15, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-1172 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 88-05, Notice 1]

Federal Motor Vehicle Safety Standards Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 121, *Air Brake Systems*, specifies braking requirements for trucks, buses and trailers equipped with air brake systems. The standard specifies various criteria, typically concerning configuration, speed or weight, for excluding certain vehicles whose attributes result in restricted highway operation. In response to a petition for rulemaking submitted by Corpac Industries, Inc., this notice proposes to eliminate from the standard, the exclusion based on vehicle width. The agency tentatively concludes that the width exclusion is unnecessary to achieve the purpose of ensuring that the standard does not apply to certain vehicles that are appropriately excluded from the standard.

DATES: Comments must be submitted by March 7, 1988. The proposed effective date is 30 days after publication of a final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-5892).

SUPPLEMENTARY INFORMATION: Standard No. 121, *Air Brake Systems*, specifies braking requirements for trucks, buses and trailers equipped with air brake systems. Certain vehicles are excluded by section S3 from the standard's applicability because they have unusual physical or operational characteristics that result in restricted highway operation (e.g., low speed, permit requirements, daytime operation) which limits hazards and the possibility of accidents. Also, the unusual configurations and low production volumes of these vehicles sharply increase compliance costs.

Corpac Industries, Inc., submitted a petition for rulemaking requesting the elimination of Standard No. 121's exclusion of vehicles that have an overall vehicle width of more than 102 inches. The petitioner stated that the Surface Transportation Act of 1982 prevents states from establishing a maximum width of more than or less than 102 inches for commercial motor vehicles operating on the National Network and that this was subsequently modified to include the approximate

metric equivalent of 2.6 m or 102.36 inches. Corpac submitted information showing that thousands of trailers are now being produced which are 102.36 inches wide. The petitioner argued that Standard No. 121 does not technically apply to these vehicles and urged that the 102-inch exclusion be eliminated to prevent the production of vehicles with possibly markedly inferior braking performance.

The first issue raised by Corpac's petition is whether the 102.36-inch trailers now being produced are excluded from Standard No. 121 by virtue of the provision, set forth in section S3(a), that excludes vehicles that have "an overall vehicle width of more than 102 inches with extendable equipment in the fully retracted position." As discussed below, it is NHTSA's opinion that these vehicles are *not* excluded, although it agrees that the standard's application to the 102.36-inch wide trailers should be clarified.

Section 416(a) of the Surface Transportation assistance Act of 1982 states that "(n)o state, other than the State of Hawaii, shall establish, maintain, or enforce any regulation of commerce which imposes a width limitation of *more or less than 102 inches* on any segment of the National System of Interstate and Defense Highways, or any other qualifying Federal-aid highway as designated by the Secretary of Transportation, with traffic lanes designed to be a width of twelve feet or more * * *." (Emphasis added.)

In proposing regulations under the statute, the Federal Highway Administration (FHWA) stated the following:

> The American National Metric Council and the Truck Trailer Manufacturer's Association have called attention to the practices of some Canadian trailer manufacturers to construct their trailers 2.6 meters wide. This dimension is equivalent to 102.36 inches. The FHWA is interested in knowing the advantages and disadvantages of allowing trailers of 102.36-inch widths on the roads as perceived by the State and the public, in general. The FHWA solicits comments on the question of allowing 102.36-inch wide trailers on the National Network. 48 FR 41280, September 14, 1983.

In issuing a final rule, the FHWA stated:

> Commenters on the subject of recognizing the approximate metric width equivalent of 2.6 meters (102.36 inches), on trailers were strongly in favor of such a position. Standardization of truck width on an international basis is seen as an important objective, which will serve to enhance international trade. The FHWA concurs in that assessment. The final rule as contained in Section 658.15 establishes the maximum width as 102 inches or its approximate metric equivalent of 2.6 meters. The FHWA believes the States can accommodate the rule without changing laws or violating congressional intent. 49 FR 23312, June 5, 1984.

The FHWA regulation, set forth at 23 CFR 658.15, states:

> No State shall impose a width limitation of more or less than 102 inches, or its approximate metric equivalent, 2.6 meters (102.36 inches) on a vehicle operating on the National Network, except for the State of Hawaii * * *

Thus, 102.36 inches is defined in the FHWA regulation as the "approximate metric equivalent" of 102 inches, and was determined by FHWA as being consistent with congressional intent as not being "more or less" than 102 inches. Particularly given this background, it is NHTSA's opinion that the 102.36-inch trailers being produced in light of the FHWA regulation are not considered to have a width of "more than 102 inches" within the meaning of Standard No. 121's applicability section. The agency also notes that previous **Federal Register** notices make it clear that NHTSA did not intend the criteria in section S3 to exclude typical configuration vehicles from Standard No. 121. For example, in establishing the 102-inch width exclusion, the agency stated that, in all states other than Hawaii, vehicles exceeding this width were allowed to operate on the highway only by permit. See 42 FR 42208, August 22, 1977.

While it is NHTSA's opinion that the 102.36-inch vehicles are not excluded from Standard No. 121, it agrees that the applicability of the standard to those vehicles should be clarified.

While clarifying the standard's applicability could be achieved through amending S3(a) to expressly refer to the 102.36-inch trailers, the agency believes that a better approach would be to eliminate the exclusion altogether. The agency has tentatively concluded that it is not necessary to retain the width exclusion. NHTSA is unaware of any vehicles wider than 102 inches or 102.36 inches that do not come within one of section S3's other exclusions. The agency believes that those exclusions are sufficiently comprehensive to continue to exclude all vehicles whose function or construction result in restricted highway operation and for which compliance would be very difficult.

Accordingly, NHTSA is proposing to delete section S3's width exclusion. The agency specifically requests comments on whether any vehicles wider than 102 inches (or 102.36 inches) are being produced that do not come within one of the standard's other exclusions and on whether there are any other reasons to maintain a width exclusion. If any commenters favor maintaining a width exclusion, the agency requests comments on the appropriate width (e.g., more than 102.36 inches, 103 inches, etc.) and an explanation of the need for that particular width.

The proposed effective date is 30 days after publication of a final rule in the **Federal Register**. NHTSA believes there is a good cause for an effective date within that time period since the proposed amendment would clarify the standard's applicability.

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. As indicated above, the proposed amendment would clarify Standard No. 121's applicability to vehicles of 102.36 inches and is not believed to affect the applicability of the standard to any other vehicles. The agency has also determined that the effects of the proposal are so minimal that a full regulatory evaluation is not required.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. I certify that the proposed amendments would not have a significant economic impact on substantial number of small entities. For the reasons stated above, the proposed amendment would clarify Standard No. 121's applicability to vehicles 102.36 inches wide and is not believed to affect the applicability of the standard to any other vehicles. Thus, neither small businesses, small organizations, nor small governmental units would be affected by the proposed amendment.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not have any significant impact on the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of

confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be sutmitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S3 would be revised to read as follows:

S3. *Application.* This standard applies to trucks, buses, and trailers equipped with air brake systems. However, it does not apply to:

(a) Any vehicle equipped with an axle that has a GAWR of 29,000 pounds or more;

(b) Any truck or bus that has a speed attainable in 2 miles of not more than 33 mph;

(c) Any truck that has a speed attainable in 2 miles of not more than 45 mph, an unloaded vehicle weight that is not less than 95 percent of its GVWR, and no capacity to carry occupants other than the driver and operating crew;

(d) Any trailer that has a GVWR of more than 120,000 pounds and whose body conforms to that described in the definition of "Heavy hauler trailer" set forth in S4;

(e) Any trailer that has an unloaded vehicle weight which is not less than 95 percent of its GVWR; and

(f) Any load divider dolly.

Notwithstanding any language to the contrary, sections S5.3.1 S5.3.1.1, S5.3.2, S5.3.2.1, S5.3.2.2, S5.7.1, S5.7.3(a) and S5.7.3(b) of this standard are not applicable to trucks and trailers.

Issued on Janaury 14, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-1054 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Federal Indian Reservations and Ceded Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent; request for proposals from Indian tribes desiring special migratory bird hunting regulations for the 1988–89 hunting season.

SUMMARY: The purpose of this Notice of Intent is to request proposals from Indian tribes that wish to establish special migratory bird hunting regulations for the 1988–89 hunting season, under the interim guidelines implemented for this purpose in September 1985. A proposal must include the details described later in this document. The U.S. Fish and Wildlife Service (hereinafter the Service) also welcomes comments concerning this Notice of Intent.

DATE: Proposals and comments should be submitted as soon as possible and must be received by June 10, 1988.

ADDRESSES: All proposals and comments should be submitted to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, Washington, DC 20240. A copy should be sent to the appropriate Service Regional Office at the address shown near the end of this document. Also, tribes that request special hunting regulations for tribal members on ceded lands should send a copy of the proposal to officials in the affected State(s).

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, Telephone (202) 254–3207.

SUPPLEMENTARY INFORMATION:

Background

Beginning with the 1985–86 hunting season, the Service has employed interim guidelines described in the June 4, 1985 **Federal Register** (at 50 FR 23467) to establish special migratory bird hunting regulations on Federeal Indian reservations (including off-reservation trust lands) and ceded lands. The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tyribal and nontribal members throughout their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such

hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approvals. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

One of the guidelines provides for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the 1916 Canadian Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource. The Service will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1988–89 hunting season must submit a proposal that includes: (1) The requested hunting season dates and other details regarding regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.); (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations.

It should be noted that the regulations that will be established for Indian tribes will include both early and late hunting seasons. The early season begins on September 1 each year and includes species such as mourning doves and white-winged doves. The late season usually begins on or near October 1 and includes most waterfowl species. Because final regulations for tribes for the 1988–89 hunting season must be established by September 1, 1988, the proposed and final rules for most tribal waterfowl seasons will be described in relation to the season dates, season length, and limits that will be permitted when final waterfowl hunting season frameworks are announced. For example, the daily bag and possession limits for ducks on most reservations in the Pacific Flyway will be shown as "Same as permitted Pacific Flyway States under final Federal frameworks." This procedure is necessary because the early season will be underway before final frameworks for the late season are announced. The final rule for tribes will include the actual season dates, bag limits, etc., for species included in the early season because the final Federal frameworks will be established in time to include them in the final rule for tribes. In some instances, specific waterfowl regulations for a particular tribe or reservation also may be shown because they will be within the final Federal frameworks that will be established. However, for the reasons shown above, final regulations for most tribes will not inlcude exact details for waterfowl.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations will permit the States in the flyway in which the reservation is located.

Pertinent details in proposals received from tribes will be published for public review in a later **Federal Register** document. Because of the time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1988–89 hunting season should submit their proposals as soon as possible, but not later than June 10, 1988. Tribal inquiries regarding the guidelines and proposals should be directed to the appropriate Service Regional Office.

FISH AND WILDLIFE SERVICE REGIONAL OFFICES

[Address Regional Director, U.S. Fish and Wildlife Service]

States	Address	Telephone No.
California, Hawaii, Idaho, Nevada, Oregon, Washington.	Lloyd 500 Bldg., Suite 1692, 500 NE Multnomah Street, Portland, OR 97232.	503/231-6118
Arizona, New Mexico, Oklahoma, Texas.	P.O. Box 1306, 500 Gold Avenue SW., Albuquerque, NM 87103.	505/766-2321
Iowa, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, Wisconsin.	Federal Building, Fort Snelling, Twin Cities, MN 55111.	612/725-3563
Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.	Richard B. Russell Federal Bldg., Room 1200, 75 Spring Street SW., Atlanta, GA 30303.	404/331-3588
Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia.	One Gateway Center, Suite 700, Newton Corner, MA 02158.	617/965-5100
Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, Wyoming.	P.O. Box 25486, Denver Federal Center, Denver, CO 80225.	303/236-7920
Alaska	1011 E. Tudor Road, Anchorage, AK 99503.	907/786-3542

Authorship

The primary author of this Notice of Intent is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually may be promulgated for the 1988–89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended.

Date: January 15, 1988.

Marvin P. Duncan,

Acting Director.

[FR Doc. 88-1127 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 13
Thursday, January 21, 1988

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.

ACTION

Student Community Service Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of Availability of funds; Student Community Service Projects.

The Division of VISTA/Student Community Service Programs, ACTION, announces the availability of funds for fiscal year 1988 for new VISTA/Student Community Service grants authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part B, 42 U.S.C. 4974.)

Application kits and technical assistance on grant application preparation are available from the ACTION State Office. Two completed application forms, with original signature, must be received in the appropriate ACTION State Office no later than 5:00 PM local standard time on March 21, 1988. Any application received after that date will not be considered for Fiscal Year 1988 funding. However, applications post-marked 5 days before the deadline date will be accepted for consideration.

Background of Notice of Final Guidelines of Student Community Service Program

The following Notice sets out the final guidelines under which Student Community Service Projects operate. This Notice replaces Student Service-Learning Program Guidelines which were published in the **Federal Register**, dated May 22, 1986 and instructions and technical assistance provided to grants previously awarded under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The Guidelines are divided into seven parts which deal with the overall program philosophy, as well as responsibilities of the sponsor, staff, volunteers and volunteer placement sites. It also includes basic data on the administration of a Student Community Service Project.

DATES: These guidelines took effect January 11, 1988. These guidelines are noted in the catalog of Federal Domestic Assistance, Number 72.005.

I. Introduction

This Notice sets forth the guidelines under which Student Community Service Projects operate. Student Community Service Project guidelines are contained in seven parts:

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions.

These guidelines supersede Student Service-Learning Program Guideliens published in the **Federal Register**, dated May 22, 1986, and instructions and technical assistance provided to grants previously awarded under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

II. Purpose

Student Community Service Projects are authorized under Title I, Part B, section 111 and section 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory purpose of these projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience, through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve on a part-time, non-stipended basis.

Service opportunities must result in student volunteers gaining learning experiences through service in low-income communities, whether or not they receive academic credit.

The intent of Student Community Service Projects is to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded, if needed, after Federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources may be made avaliable to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fundraising and recruiting will be provided by ACTION as required.

III. Grantee Eligibility and Selection Criteria

The following criteria will be considered by ACTION in the selection and approval of Student Community Service Projects:

A. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student community service project grant.

B. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in Part II.

C. Grant funds must be used to initiate or expand a student volunteer community service project which addresses the needs of the low-income community.

D. The grantee must develop and maintain community support for the Student Community Service Project through a planned program including public awareness and communications.

E. Proposed community representation in the project's planning and operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application.

F. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of student volunteers who will serve in the project and hours

of service are to be included in project goals and objectives.

G. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

H. The grantee must identify resources which will permit continuation of the student community service project, if needed, upon the conclusion of Federal funding as outlined in Part II.

I. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government. This does not refer to agreements made with volunteer placement sites as discussed in Part VI.

J. The grantee must ensure compliance with the restrictions outlined in Part VII.

The Director of VISTA/Student Community Service Programs may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;
2. Availability of volunteer activities to students from all segments of society;
3. Applicants' accessibility to alternate resources, both technical and financial;
4. Allocation of Student Community Service resources in relation to other ACTION funds.

IV. Grant Application Procedures

A. Scope of Grant

Student Community Service Project grants are awarded for up to a twelve-month period. Requests for second- or third-year reduced funding can be sought by grantees. Maximum federal awards over a period of three years are up to $15,000 for the first year, up to $10,000 for the second, and up to $5,000 for the third. The grantee is required to contribute a local share of at least $3,000 each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their Student Community Service Projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. Contact the ACTION State Office for specific instructions on how to fulfull this requirement.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA/Student Community Service Projects.

B. Procedures for New Grantees

Project application forms are available from ACTION State offices, which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which is available from ACTION State or Regional offices.

Applications are to be submitted to the appropriate ACTION State Office for review and subsequently forwarded to the ACTION Regional office for comment prior to their submission to the Director of VISTA-Student Community Service Programs, who will make the final selection of new Student Community Service project grantees.

The Regional Directors will notify all applicants of the final decisions, and the regional Grants and Contracts Officers will issue Notices of Grant Awards to the grantees upon notification from the Director of VISTA/Student Community Service Programs.

C. Procedures for Renewal Grantees

Applications for renewal projects will be evaluated using the factors identified in selecting initial grantees, as well as the grantee's compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Applications for renewals for second and third years are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the second- or third-year renewal application is denied, the sponsor will be notified that the ACTION Regional Director intends to deny the application for renewal and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR Part 1206. This regulation is available from ACTION State or Regional Offices.

V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which will be furnished the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions

The Student Community Service Project sponsor shall be responsible for providing at least $3,000 in non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements

Sponsors must comply with fiscal reporting requirements as outlined in ACTION Handbook 2650.2 and must maintain records in accordance with generally accepted accounting principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

A quarterly project progress report shall also be submitted to the ACTION State Office no later than 30 days after the end of each project quarter. The report shall include, but not be limited to, the following items:

1. A comparison of actual accomplishments with the goals and objectives established for the period.
2. The number of volunteers participating in the project during the quarter.
3. The number of volunteer hours generated during the quarter.
4. Problems, delays, or adverse conditions that have affected or will affect the attainment of project objectives.

C. Insurance

Grantees are responsible and must show evidence that student volunteers,

while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation

The sponsor should structure student volunteers assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff

Each grantee will designate a person to serve as the project director. A full-time director is desirable. A rationale for less than a full-time project director must be included with the project application. The project director should be hired within 30 days of project start date. Supervision of the project director is the responsibility of the sponsor.

Student Community Service Project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations

1. Community Support

A variable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board. Initial outreach to representatives of these groups, as evidenced by accompanying letters of support, is seen as an effective step toward the development of the application.

2. Volunteer Recognition

With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals. Specific recognition activities should be reflected in the application narrative and budget.

3. Public Awareness

A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and project director should inform community, city and county officials, and the media about development, growth and success of the Student Community Service project.

VI. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged throught he utilization of a Memorandum of Understanding, a Letter of Agreement or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer recruitment, orientation/training, volunteer transportation, recognitioin and reporting of service hours, are functions outlined in this agreement.

VII. Restrictions

A. Special Restrictions on Student Community Service Project Grantees

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) in any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) in connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR Part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and communicate to staff and volunteers, the prohibitions included therein.

3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant from ACTION is a state or local government agency, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff

member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, DC 20525.

4. Non-discrimination

No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. Religious Activities

Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. Labor and Anti-Labor Activity

No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. Non-displacement of Employed Workers

A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. Non-compensation for Services

No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested to required to contribute, or to solicit contributions, to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. Volunteer Status

Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. Nepotism

Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

(42 U.S.C. 4974)

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Regional Office, 10 Causeway Street, Room 473, Boston, MA 02222–1039
ACTION State Office, Abraham Ribicoff Fed. Bldg., 450 Main St., Rm 524, Hartford, CT 06103–3002
ACTION State Office, Federal Bldg., Rm 305, 76 Pearl Street, Portland, ME 04101–4188
ACTION State Office, 10 Causeway Street, Room 467, Boston, MA 02222–1038

(New Hampshire/Vermont)

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Rm 316, Concord, NH 03301–3939
ACTION State Office, John E. Fogarty Bldg., Rm 200, 24 Weybosset Street, Providence, RI 02903–2882

Region II

ACTION Regional Office, 6 World Trade Center, Room 758, New York, NY 10048–0206
ACTION State Office, 402 East State St., Room 426, Trenton, NJ 08608–1507

(Metropolitan New York)

ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048–0206

(Upstate New York)

ACTION State Office, U.S. Courthouse & Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207–2923

(Puerto Rico/Virgin Islands)

ACTION State Office, Frederico DeGetau Federal Ofc. Bldg., Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918–2241

Region III

ACTION Regional Office, U.S. Customs House, 2nd & Chestnut St., Rm 108, Philadelphia, PA 19106–2912
ACTION State Office, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202–2230

(Delaware/Maryland)

ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814
ACTION State Office, Federal Building, Room 500, 85 Marconi Blvd, Columbus, OH 43215–2888
ACTION State Office, US Customs House, Room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106–2998

(Virginia/Dist. of Columbia)

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240–1832
ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301–1409

Region IV

ACTION Regional Office, 101 Marietta St., N.W., Suite 1003, Atlanta, GA 30323–2301
ACTION State Office, 2121 8th Avenue North, Rm 722, Birminghan, AL 35203–2307
ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803–3750
ACTION State Office, 75 Piedmont Ave., NE., Suite 412, Atlanta, GA 30303–2587
ACTION State Office, Federal Building, Rm 1005–A, 100 West Capital Street, Jackson, MS 39269–1092
ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, Rm 131, Raleigh, NC 27601–1739

Region V

ACTION Regional Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604–3964
ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430
ACTION State Office, Federal Bldg./US Courthouse, 801 Broadway, Room 246, Nashville, TN 37203–3889
ACTION State Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604–3964
ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis IN 46204–1922
ACTION State Office, Federal Building, Rm 339, 210 Walnut, Des Moines, IA 50309–2195

Region VI

ACTION Regional Office, 1100 Commerce, Rm 6B11, Dallas, TX 75242–0696
ACTION State Office, Federal Bldg., Room 652, 231 West Lafayette Blvd., Detroit, MI 48226–2799
ACTION State Office, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596
ACTION State Office, 517 East Wisconsin Ave., Rm 601, Milwaukee, WI 53202–4507
ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201–3291
ACTION State Office, Federal Building, Room 248, 444 S.E. Quincy, Topeka, KS 66603–3501
ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801–1910
ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106–2009
ACTION State Office, Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501–2026
ACTION State Office, 200 NW 5th, Suite 912, Oklahoma City, OK 73102–6093
ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747

Region VIII (No Region VII)

ACTION Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349
ACTION State Office, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203–1167
ACTION State Office, Federal Building, Room 6036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649
ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, Rm 192, Helena, MT 59626–0101
ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896

(North & South Dakota)

ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452
ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 484, Salt Lake City, UT 84101–2198

Region IX

ACTION Regional Office, 211 Main Street, Rm 530, San Francisco, CA 94105–1914
ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190
ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105–1974
ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671

(Hawaii/Guam/American Somoa)

ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850
ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–1208

Region X

ACTION Regional Office, Federal Office Building, 909 First Avenue, Ste. 3039, Seattle, WA 98174–1103
ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745

(Alaska)

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103
ACTION State Office, Federal Bldg., Room 647, 511 NW Broadway, Portland, OR 97209–3416
ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103.

(42 U.S.C. 4974)

Dated in Washington, DC on January 15, 1988.

Donna M Alvarado,

Director, ACTION.

[FR Doc. 88–1153 Filed 1–20–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 15, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Marketing Order 989—Raisins Produced From Grapes Grown in California
On occasion; Weekly; Annually
Businesses or other for-profit; Small businesses or organizations; 11,543 responses; 1,727 hours; not applicable under 3504(h)
Patricia Petrella, (202) 475–3920

New

• Farmers Home Administration
Request for Certification/State Mediation Loan Program
On occasion
State or local governments; 5 responses; 40 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736

Reinstatement

• Food and Nutrition Service
• Issuance Reconciliation Report
FNS–46
Monthly
State or local governments; 3,708 responses; 29,990 hours; not applicable under 3504(h)
Paul Jones, (703) 756–3385

Revision

• Agricultural Stabilization and Conservation Service
7 CFR Part 1430, Dairy Products—Dairy Termination Program
Annually
Farms; 15,800 responses; 2,633 hours; not applicable under 3504(h)
Clarence Domire, (202) 447–7673

• Animal and Plant Health Inspection Service
Brucellosis Program (9 CFR 51, 71, 78 and Cooperative Agreements)
VS 1–68, 4–1, 4–1D, 4–4, 4–6, 4–33D, 4–54D, 4–59, 4–108, A, B, C, 6–35, 1–23
Recordkeeping; On occasion; Monthly
State or local governments; Farms; Businesses or other for-profit; 17,727,780 responses; 88,429 hours; not applicable under 3504(h)
Dr. Hobbs, (301) 436–5861

• Farmers Home Administration
7 CFR 1944–A, Section 502 Rural Housing Policies, Procedures and Authorizations
440–34, 1944–3, –4, –5, –6, –A6, –12, and –36
On occasion
Individual or households; Businesses or other for-profit; Small businesses or organizations; 818,600 responses; 457,640 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–1160 Filed 1–20–88; 8:45 am]

BILLING CODE 3410–01–M

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Date, Time and Place: February 1 and 2, 1988, 8:00 a.m. at the Sheraton National Hotel Columbia Pike and Washington Boulevard, Arlington, Virginia.

Status: Open.

Matters To Be Considered:

On February 1 and 2 the Commission will begin the process of drafting recommendations.

Written Statements May Be Filed Before or After the Meeting With:

Contact person named below.

Contact Person for More Information: Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Avenue NW., Suite 1100, Washington, DC 20005 (202) 638–6222.

Signed at Washington, DC., this 13th day of January 1988.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 88–1079 Filed 1–20–88; 8:45 am]

BILLING CODE 3410–05–M

Commodity Credit Corporation

1987 Minor Kinds of Tobacco Price Support Levels

ACTION: Notice of determination of 1987 tobacco price support levels.

SUMMARY: The purpose of this Notice of Determination is to affirm the announcement made by press release on September 14, 1987 of the levels of price support for all eligible kinds of tobacco (except flue-cured and burley) for the 1987 marketing year. The levels of price support for these six kinds of tobacco are made in accordance with section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202) 447–8839 or Kenneth M. Robison, (202) 447–5188. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Robison.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The provisions of this notice will not 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 governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistant Program to which this notice applies are: Title-Community Loans and Purchases; Number 10.051, as set forth in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to the notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

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

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government and after due consideration of data, views and recommendations received from tobacco producers and other interested persons pursuant to a Notice of Proposed Determinations which was published on April 21, 1987 (52 FR 13112).

Discussion

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1987 crop of Virginia fire-cured (type 21), Kentucky-Tennessee fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar filler and binder (types 42–44; 54–55) and Puerto Rican filler (type 46) tobaccos, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the "Act").

Section 106(f)(6)(A) of the Act provides that the level of support for the 1987 crop of a kind of tobacco shall be the level in cents per pound at which the 1986 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1987 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1986 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii). Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1987 crop of such kind of tobacco will be the 1986 level, adjusted by the difference between (plus or minus) the 1987 "basic support level" and the 1986 "basic support level." See calculations published at 52 FR 13112.

In addition, section 106(f)(6)(B) provides that to the extent requested by the Board of Directors of an association through which price support is made available to producers (producer association) the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve and marketability of tobacco.

During the comment period, which ended May 21, 1987, a total of 13 comments were received from producer associations, a State ASC committee, and individuals relating to the level of support for these six kinds of tobacco. There were seven comments recommending the price support levels be set at the proposed level (about 0.3 percent below the 1986 support level). One comment for Kentucky-Tennessee fire-cured and one comment for dark air-cured recommended the price support level be set at the proposed level tied to adjustments in the grade loan rates. One comment for Wisconsin binder tobacco recommended setting the price support level at 87.7 cents per pound. Two comments for Ohio filler tobacco recommended the price support level be set at 87.7 cents per pound, or lower, if a reasonable no net cost assessment fee was announced.

The 1987 production of these six kinds of tobacco is forecast to be significantly lower than in 1986 due to reduced acreage allotments. Growing conditions have been generally favorable but an early dry spring in the Kentucky-Tennessee region lead to variable setting dates. Thus, the fire-cured and dark-air cured crops are maturing at variable times. Use of these tobaccos are projected to decrease 5 to 7 percent below 1986, largely due to increased excise taxes and declining demand for smokeless tobacco products. Supplies of fire-cured, dark air-cured and cigar-binder and filler tobaccos are expected to remain excessive.

An analysis of the key factors used in determining the support level for each kind of tobacco for the 1987 marketing year follows the discussion of comments received.

Comments Received

Virginia Fire-cured Tobacco (Type 21)—The proposed level of support announced for Virginia Fire-cured tobacco (Type 21) was 119.6 cents per pound. Two comments were received, including one from the loan association recommending that the price support level be set at the proposed level (a 0.3 percent decrease from the 1986 support level).

The support use ratio of 1.7 for 1987 remains below normal because 2.5 million pounds of tobacco stocks were destroyed by a 1985 flood. The acreage allotment factor was reduced 10 percent and production is expected to be down about 5 percent. Due to declining production, market prices are expected to average more than 7 cents per pound

above the support level. Acccordingly, the level of support has been determined to be 119.6 cents per pound.

Kentucky-Tennessee Fire-cured Tobacco (Types 22–23)—The proposed level of support that was announced for Kentucky-Tennessee Fire-cured tobacco (types 22–23) was 123.8 cents per pound. Three comments were received. Two loan associations recommended setting the support level at the proposed level (a 0.3 percent decrease from the 1986 support level). One loan association recommended setting the support level at the proposed level with an adjustment of the grade loan rates.

The supply-use ratio of 4.0 is excessive. The acreage allotment factor was reduced 40 percent and production is expected to be down about 35 percent from 1986. Market prices were expected to be 17 percent above the support level. The inventory of the two Kentucky-Tennessee fire-cured tobacco associations represents approximately 0.9 year's use. Accordingly, the level of support has been determined to be 119.6 cents per pound.

Dark Air-cured Tobacco (Types 35–36)—The proposed level support that was announced for Dark Air-cured tobacco (types 35–36) was 195.4 cents per pound. Three comments were received. Two associations recommended setting the price support level at the proposed level (a 0.3 percent reduction from the 1986 support level). One association recommended setting the price support level at the proposed level with an adjustment of the grade loan rates.

The supply-use ratio of 4.5 is excessive. Declining demand has persisted and the acreage allotment factor was reduced 35 percent this year. Production in 1987 is expected to be down 30 percent from 1986. This reduction is expected to improve the supply-use ratio but it is likely to remain excessive. Inventories of the three associations through which price support is made available with respect to dark air-cured tobacco (types 35–36) are equal to almost two years' use (The Eastern Dark Fire-cured Association has 51.8 percent of CCC's loan stocks and its members accounts for 55 percent of production; the Western Dark Fire-cured Association has 17.7 percent of CCC's loan stocks and its members account for 14 percent of the production; and the Stemming District has 30.5 percent of CCC's loan stocks and accounts for 30 percent of the production). Accordingly, the level of support has been determined to be 105.4 cents per pound.

Virginia Sun-cured (Type 37)—The proposed level of support that was announced for Virginia sun-cured tobacco (type 37) was 105.6 cents per pound. Two comments were received recommending that the support level be set at the proposed level (a 0.3 percent reduction from the 1986 level).

The supply-use ratio of 2.3 is slightly below normal. The acreage allotment factor was held constant in 1987, but production is expected to be down 50 percent from last year due to low prices over the last few years. Based upon these conditions it has been determined that a tightening supply situation exists. Accordingly, the level of support has been determined to be 105.6 cents per pound.

Cigar Filler and Binder Tobacco (Types 42–44, 53–55)—The proposed level of support that was announced for cigar filler and binder tobaccos (types 42–44, 53–55) was 91.4 cents per pound. Three comments were received. One loan association recommended the support level be set at 87.7 cents per pound. Two comments from the Ohio loan association recommended reducing the support level if it is tied to a reduction in the no net cost fee.

CCC has determined that the excessive inventory of the association will necessitate an increased assessment. This kind of tobacco is largely bought from each producer at a flat price for the entire crop. Although the trade purchased 85 percent of the 1986 Southern Wisconsin tobacco (type 54) production at a premium above the support level 76 percent of the Northern Wisconsin tobacco (type 55) was pledged as collateral for CCC price support loans and 67 percent of the Ohio filler (types 42–44) was pledged as collateral for CCC price support loans. Even with a 5 percent acreage reduction, the 1987 supply-use ratio at 3.6 years use is still expected to remain excessive. Accordingly, the level of support has been determined to be 91.4 cents per pound.

Puerto Rican Filler Tobacco (Type 46)—The proposed level of support that was announced for Puerto Rican filler tobacco (type 46) was 75.0 cents per pound. No comments were received.

The supply-use ratio is 12.4, which is excessive. There is only one buyer who has usually purchased the loan tobacco by bid sale at less than the association's costs. In the face of declining demand, the poundage production quota, which is set by the Commonwealth, has not sufficiently restricted production so as to reduce loan stocks. To discourage production and to ensure no-net-cost to the taxpayer, the level of price support was sharply lowered in 1984 and a no-net-cost assessment of 52 cents per pound was initiated. However, since the Commonwealth subsidizes growers, the anticipated production response associated with lower grower returns is negated. Accordingly, the level of support has been determined to be 74.7 cents per pound.

MINOR KINDS OF TOBACCO: ESTIMATED PRODUCTION, SUPPLY, AND LOAN ACTIVITY 1987/88

[Million pounds]

Kind and type	1987/88 Production	1987/88 Total supply	1987/88 reserve supply	1987 Crop CCC loan collateral	1987/88 CCC loans as percent of production
Virginia fire-cured type 21	3.6	10.0	8.3	0.1	3
Kentucky-Tennessee fire-cured types 22–23	23.2	127.3	116.7	1.5	6
Dark air-cured, types 35–36	7.5	57.3	54.9	1.0	13
Virginia sun-cured, type 37	.1	.7	1.0	[1]	[1]
Cigar-filler and binder, types 42–44, 53–55	10.1	64.2	63.8	4.3	43
Puerto Rican type 46	.2	6.1	1.5 [2]	.2	100

[1] Negligible.
[2] Three times annual disappearance.

As noted in the above table, the supplies of four of these kinds of tobacco (Kentucky-Tennessee fire-cured, dark air-cured, cigar-filler and binder, and Puerto Rican) are currently in excess of the supply deemed adequate to meet domestic use and export needs. As a result of these excess supplies of tobacco, the quantity of tobacco pledged as collateral for CCC price support loans has also become ample to excessive. Supplies of Virginia fire-cured and Virginia sun-cured are not excessive.

Determinations

Accordingly, it has been determined that the following support levels will be applicable for the following kinds of 1987-crop tobacco:

Kind and type	Support (cents per pound)
Virginia fire-cured, type 21	119.6
Kentucky-Tennessee fire-cured, types 22-23	123.8
Dark air-cured, types 35-36	105.4
Virginia sun-cured, type 37	105.6
Cigar filler and binder, types 42-44, 53-55	91.4
Puerto Rican filler, type 46	74.7

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, 15 U.S.C. 714b, 714c, secs. 101, 106, 401, 403, 406, 63 Stat. 1051, as amended, 74 Stat. 6 as amended, 63 Stat. 1054, as amended, 1055 (7 U.S.C. 1441, 1445, 1421, 1423, 1426).

Signed at Washington, DC, on January 14, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-1094 Filed 1-20-88; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Georgia State Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia State Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 9:30 p.m. on February 8, 1988, at the Omni Hotel, One CNN Center, Atlanta, Georgia, 30355. The purpose of the meeting is to review topics for program activities, and to receive a staff report on the status of the Commission and state advisory committees.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson Elaine Alexander or John I. Binkley, Director of the Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-1071 Filed 1-20-88; 8:45 am]

BILLING CODE 6335-01-M

Iowa Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Special Education Subcommittee of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on February 17, 1988, at Hotel Fort Des Moines, 10th and Walnut Streets, Des Moines, Iowa. The purpose of the meeting is to review information concerning minority suspension rates and the placement of minorities in Special Education in selected school districts in Iowa. The Subcommittee will also discuss future programs plans.

Persons desiring additional information should contact Committee Chairperson, Ralph S. Scott, Jr., or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-1072 Filed 1-20-88; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 4:00 p.m., on February 10, 1988, at the Amway Grand Plaza Hotel, 187 Monroe, Grand Rapids, Michigan. The purpose of the meeting is to conduct orientation for a newly rechartered Advisory Committee, conduct program planning for the balance of FY 1988 and be briefed by city officials and community leaders regarding the status of civil rights in Grand Rapids.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Dennis L. Gibson, Jr., or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-1073 Filed 1-20-88; 8:45 am]

BILLING CODE 6335-01-M

Mississippi Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules of Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 2:00 p.m., on February 18, 1988, at the Sheraton Regency, 750 North State Street, Jackson, Mississippi. The purpose of the meeting is to orient new members of the Committee, discuss civil rights issues of interest and concern among the membership and select projects for Fiscal Year 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Catherine Palmquist, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1988.
Susan J. Prado,
Acting Staff Director.
[FR Doc. 88-1074 Filed 1-20-88; 8:45 am]
BILLING CODE 6335-01-M

Pennsylvania Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:00 p.m. on January 29, 1988, in Court Room 300 of the U.S. Customs House, 2 Chestnut St., Philadelphia, Pennsylvania. The purpose of the meeting is to discuss the status of the Commission; the Committee's draft report on the State law requiring the collection of data on bias-related incidents; and plans for two forums—one forum on special education in public schools, and a later forum on transportation barriers faced by the disabled.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Susan M. Wachter, (215/898-6355) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1988.
Susan J. Prado,
Acting Staff Director.
[FR Doc. 88-1075 Filed 1-20-88; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA)
Title: Capital Construction Fund Deposit/Withdrawal Report
Form Number: Agency—NOAA 34-82; OMB—0648-0041
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,000 respondents; 500 reporting hours
Needs and Uses: The Fishing Vessel Capital Construction Fund allows participating fishermen to defer the tax on income into a fund for the purpose of constructing, acquiring, or reconstructing a fishing vessel. Fishermen participating in this program must submit annual information on their deposits to and withdrawals from their accounts. The information is used to check compliance with NOAA and IRS regulations.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen 395-7340

Copies of the above information collection proposal can be otained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: January 7, 1988.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 88-1099 Filed 1-20-88; 8:45 am]
BILLING CODE 3510-OW-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.
ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

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 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00001." A summary of the application follows.

Applicant: Michael R. Mace d/b/a Mutual Trade Services (MTS), P.O. Box 20821, Billings, Montana 59104, Telephone: (406) 252-9700
Application No.: 88-00001
Date Deemed Submitted: January 7, 1988
Members (in addition to applicant):
none
Summary of the Application:

Export Trade

Products

All products.

Related Services

Consulting, international market research, advertising, marketing, insurance, product research and design, transportation, trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods.

Export Markets

The Export Markets include 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).

Export Trade Activities and Methods of Operation

MTS seeks certification to:

1. Enter into exclusive and/or nonexclusive agreements with Suppliers individually to act as an Export Intermediary wherein:

a. MTS agrees not to represent any competitors of such Supplier of Products or Related Services in any Export Market unless authorized by the Supplier; and/or

b. The Supplier agrees not to sell, directly or indirectly, through any other Export Intermediary into any Export Market in which MTS exclusively represents the Supplier as an Export Intermediary.

2. Enter into exclusive and/or nonexclusive agreements with other Export Intermediaries for the sale of Products or Related Services in any Export Market wherein:

a. MTS agrees to deal in Products or Related Services in any Export Market only through that Export Intermediary; and/or

b. The Export Intermediary agrees not to deal in particular Products or Related Services in any Export Market with any Export Intermediary other than MTS.

3. Contact Suppliers (including competing Suppliers) on a one-to-one basis to elicit price, volume, estimated delivery schedules, and other information relating to sales in the Export Markets.

4. Enter into exclusive and/or nonexclusive agreements with individual buyers in any Export Market to act as a purchasing agent with respect to particular transactions.

ACTION: Notice of Name Change by Holder of Export Trade Certificate of Review No. 86–00003.

On July 11, 1986, The Department of Commerce, with the concurrence of the Department of Justice, issued an export trade certificate of review to the International Shippers Association (51 FR 26031, July 18, 1986). The International Shippers Association has changed its name to First International Shippers Association. The Export Trade, Export Trade Activities, and Methods of Operation covered by the certificate of review are unchanged. The certificate of review remains in effect under the holder's new name.

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.

Date: January 5, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88–1162 Filed 1–20–88; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review, application #87–00015.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Aluminum Recycling Export Association (AREA). 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

Unwrought alloys of aluminum ("aluminum alloys"), in the form of pig, ingot, rod, shot, drops, waffle or sows, made from aluminum base scrap or primary aluminum to conform to any or all specifications for the aluminum casting and steel making industries.

Export Trade Facilitation Services (as They Relate to the Export of Goods and Services)

Consulting, management, international market research, advertising, marketing, sales of goods and services, insurance, product research and design, legal assistance, packing and crating, transportation, wharfing and handling, trade documentation and freight forwarding, communication and processing of foreign orders, warehousing, foreign exchange, financing, taking title to goods, and customs clearance.

Export Markets

The Export Markets include 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) and Mexico.

Members (in Addition to Applicant)

Aluminum Smelting and Refining Co., Inc., Maple Heights, OH; Batchelder-Blasius, Inc., Spartanburg, SC; Roth Brothers Smelting Corp., East Syracuse, NY; and Gettysburg Foundry Specialties Co., Gettysburg, PA.

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, AREA is certified to:

1. Enter into exclusive agreements with its Members to act as their Export Intermediary by providing Export Trade Facilitation Services. These agreements may include any or all of the following provisions:

a. Each Member independently will provide AREA with an estimate of what quantities and specifications of aluminum alloys it will make available for export through AREA, provided, however that each Member agrees to commit a minimum of 40,000 pounds per year for export through AREA.

b. AREA can agree to purchase aluminum alloys from its Members.

c. AREA will market and sell the aluminum alloys, either directly or through Export Intermediaries other than AREA, to such purchasers in the Export Markets, at such prices, and on such terms as AREA shall determine.

2. Purchase aluminum alloys from, and determine the prices of aluminum alloys which AREA will pay to, Member (and other) suppliers.

3. Enter into exclusive or nonexclusive agreements with other Export

Intermediaries for the sale of aluminum alloys in the Export Markets.

4. Participate in meetings with one or more Member suppliers to deliver and discuss, or otherwise exchange, information with Member suppliers regarding:

a. The prices that AREA has charged or will charge in the Export Markets for each Member supplier's aluminum alloys;

b. The type, quality, and quantity of aluminum alloys available from Member suppliers for export;

c. For specific transactions and on a transaction-by-transaction basis, delivery dates, terms of sale, and other information necessary to arrange and complete export sales of the aluminum alloys;

d. General economic or business conditions in the Export Markets, including supply and demand conditions, prices and terms of sale in the Export Markets, and transportation and other costs incurred in exporting to the Export Markets;

e. AREA's sales results in the Export Markets, including orders shipped, costs of doing business, and other information relating to AREA's business in the Export Markets;

f. For specific transactions and on a transaction-by-transaction basis, quantities and prices of aluminum alloys purchased from each Member supplier for export, and the terms and conditions under which such purchases were made;

g. Matters concerning AREA's organization, governance, financial condition and membership;

h. Market strategies for the Export Markets, and other issues relating to sales and Export Trade Facilitation Services in the Export Markets and AREA's export business;

i. Information about U.S. and foreign legislation and regulations, including Federal programs affecting sales and Export Markets.

5. Participate with all Member suppliers for the exclusive use of Member suppliers in statistical programs covering AREA's shipments, future orders, inventories and prices, provided, however, information disseminated to Members suppliers will be in an aggregated form.

6. Enter into agreements with customers in the Export Markets wherein AREA may agree in each case to sell aluminum alloys in the Export Markets only to such customers, and/or such customers may agree not to purchase the alloys from any competitor of AREA.

7. Act as a shippers association to negotiate favorable transportation rates and other terms with individual ocean common carriers and individual conferences.

8. Prescribe the following conditions of membership to and termination from AREA:

a. AREA shall have the right to exclude firms or companies from membership in its organization.

b. AREA shall have the right to admit additional producers of aluminum alloys from time to time who:

(1) Receive a majority vote of AREA's Board of Directors;

(2) Make such capital contribution in the purchase of common shares of stock as is determined in good faith by AREA's Board of Directors. A fee shall be charged to cover initial start-up costs, including attorney's fees incurred by AREA's Members; and

(3) Agree not to compete with AREA, during the period of membership in AREA and for two years thereafter, in the export of aluminum alloys to particular Export Markets, except as shall be specifically agreed upon in writing between the new member and AREA.

c. Each member shall have the right to withdraw its membership from AREA by giving 180 days' prior written notice ot the remaining members. The remaining members shall then have the option to terminate AREA or pay the withdrawing member the value of its stock, as adjusted, on the date of its withdrawal.

d. Any member of AREA may be removed by a two-thirds vote of the Board of Directors with prior notice of the vote given to the member. Removal shall be for due cause, including, but not limited to, violation of AREA's Bylaws or agreements entered into by and between members, and loss of creditworthiness.

e. The withdrawing or removed member shall remain responsible for commitments made by such member and by AREA on behalf of such member prior to the effective date of such member's withdrawal or removal. The withdrawing or removed member shall reimburse AREA for all costs, including attorney's fees, incurred as a result of withdrawal or removal.

A copy of this 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: January 14, 1988.

John E. Stiner,

Director, Officer of Export Trading Company Affairs.

[FR Doc. 88-1162 Filed 1-20-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215-521-9600), to discuss the Surf Clam and Ocean Quahog Fishery Management Plan, as well as other fishery management and administrative matters. The public meeting will convene January 20, 1988, at 10:00 a.m., and will adjourn in the afternoon of January 21. The public meeting may be lengthened or shortened depending upon progress on the agenda, and the Council may convene a closed session (not open to the public) to discuss personnel and/or national security matters.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901-6790; telephone: (302) 674-2331.

Date: January 15, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-1174 Filed 1-20-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Request for Modification; Mr. Brent S. Stewart, Hubbs Marine Research Center (P278C)

Notice is hereby given that the Applicant has applied in due form for a Modification Permit No. 579 to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:*
   Mr. Brent S. Stewart, Hubbs Marine Research Center, 1700 South Shores Road, San Diego, California 92109
2. *Type of Permit:* Scientific Research

3. *Name and Number of Marine Mammals:*

Northern elephant seal (*Mirounga angustirostris*) California sea lion (*Zalophus californianus*) Harbor seals (*Phoca vitulina*)

4. *Type of Take and Number Requested:*

The Applicant has requested authorization to (a) take by tagging, using numbered plastic cattle ear tags, an additional 2000 elephant seal pups annually on San Nicolas and San Miguel Islands (1000 each); (b) apply hot or cold brands (angles or numbers) on 2900 elephant seals and 60 harbor seals annually. Over a 4-year period, apply hot or cold brands to 3000 California sea lions; (c) conduct brief observations of the behavioral response of adult northern elephant seals to seismic impulses.

5. *Location of Activity:*

San Miguel, San Nicolas California.

6. *Period of Activity:*

4 Years

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are 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;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: January 13, 1988.

[FR Doc. 1095– Filed 1–20–88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Mapping Agency; Change in Date of Advisory Committee Meeting

SUMMARY The meeting of the Defense Science Board Task Force on Defense Mapping Agency scheduled for March 8–9, 1988 as published in the **Federal Register** (Vol. 52, No. 242, Page 47958, Thursday, December 17, 1987, FR Doc. 87–28978) will be held on March 9–10, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1123 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Cancellation of Meeting

SUMMARY The meeting notice for the Defense Science Board Task Force on Low Observable Technology for January 13–14, 1988 as published in the **Federal Register** (Vol. 52, No. 184, Page 35755, Wednesday, September 23, 1987, FR Doc. 87–21957.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1119 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Change in Date of Advisory Committee Meeting

SUMMARY The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for February 17–18, 1988 as published in the **Federal Register** (Vol. 52, No. 184, Page 35755, Wednesday, September 23, 1987, FR Doc. 87–21957) will be held on February 23–24, 1988. This notice supersedes the change previously submitted in **Federal Register** (Vol. 52, No. 203, Page 39264, Wednesday, October 21, 1987, FR Doc. 87–24307).

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense, January 14, 1988.

[FR Doc. 88–1122 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on March 23–24, May 4–5, and June 22–23, 1988 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1124 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Military System Applications of Superconductors; Change in Location of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on Military System Applications of Superconductors scheduled for January 19–20, February 24–25, March 17–18, and April 14–15, 1988 as published in the **Federal Register** (Vol. 52, No. 224, Page 44625, Friday, November 20, 1987, FR Doc. 87–26805) will be held at the Systems Planning Corporation, Arlington, Virginia.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1120 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Military System Applications of Superconductors; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Military System Applications of Superconductors will meet in closed session on May 25–26, 1988 at the Systems Planning Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will enumerate and evaluate military system applications that may be enabled by the recent progress in high temperature superconductors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense. January 14, 1988.

[FR Doc. 88–1125 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force Subgroup to the Strategic Air Defense; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force Subgroup to the Strategic Air Defense will meet in closed session on February 1–2, 1988 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate and make recommendations on the use of technology for the extension of the Strategic Air Defense mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1121 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Technological and Operational Surprise; Change in Date of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on Technological and Operational Surprise scheduled for January 5–6, 1988 as published in the **Federal Register** (Vol. 52, No. 220, Page 43785, Monday, November 16, 1987, FR Doc. 87–26400) will be held on February 1–2, 1988.

January 14, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–1118 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Weapon Effectiveness Task Force will meet February 4, 1988 from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's ability to maximize weapon effectiveness through both hardware design and tactical employment, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: January 15, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–1097 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Laser Weapons will meet on February 2–3, 1988. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:30 p.m. on February 2; and commence at 9:00 a.m. and terminate at 4:00 p.m. on February 3, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide for the Navy an assessment of the potential military value of laser technology for weapon applications. The agenda will include technical briefings and discussions addressing military laser weapon programs. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: January 15, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–1098 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.097]

Notice Inviting Applications for New Awards Under the Law School Clinical Experience Program for FY 1988

Purpose: Provides grants to accredited law schools to establish or expand programs of clinical experience for students in the practice of law.

Deadline for Transmittal of Applications: March 31, 1988.

Applications Available: January 29, 1988.

Available Funds: The Congress appropriated $3,830,000 for this program for Fiscal Year 1988. The program legislation would permit the Secretary to pay up to 90 percent of the cost of projects at law schools. (20 U.S.C. 1134s(a)). The program regulations at 34 CFR 639.40(a)(2) permit the Secretary to establish annually a lower maximum Federal share. The maximum Federal share will be set at 50 percent for Fiscal Year 1988.

Priorities: The Secretary has chosen an absolute priority under 34 CFR 75.105(c)(3) and 34 CFR 639.11. Each application under this competition must:

1. Propose projects to provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

2. Propose activities to provide service to persons who have difficulty in gaining access to legal representation.

The following estimates are based upon the FY 1988 appropriation:

Estimated Range of Awards: $25,000 to $72,000.

Estimated Average Size of Awards: $66,034.

Estimated Number of Awards: 58.

Project Period: 12 months.

Applicable Regulations: (a) The Law School Clinical Experience Program Regulations, 34 CFR Part 639. The amendments to these regulations were published in the **Federal Register** on April 16, 1987 (Vol. 52. FR 12508). (b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Dr. Charles H. Miller on (202) 732–4395 or Mrs. Barbara J. Harvey on (202) 732–4863, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202.

Program Authority: 20 U.S.C. 1134s–1134t.

Dated: January 12, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–1158 Filed 1–20–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Revised Draft Long Term Intertie Access Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of revised policy, announcement of public meetings, and request for comment. *BPA File:* LTIAP. BPA requests that all comments submitted in response to this notice contain the file designation LTIAP.

SUMMARY: BPA is announcing availability of its Revised Draft Long Term Intertie Access Policy (Draft LTIAP) for public review and comment. This policy revises the 1986 Proposed Long Term Intertie Access Policy (Proposed LTIAP) (57 FR 39904, November 3, 1986). This policy was distributed on December 15, 1987, but is referred to in this notice as the 1988 Draft).

BPA has revised the Proposed LTIAP as a result of the many comments received and additional discussions about the Intertie Access Policy. The Draft LTIAP reflects the results of these activities, and is a final phase of a multi-year process to determine the best long-term management of access to BPA's portion of the Intertie system between the Pacific Northwest and the Pacific Southwest.

A policy governing Intertie access will contribute to BPA's fiscal stability by ensuring that BPA has reliable access to its own transmission lines to sell and transmit surplus power from the Federal hydroelectric system. It will also provide fair and equitable distribution of excess Intertie capacity to Pacific Northwest utilities.

BPA anticipates the final Long Term Intertie Access Policy to be implemented on or about May 1, 1988.

Responsible Official: Mr. John A. Cameron, Jr., Intertie Access Policy Project Manager, is the official responsible for developing the policy.

DATES: Initial written comments are requested by 5 p.m. on February 5, 1988. Copies of these comments will then be mailed to those who have submitted initial comments. The written comments will also be made available to others who request them through BPA's document request line (see below for telephone number). Final comments on the policy and on the initial comments submitted to BPA should be received no later than 5 p.m. on February 19, 1988.

Public comment forums, at which BPA will discuss the Revised Draft LTIAP and receive oral comments, will be held in the following locations:

January 6–7, 1988, Holiday Inn—Airport, Portland, Oregon.

January 12, 1988, Holiday Inn—Airport, Portland, Oregon.

January 20, 1988, Sheraton Inn—Airport, Portland, Oregon.

January 27, 1988, Holiday Inn—Airport, Portland, Oregon.

February 3, 1988, Clarion Hotel—401 E. Millbrae, San Francisco, California.

All forums will begin at 9:00 a.m. and will continue until 4:00 p.m.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Cameron, Jr., Intertie Access Policy Project Manager, P.O. Box 3621, Portland, OR 97208, 503–230–5151. Or contact the Public Involvement office at the address listed above, 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518

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SUPPLEMENTARY INFORMATION:

Part I. Explanation of BPA's Revised Draft Long Term Intertie Access Policy

Introduction

The proposed Long Term Intertie Access Policy ("LTIAP" or "1988 draft") included in this document reflects major changes in direction on provisions defining Assured Delivery, Formula Allocation, and Fish and Wildlife protection. The changes are intended to serve two primary purposes. First, the LTIAP as revised is designed to provide greater specificity to give utilities in the Northwest and California greater planning certainty. Second, the LTIAP as revised is designed to provide more revenue protection for BPA, while providing Assured Delivery for a wider variety of transactions than the 1986 draft LTIAP.

This narrative summarizes the issues raised by the proposed LTIAP and the current revision. Appendices containing more detailed information and examples follow the narrative. The revised LTIAP is presented for public comment, which BPA will consider in developing the final Long Term Intertie Access Policy in April 1988.

Assured Delivery. To address the needs of Northwest utilities and to protect BPA's revenue recovery, BPA has determined an amount of capacity for Assured Delivery transactions that will include an amount for Firm Sales based on a utility's Average Firm Surplus as computed in each utility's Exhibit B to the LTIAP. The amount includes 105 megawatts for Montana Power Company pursuant to section 9(i)(3) of the Northwest Power Act. An amount also will be set aside for Seasonal Exchanges. Provisions for capacity contracts and capacity-energy exchanges have been deleted because little interest has been expressed regarding these transactions.

Formula Allocation. Allocating access under Condition 1 based on the size of the California market is the major change BPAS made to the Formula Allocation proposal. This change responds to analyses BPA conducted of the impacts on BPA under Condition 1 of allocating to the available Intertie capacity versus allocating to the identified market. BPA would lose $16 million annually by allocating to Intertie Capacity rather than to the market.

Fish and Wildlife Protection. BPA included fish and wildlife provisions in the 1988 draft LTIAP to protect BPA's investments in facilities to protect, mitigate, and enhance fish and wildlife. The revised provisions reduce a utility's access to the Intertie for any new hydroelectric projects developed within "Protected Areas." The provisions also will apply to existing projects in Protected Areas as their licenses expire.

BPA will rely on intervention in Federal Energy Regulatory Commission hydro licensing proceedings under the Federal Power Act to resolve problems associated with its fish and widlife investments which may arise from existing projects prior to expiration of their licenses.

I. Assured Delivery

Amount. The 1988 draft policy determines an Assured Delivery maximum on the basis of both Northwest utility system operations and revenue impacts on BPA. In contrast to 1986 draft LTIAP which provided 420 MW for firm power sales only, BPA is now accommodating Seasonal Exchanges as well as firm power sales by providing 800 MW of Assured Delivery service. The figure of 800 MW is the approximate sum of Exhibit B firm energy surpluses for listed Scheduling Utilities (361 MW) [1] and an estimate of surplus summertime Firm Energy Load Carrying Capability (FELCC) that can be generated by the same utilities (440 MW). This amount of Assured Delivery has a deleterious, but tolerable, effect of $14 million on BPA annual revenues. Later in this document, we discuss proposed mitigation measures that help contain these revenue effects.

The summertime FELCC estimate is still subject to debate. Seasonal Exchanges could reduce the need for capacity additions in both the Northwest and the Southwest. However, BPA is concerned about the availability of FELCC for the critical month of August when the Northwest faces hydro operation problems. A strategy of using Seasonal Exchanges to defer Northwest capacity additions for wintertime loads could backfire if it resulted in a need for new firm resources in August. Seasonal Exchanges should not be allowed beyond the point where they begin to have negative effects on Northwest coordinated system operations. The definition of Seasonal Exchanges, appearing on page 3 of the 1988 revised draft policy, reflects these operational concerns.

To the extent ongoing studies demonstrate that 440 MW is too high an estimate of summertime surplus FELCC, the Assured Delivery maximum will be reduced in the final policy. However, if we have underestimated summertime FELCC, BPA revenue impacts may constrain may increase in the Assured Delivery maximum unless more rigorous mitigation measures are adopted.

Ideally, the final policy will include a set of firm energy surplus and summertime surplus FELCC numbers for each utility which reasonably balance BPA's revenue concerns with that utility's desire to exchange its summer surplus. Then, there would be little need for rationing provisions, described below, and utilities might not feel a need to conclude transactions quickly under the pressure of a first-come first-served policy.

However, to the extent revenue concerns cause BPA to limit Assured Delivery to an amount less than the combined total of firm sales and Seasonal Exchanges allowed on a utility by utility basis, some form of rationing would be required. Although no rationing provision is included in the 1987 revised draft, the final policy may contain such a provision.[2]

[1] This figure is the 1988–89 Pacific Northwest Utility Conference Committee estimated firm energy surplus, plus an additional amount made available to Montana Power Company in proposed settlement of any obligation under Northwest Power Act section 9(i)(3). See Exhibit B.

[2] The final policy may contain rationing provisions like the following:

"If timely requests for Assured Delivery exceed the maximum amounts specified in section 4(d), BPA will ration available capacity. Assured Delivery will be made available to Scheduling Utilities that meet all conditions for Assured Delivery and lack transmission interconnections with the Southwest, according to the following priorities:

(i) existing BPA firm transmission contracts for their remaining term,:

(ii) transactions involving section 9(i)(3) resources,

(iii) Seasonal Exchanges, and

(iv) firm power sales.

"For a given priority, if there is insufficient capacity available to satisfy all requests, each request will be reduced pro rata. No request in any lower priority will be satisfied. Once a request has been satisfied, in whole or part, with an Assured Delivery contract, that contract becomes an "existing BPA firm transmission contract" for purposes of determining priorities in any subsequent rationing exercise. After assured Delivery has been made available to Scheduling Utilities lacking Southwest interconnections, any remainder will be made available for Exhibit B transactions of utilities that come within the limitation of section 4(a).

"If Assured Delivery capacity is insufficient to satisfy demands of Scheduling Utilities for Seasonal Exchanges, BPA may offer to substitute itself for a Southwest utility and perform the Seasonal Exchange with the Scheduling Utility."

Other Firm Sale Provisions. A utility may increase its Exhibit B amount by purchasing surplus firm power either from another regional utility (which would reduce the selling utility's exhibit B amount) or from BPA. BPA may adjust a utility's Exhibit B amount to reflect a reduction in the utility's firm surplus power and may revoke any uncommitted Assured Delivery amount. *See* section 4(d)(2)(B)(ii). The definition of Qualified Northwest Resources includes new resources that are necessary to support sales receiving Assured Delivery service.

To allow for maximum use of the Intertie, section 4(d)(2)(C) permits a utility granted Assured Delivery to shape its firm power sale into the months of September through December by delivering up to 1.8 times its Exhibit B amount. During those fall months, spot market energy sales to the Southwest tend to be less than in the spring when the region's hydroelectric dams are more often near or in a spilling condition. If a utility shapes Assured Delivery energy into the fall, less firm energy may be shaped into remaining months of the operating year so that the total energy delivered does not exceed its annual Exhibit B energy maximum for firm sales.

Additional Assured Delivery. BPA concerns about the adverse revenue effects of Assured Delivery is lessened when the transaction involves a joint venture between itself and another utility. Section 4(c) of the 1988 draft imposes no capacity limits on Assured Delivery for transactions in which BPA is able to increase sales of its surplus firm power through transactions with other sellers. Assured Delivery for these types of joint sale transactions would not be rationed, even if limits were placed on transactions which did not include BPA as a seller.

One type of joint venture is the firm displacement sale in which a BPA sale of firm power displaces a Northwest generating utility's generating resources for sale to the Southwest. Another possible transaction, on which BPA invites comment, is a sale in lieu of exchange (section 4(c)(2)) in which BPA would use its winter surplus to satisfy Northwest seasonal power requirements.

The list of possible joint ventures is not intended to be exhaustive. This provision of the policy holds potential promise for utilities like Montana Power Company, which has surplus firm power in excess of its Exhibit B amount.

Mitigation. The 1986 draft LTIAP made MW of Assured Delivery service available to Northwest Scheduling Utilities with firm surpluses. The policy objective underlying this proposal was BPA's desire to assist Northwest utilities in disposing of their surpluses through long-term firm power sales to the Southwest. Assured Delivery was to be made available without regard to any adverse impact on BPA's ability to sell firm power or nonfirm energy to the same Southwest utilities. We now believe that there is a greater demand in the Northwest for Assured Delivery to facilitate Seasonal Exchanges than for firm power sales. In a major change of policy proposals, BPA is now proposing to accommodate Seasonal Exchanges and firm sales in a manner that reduces adverse revenue impacts on the agency.

Mitigation refers to conditions imposed on a utility for an Assured Delivery contract. Intertie Capacity not available to BPA because of Assured Delivery contracts executed between a Northwest utility and a Soutwest utility reduces BPA revenues and can inhibit BPA's ability to make its Treasury payments. During the operating year BPA often has power available to load the Intertie fully. Assured Delivery granted under these circumstances would reduce BPA's revenues. BPA recognizes the interest of utilities in gaining firm access to the Intertie. BPA is not willing, however, to jeopardize its fiscal responsibilities to the Treasury.

The first mitigation measure, contained in section 4(d)(4)(A), is to require that during any hour in which prescheduled energy sales are made under Condition 1 Formula Allocation procedures, a utility must deduct its Assured Delivery amount from its Formula Allocation amount. The total amount of Intertie access granted to each utility is equal to its Condition 1 formula allocation. If a utility's Assured Delivery amount is greater than its Formula Allocation, then that utility must purchase enough energy from BPA to make up the difference. BPA believes that this mitigation measure will partially offset the spot market revenues BPA will lose by granting Assured Delivery. The measure is based on comments received on the 1986 draft LTIAP.

The second mitigation measure, contained in section 4(d)(4)(B), focuses on Seasonal Exchanges by requiring all energy returns at prescheduled levels (South-to-North counterscheduling on the Intertie) be delivered to the point of interconnection with the Northwest at either the California-Oregon border or the Nevada-Oregon border. Furthermore, if BPA has invoked Condition 1 or Condition 2 Formula Allocations, cash out provisions [3] of Seasonal Exchange contracts become inoperative. This mitigation measure has the effect of increasing the North-to-South capability of the Intertie during Conditions 1 and 2 when energy is being returned and increasing the size of the market for BPA and Scheduling Utility sales.

These mitigation measures especially tend to reduce the adverse revenue impacts of Seasonal Exchanges on BPA and are critical to our decision to provide Assured Delivery for such transactions.

II. Formula Allocation

The 1988 draft policy continues the Formula Allocation methodology used in the Near Term Intertie Access Policy (NTIAP) of allocating adcess to the Intertie based on three possible conditions. Provisions for Condition 1 reflect the expiration of the Exportable Agreement at the end of 1988, the public comment received on the 1986 draft LTIAP, and the analyses completed by BPA.

In section 5(a) of the 1988 draft, BPA continues the special limitation on Formula Allocations when necessary to protect fish and wildlife. This provision was originally included in the 1986 draft LTIAP to address situations when BPA may wish to provide flows above those allowed under its own hourly allocation in order to address a specific fishery concern, or example on Vernita Bar, in the Hanford reach of the Columbia. BPA and several public utility districts are arranging, under specified circumstances, to provide increased flows between December and April to protect hatching and emerging fall chinook. Without increased flows, some redds (egg nests) would be left uncovered when flows are reduced to reflect lower demand for electricity. Section 5(a) allows BPA to market the additional electricity produced as a result of the flows BPA may provide to protect fish and wildlife.

Condition 1

Condition 1 under the NTIAP incorporated the pre-existing Exportable Agreement, which expires on December 31, 1988. Parties to the Agreement declare amounts of exportable energy—surplus energy available for export at the applicable BPA rate. If total declarations of exportable energy exceeds the available Intertie Capacity

[3] Cash out provisions of Seasonal Exchange contracts allow a Northwest utility to accept dollar payments from a Southwest utility in lieu of actual energy returns.

or the size of the Pacific Southwest market, whichever is smaller, each party to the Agreement is allocated access to the amaller amount based on its share of total declarations.

The 1986 draft LTIAP proposed that upon expiration of the Exportable Agreement a condition of spill or likelihood of spill on the Federal Columbia River power system would trigger Condition 1. BPA and Northwest scheduling utilities could declare surplus energy available for export and BPA would allocate access to the Intertie by approximating the ratio of each declaration to the sum of all declarations multiplied by the available Intertie Capacity. Each Scheduling Utility's allocation would be limited by the ratio of its regional hydroelectric capacity to the total regional hydroelectric capacity of the Scheduling Utilities multiplied by the total of all declarations (the "Hydro Cap").

Subsequent to releasing the 1986 draft LTIAP for public review, BPA received and considered many comments and suggestions for allocation under Condition 1. The majority of respondents either favored continuing the provisions of the Exportable Agreement by negotiating a new agreement or implementing a similar Condition 1 allocation policy. The comments identified the Exportable Agreement as an equitable means of allocating access to the Intertie. Others recommended that the Exportable Agreement be allowed to terminate after December 31, 1988, and a similar agreement not be negotiated. A few commenters suggested that Condition 1 be eliminated upon expiration of the Exportable Agreement, identifying Condition 2 as an equitable means to allocate access to the Intertie. One commenter suggested that BPA pursue a policy wherein BPA would receive an allocation sufficient to market its surplus energy and allow access to others scheduling utilities on a first-come first-served basis.

The 1988 draft now incorporates provisions from both the Exportable Agreement and the 1986 draft LTIAP for allocation under Condition 1. A condition of spill or likelihood of spill on the Federal Columbia River Power System will determine Condition 1. In Condition1, BPA must be especially concerned with protecting its own sales, because sales foregone during spill conditions cannot be stored and made later. BPA and Scheduling Utilities will declare surplus energy available for export at the applicable BPA rate and receive a share of available Intertie Capacity approximating the ratio of each Scheduling Utilitiy's hydroelectric capacity to the region's hydroelectric capacity multiplied by the quantity of available Intertie Capacity. To the extent that the market for Pacific Northwest energy at BPA's price is less than the available Intertie Capacity, BPA will allocate access to the Intertie to equal that market. Once a utility receives an allocation it is free to negotiate a sale with any purchaser.

BPA believes that once the Exportable Agreement expires, these provisions for Condition 1 will balance BPA's long-term objectives of: (1) Managing the Intertie in a manner that provides sufficient access for BPA to market its surplus energy and ensures its ability to meet its financial obligations, including repayment to the Treasury; and (2) providing Intertie access for the region's scheduling utilities to market surplus electricity.

Allocating To The Market. Allocating access under Condition 1 based on the size of the Southwest market, as under the Exportable Agreement, constitutes the major change BPA made from the 1986 draft LTIAP Formula Allocation proposal. This change comes in response to analyses identifying the impacts on BPA under Condition 1 of allocating to the available Intertie Capacity or to the identified market. Appendix A shows an example of the difference in transmission capacity for BPA between allocating to the market or the Intertie.

The market for power in California is often less than available Intertie capacity because of minimum generation requirements. As the Intertie is expanded and Southwest utilities bring on new generation that cannot be displaced with spot market purchases, the frequency of this situation is expected to grow.

The heart of BPA's revenue problem in this situation is the Northwest Regional Preference Act, 16 U.S.C. 837, *et seq.*, which requires BPA to quote an energy price to Northwest utilities before making any sale to the Southwest. This creates a problem in which Northwest utilities, which are both BPA's customers and competitors, know BPA's price but we do not know theirs. In the Condition 1 situation where the size of the Southwest market is less than available Intertie Capacity, Northwest utilities are able to use this information to undercut the BPA price and use their allocations to reduce BPA hourly sales to a small Southwest market. If a "real time" BPA pricing iteration were even possible, BPA would still be required to announce its new price to the Northwest. Regional preference makes BPA a "sitting duck" for its competitors. Allocating according to market size reduces BPA's vulnerability by reducing the size of Scheduling Utility allocations.

In reviewing the allocation procedure, BPA set out to determine the revenue impacts of allocating Condition 1 access to the market or to the size of the available Intertie Capacity. Analyses indicate that BPA would lose approximately $16.4 million in 1989 by allocating to the Intertie rather than the market. This loss would decrease to $10.7 million in fiscal year 1992. Beyond 1992 the difference would increase, mainly due to projected fuel price increases.

Allocation to the market will not necessarily cause the Intertie to go unloaded. Purchasers with low decremental costs may choose to displace those resources with additional energy purchased at BPA's market expansion rates after the first allocations are made.

The Hydro Cap. BPA received comment on the provision to allocate to a Scheduling Utility based on its hydroelectric capacity ("Hydro Cap"). Allocating access to the Intertie based on a utility's hydroelectric capacity is consistent with the definition of Condition 1. When the Federal Columbia River power system is spilling or likely to spill, the maximum allocation to utilities with greater hydroelectric resources increases, thus decreasing the probability of wasting the resources by spilling. Under this provision, BPA's share of allocations would tend to increase due to its large hydroelectric capacity. BPA believes this will contribute to proper management of the Columbia River system and to efficient use of the region's resources. The specific wording for the provision has been changed from the 1986 draft LTIAP to reflect the allocation procedure more accurately.

The Hydro Cap is also a necessary element of Assured Delivery mitigation provisions and the Protected Area program, described below. Hydro Cap numbers give BPA and scheduling utilities a predictable, practical way of anticipating the amount of energy to be purchased under Condition 1 mitigation provisions (policy section 4(d)(4)(A)). Also, Hydro Caps appear to be the only practical way in which BPA can enforce the prohibition against hydroelectric development in Protected Areas (policy section 7(c)).

Conditions 2 and 3

Conditions 2 and 3 are similar to those in the NTIAP and the 1986 draft LTIAP.

Under Condition 2, when Condition 1 is not in effect and BPA and Scheduling Utilities declare amounts of surplus energy available for sales on the Intertie that exceed the available Intertie Capacity, a utility's allocation will approximate the ratio of its declaration to the sum of all declarations multiplied by the available Intertie Capacity.

Under Condition 3, when Condition 1 is not in effect and when the total surplus energy declared available by BPA and Scheduling Utilities is less than the total available Intertie Capacity, BPA's and Scheduling Utilities' allocations will equal their declarations. The remaining available Intertie capacity will be offered to extraregional utilities.

Policy Section 5(d)

BPA believes that there are sound justifications for pro rata allocation of Intertie capacity among Northwest sellers of surplus energy, which we describe below. However, section 5(d) of the 1988 draft proposes to end Condition 2 and 3 pro rata allocations for nonfederal utilities when the third AC Intertie expansion is completed, provided anticompetitive problems in the Southwest are cured by that time. BPA will explore the practicality of this proposal during the public process on the 1988 draft policy.

Revenue Justification. Anyone who has participated in a BPA rate case knows that the Northwest Power Act ties BPA's revenues and costs to the revenues and costs of Northwest utilities. Actions that depress utility revenues tend to reduce BPA revenues or increase BPA costs. This is a major concern for BPA, which lost $199 million in fiscal 1987 and $65 million in fiscal 1986.

The first concern relates to scheduling utilities that annually receive $160 million in residential exchange subsidies under Northwest Power Act section 5(c). *See Pacificorp* v. *FERC,* 795 F.2d 816 (9th Cir. 1986). Surplus energy sales are used as a credit in calculating a subsidy recipient's "average system cost" (ASC). A change in formula allocation procedures that reduces the revenues of exchanging utilities lowers the ASC credits and increases the subsidies paid by BPA.

The second concern relates to scheduling utilities which purchase some of their power requirements as preference customers of BPA. A change in formula allocation procedures that reduces the sales of BPA preference customers causes the latter to displace purchases from BPA with their own unsold energy. The so-called "availability charge" has been an incomplete and very controversial remedy to this displacement problem even after BPA's adoption of the charge was upheld in *City of Seattle* v. *Johnson,* 813 F.2d 1364 (9th Cir. 1987). Two more challenges to the availability charge are now pending before the court.

Antitrust Concerns. BPA records of decisions on earlier versions of the IAP speak to the problems of California utility market concentration and the resulting anticompetitive burdens placed on utilities that lack ownership interests in the southern portion of the Intertie. Certainly no California utility has an Intertie policy that provides anything near the access given by BPA.

Judge Norris' dissent in *CEC v. BPA* suggests that a remedy may be had through a treble-damage antitrust action against California Intertie owners. *California Energy Commission v. BPA,* Ninth Cir. Nos 84–7836, et al. (slip op. at 25, November 6, 1987). However, this course of action seems terribly impractical. Fifteen years after the Federal Energy Regulatory Commission initiated an investigation of anticompetitive transmission restrictions by California Intertie owners and four years after Administrative Law Judge Howe found the existence of anticompetitive problems, the case still awaits resolution and no remedies have been put into effect. *Pacific Gas & Electric Company,* FERC Docket No. E–7777. We do not believe that a district court treble damage action would move to any quicker resolution. BPA cannot wait 14 years for a cure to problems in its critical California market when BPA's average losses run to $100 million per year.

BPA's response is to put California concerns about competition to a test. When the third AC interconnection goes into commercial operation, the market power of existing California Intertie owners should be reduced because other California utilities will gain the access now denied them because of the absence of any California Intertie access policy. BPA seeks public comment on a proposal to cease allocating individual Intertie capacity amounts to non-Federal utilities during Conditions 2 and 3 after commercial operation of the third AC Intertie. However, this provision would not be operative if the Administrator determines that:

(1) even after commercial operation of the third AC, Intertie access continues to be impaired for California utilities presently lacking ownership in the southern portion of the Intertie, or

(2) Southwest utilities utilize some pro rata scheme to allocate energy purchases over the Intertie.

Formula allocations would continue for Condition 1 because they are necessary to enforce Assured Delivery mitigation measures and the 1988 draft policy's Protected Area program. *See* page 12, above.

During the remaining course of this proceeding, BPA is particularly concerned about quantifying any adverse impact on BPA revenues that might be associated with adoption of section 5(d).

Alternatively, commenters are encouraged to address the question of whether section 5(d) might be implemented sooner. Anyone commenting on this option should also address ways in which BPA might resolve its revenue and California transmission problems.

III. Fish and Wildlife Protection

"Protected Areas." BPA would prohibit Intertie access for new hydroelectric projects licensed within "Protected Areas," which are designated river reaches withdrawn from hydro development due to the presence of anadromous or high value resident fish, or wildlife. BPA also has designated areas where we have determined that investments in habitat, hatchery, passage, or other projects may result in the presence of anadromous fish. The Northwest Power Planning Council (Council) is developing a Protected Area program that may cover the entire Northwest. However, BPA's Protected Area designations would cover only the Columbia River basin.

Our focus is on hydro developments which may frustrate BPA investments of ratepayer funds to achieve the goals of the Council's Fish and Wildlife Program. The Northwest Federal power system expends over $100 million per yer on fish and wildlife, in actual expenditures and lost revenues. The policy would ensure that those expenditures and that existing productive habitat will not be harmed by future hydro development.

Initially, BPA would designate Protected Areas by using information collected through the Council's Hydro Assessment Study. This information includes:

- Anadromous fish data collected by state and Federal fish and wildlife agencies and tribes under Council direction.
- Resident fish and wildlife data collected by state and Federal fish and wildlife agencies, tribes, and interested parties such as hydro developers as part of the BPA-funded Pacific Northwest Rivers Study.
- The Pacific Northwest Hydropower Data Base and Analysis System which

includes detailed information about 4,000 potential and existing hydro projects. This information was obtained using FERC data through a joint effort by BPA, the Council, and the Corps.

The Council's Hydro Assessment Study examined the effect of Protected Area designations on proposed hydro projects with license or permit applications pending before the Federal Energy Regulatory Commission (FERC).

According to Council staff, of a total 190 Columbia Basin hydro applications pending before FERC, 118 (62 percent) fall within Protected Areas. If constructed, the total capacity of those Protected Area projects would be 847 MW, 35 percent of the total Basin Hydro Capacity pending FERC license. The Council's analysis assumed that all projects in Protected Areas would be developed. Thus, the study tends to overestimate the power impacts because many of these potential projects might be frustrated by financing, engineering, environmental, or other barriers.

IF the Council adopts its proposed Protected Area program, the proposed policy would provide BPA consistency with the Fish and Wildlife Program—subject to BPA's review of Council changes. The 1988 draft policy largely eliminates utility fears that they never know with certainty whether a hydro resource will qualify, or continue to qualify, for access to the Intertie. However, some uncertainty remains because BPA or the Council may change Protected Area designations as the program evolves through completion of the Council's sub-basin and system planning efforts. Upon completion of the planning process, BPA will evaluate the fish and wildlife investments contemplated in the plans and may consider revisions to its Protected Area designations. These revisions may add or delete areas from the designations.

The 1988 proposed policy would not necessarily stop hydro development in Protected Areas. However, Protected Area designations would send an unambiguous, self-enforcing message to FERC, other regulator, and hydro developers that no Intertie access will be provided for projects constructed in areas of greatest concern to BPA and the Council. Southwest market access could not be reflected in any accurate assessment of need for a project. Neither could Southwest utility avoided costs be used in calculating the "avoided cost" rate for a small hydro facility under the Public Utility Regulatory Policies Act (PURPA). A utility purchasing a Protected Area PURPA resource may have a very low avoided cost to the extent lost revenues associated with reduced Intertie access are reflected in its calculation.

If a Scheduling Utility still proceeds to acquire a license or purchase power from a hydro project within a Protected Area, BPA will reduce the amount of that utility's power transmitted over the Intertie under both Assured Delivery and Formula Allocation provisions. These reductions will take place regardless of whether project power is transmitted on the Intertie. There is no need to trace power flows from a Protected Area resource.

Assured Delivery provisions affect long-term contracts, including Seasonal Exchanges, for transmission of firm power. If a Scheduling Utility builds or purchases power from a new hydro project located in a Protected Area, BPA will decrement that utility's Exhibit B by an amount equal to the nameplate capacity of the project. If the utility has already utilized its Exhibit B amounts, Assured Delivery contracts of that utility will be decremented.

Formula Allocations under Condition 1 depend on the amount of Northwest hydro resources owned or acquired by each utility. BPA will decrement the utility's "Hydro Cap" if a utility builds or purchases a hydro project in a Protected Area.

When FERC licenses expire on existing projects located within Protected Area, BPA will offer recommendations to assist the licensee in developing any necessary protective conditions to mitigate damage to BPA's fish and wildlife investments so that Intertie access may continue.

For all hydro—new or existing—*outside* Protected Area, BPA will intervene in FERC proceedings to protect its fish and wildlife investments.

BPA believes that the revised fish and wildlife provisions are consistent with its statutory authority. The United States Court of Appeals recently cited Northwest Power Act section 4(h)(10) as authority for BPA to restrict Intertie access for hydro projects adverse to fish and wildlife resources. *California Energy Commission* v. *BPA*, Ninth Cir. Nos 84–7836, et al. (slip op. at 22, November 6, 1987).

Major Differences From The 1986 Draft Policy. The Interim and Near-Term IAPs addressed fish and wildlife concerns by prohibiting access for new power resources completed after September 7, 1984. The 1986 draft policy was more selective in its approach. Assured Delivery could be denied prospectively if BPA determined that a resource was harmful. Utilities were required to declare which resources were used to support an Assured Delivery contract. However, there were no enforcement provisions to ensure that the resources listed were, in fact, those being used. BPA did not propose to decrement the amount of power transmitted under an existing assured delivery contract. Formula Allocations would be decremented only by an amount equal to the power produced by a new resource—damage caused by existing resources would not result in decrements to Formula Allocations.

The 1986 draft policy contained a presumption that existing hydro projects were not harmful to BPA's investments in fish or wildlife. To rebut that presumption, complaints were accorded a process by which BPA would consider challenges on a case-by-case basis. For a new project, challengers were asked to show that it was harmful to fish and wildlife regardless of potential effect on BPA fish and wildlife investments. If BPA determined that an existing project was harming its investments, BPA could enter into negotiations to address the problem, and ultimately deny access.

The utility community generally opposed the inclusion of such quasi-regulatory provisions, citing their belief that FERC should be the exclusive Federal regulator. Even if existing resources complied with applicable FERC license conditions, BPA could prohibit access if those resources detracted from fish and wildlife measures under the Northwest Power Act. Utility commenters suggested that if BPA continued to exercise regulatory oversight, it should adopt procedural protections akin to those in a Northwest Power Act section 7(i) hearing

Fish and wildlife interests claimed the provisions should be much broader and more detailed, providing a regional alternative and supplement to FERC regulation. In addition, they believe the sanctions did not adequately prohibit new and existing resources from damaging fish and wildlife since decrements applied to Formula Allocations did not prevent damage due to existing operations.

BPA considered removing all fish and wildlife provisions from the LTIAP and relying entirely on intervention in the FERC licensing proceedings. Under this approach, BPA would intervene in proceedings concerning both new and existing projects. Statutes governing FERC's review of the fish and wildlife effects have been revised since earlier IAPs were drafted. The Electric Consumers Protection Act (ECPA), enacted in 1986, increased FERC's responsibility for reviewing fish and wildlife issues and providing mitigation. Section 3(a) of ECPA amends Federal

Power Act provisions relevant to hydro licensing—including relicensing existing projects—as follows:

> In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, *shall give equal consideration to* the purposes of energy conservation, *the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat)*, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. [Emphasis supplied.]

Section 8(a) of ECPA effectively terminates the exemption of PURPA small-hydro projects from environmental regulation by FERC. Any small hydro project utilizing a "new dam" [4] must satisfy fairly rigorous conditions in order to claim an exemption from further regulation. PURPA section 210 does not apply to any new dam or diversion unless FERC finds that (1) the project will not have substantial adverse effects on the environment, including recreation and water quality; (2) the project would not be located on a protected river; and (3) the project meets the terms and conditions set by fish and wildlife agencies.

ECPA should increase FERC's attention to BP's fish and wildlife investments if BPA chooses to intervene in FERC proceedings. However, we believe that exclusive reliance on FERC intervention may not provide sufficient protection for BPA fish and wildlife investments. FERC has no explicit statutory authority to protect those investments and may ultimately license projects that could negatively affect those investments. The Protected Area concept provides an acceptable balance between the statutory perogatives of each Federal agency. It allows BPA to send a clear message to FERC and hydro developers, before the licensing process commences, about fish and wildlife matters of greatest fiscal concern to BPA. The potential fish and wildlife effects of new hydro projects will be considered at the time BPA designates its Protected Areas. The provisions give developers more certainty as they consider the economics for potential projects, without lengthy case-by-case BPA administrative process and without overlapping FERC's licensing activities.

An "existing project" is defined as one licensed before the date the policy would take effect. The 1988 draft IAP considers fish and wildlife effects attributable to existing projects within Protected Areas only at the time licenses for those projects expire. BPA may restrict Intertie access only when FERC initiates relicensing procedures and BPA and the project operator cannot agree to structural and operational modifications to mitigate potential damage to BPA fish and wildlife investments directly attributable to that project. The 1988 draft IAP also does not provide a means to prevent Intertie access to projects located outside Protected Areas.

To address concerns that enforcement provisions in the Draft LTIAP would not provide a significant deterrent, the revised LTIAP applies decrements to existing assured delivery contracts. This provision seeks to prevent utilities from developing potentially harmful resources in the future to support assured delivery contracts signed today. Consequently, assured delivery contracts between utilities and their customers likely would need to provide for a reduction in the power delivered if BPA determines that the utility has built or purchased power from a project located in a Potected Area.

The Draft LTIAP sought to decrement Formula Allocations if a utility operated a project harmful to BPA's fish and wildlife investments. Since utilities could overdeclare their Formula Allocation needs in an effort to blunt any decrements BPA might apply to their Formula Allocations, BPA determined that decrements applied to Formula Allocations were not an effective enforcement mechanism. Consequently, the 1988 draft IAP does not apply decrements to Formula Allocations under Conditions 2 and 3.

BPA has restructed the provisions affecting existing hydro projects because BPA believes the Council's Program and the FERC process adequately addressed BPA's investment concerns. Since adopting the Near Term IAP in 1985, BPA has received only one challenge concerning the operation of an existing project. That challenge, brought by the National Marine Fisheries Service (NMFS), concerned the Sullivan plant operated by Portland General Electric on the Willamette River. NMFS presented no data indicating how the Sullivan Plant could harm BPA's investments in fish and wildlife facilities. The reason BPA ultimately rejected the challenge, however, was that BPA determined that the project's power was not sold on the Intertie.

Appendix A—Allocation to Market vs. Intertie under Condition 1: The Difference in BPA's Available Capacity

Assumptions
- Intertie Capacity ..... 4,000 MW
- BPA price ..... 15 m/kWh
- Market estimate ..... 3,000 MW
- Hydro Capacities:
  - BPA ..... 20,000 MW
  - Non-Federal utilities. 10,000 MW

Allocate to Intertie
- Allocation:
  - BPA ..... 2,667 MW
  - Non-Federal utilities. 1,333 MW
- Likely sales:
  - BPA ..... 1,667 MW @ 16 m/kWh
  - Non-Federal utilities. 1,333 MW @ 15.5 m/kWh

- Because BPA must announce its price first, the difference between the market and Intertie all comes out of BPA allocation.
- Note that because BPA's price is known, non-Federal utilities have no incentive to lower their price further than just below BPA's (unless the market at BPA's price is less than total non-Federal utilities' allocation).

Allocate to Market
- Allocations:
  - BPA ..... 2,000 MW
  - Non-Federal utilities. 1,000 MW
- Likely Sales:
  - BPA ..... 2,000 MW @ 16 m/kWh
  - Non-Federal utilities. 1,000 MW @ 16 m/kWh

- Actual sales may differ from allocations. However sales above allocations by non-Federal utilities in any particular hour are subtracted from subsequent allocations.

Part II. Revised Draft Long Term Intertie Access Policy

Table of Contents

Section 1 Definitions.

1. "Administrator" means the Administrator of Bonneville Power Administration (BPA) and is used interchangeably with BPA.

[4] "New dam or diversion" means a dam requiring any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar devices).

2. "Administrator's Power Marketing Program" refers to all marketing actions taken and policies developed to fulfill BPA's statutory obligations. These actions and policies are based on exercises of broad authority to act, consistent with sound business principles, to recover revenue adequate to amortize Federal investments in the Federal Columbia River power and transmission systems, while encouraging diversified use of electric power at the lowest practical rates. In the Northwest, the Administrator's Power Marketing Program includes BPA's power supply obligations and programs to market surplus power in a manner that assures an adequate, reliable, economical, efficient, and environmentally acceptable power supply, while preserving regional and public preference to Federal electric power. In the Southwest, the Administrator's Power Marketing Program includes the Administrator's programs to market surplus Federal power at equitable prices and to assist in marketing the Northwest's non-Federal power surplus.

3. "Assured Delivery" means firm Intertie transmission service provided by BPA under a transmission contract to wheel power covered by a contract between a Scheduling Utility and a Southwest utility. Assured Delivery contracts may not exceed 20 years' duration. The service is interruptible only in the event of an uncontrollable force or a determination made pursuant to sections 7 or 8 of this policy. Assured Delivery service will be reduced only by the amount of transmission capacity of the Southwest later acquired by a Scheduling Utility through ownership or contract.

4. "BPA Resources" means Federal Columbia River Power System hydroelectric projects; resources acquired by BPA under long-term contracts, including resources acquired pursuant to sections 5(c) and 6 of the Northwest Power Act; and resources acquired pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act.

5. "Extraregional Utilities" are generating utilities, or divisions thereof, that do not provide retail electric service and own or operate significant amounts of generating capacity in the Northwest.

6. "FD Supported Sale" means that portion of a Scheduling Utility's firm sale equal, in amount and shape, to the utility's purchase of BPA Firm Displacement power.

7. "Formula Allocation" means the shares of Intertie Capacity made available to Scheduling Utilities and, under certain conditions, Extraregional Utilities for short-term sales of energy.

8. "Intertie" means the two 500-kilovolt (kV) alternating current (AC) transmission lines and one 1,000-kV direct current (DC) line, which extend from Oregon into California or Nevada, and any additions thereto identified by BPA as Pacific Northwest-Pacific Southwest Intertie facilities.

9. "Intertie Capacity" means the North to South transmission capacity of the Intertie controlled by BPA through ownership or contract; increased by power scheduled South to North, decreased by loop flow, outages, and other factors that reduce transmission capacity; and further decreased by Pacific Power & Light Company's schedules, under its scheduling rights at the Main substation (BPA Contract Nos. DE–MS79–86BP92299 and DE–MS79–79BP90091).

10. "Mitigation" refers to the conditions, other than rate schedule provisions, imposed by BPA on a Scheduling Utility in return for an Assured Delivery contract. Mitigation helps offset operational and economic problems, attributable to a Scheduling Utility's power transaction, that inhibit BPA's ability to meet its existing firm load obligations or to generate revenues. The Mitigation measures specified in this policy must be included in all Assured Delivery contracts, unless substitute measures are negotiated with BPA on a case-by-case basis.

11. "Nonscheduling Utility" means a non-Federal Northwest utility that owns a generating resource, but does not operate a generation control area within the Pacific Northwest. A Nonscheduling Utility requesting Intertie access for its resource must do so through the Scheduling Utility (or BPA) in whose control area the resource is located.

12. "Pacific Northwest" (or "Northwest") is defined in the Northwest Power Act, 16 U.S.C. 839e, as the states of Oregon, Washington, and Idaho; the portion of Montana west of the Continental Divide; portions of Nevada, Utah, and Wyoming within the Columbia River drainage basin; and any contiguous service territories of rural electric cooperatives serving inside and outside the Pacific Northwest, not more than 75 air miles from the areas referred to above, that were served by BPA as of December 1, 1980.

13. "Protected Area" means a stream reach within the Columbia River drainage basin specially protected from hydroelectric development because of the presence of anadromous or high value resident fish, or wildlife. Protected areas may also include stream reaches which could support anadromous fish if investments were made in habitat, hatcheries, passage, or other projects. This policy contemplates that BPA will implement, after review and possible modification, a comprehensive protected area program adopted by the Pacific Northwest Electric Power and Conservation Planning Council.

14. "Qualified Extraregional Resources" means:

(a) A generating unit located outside the Northwest that was in commercial operation on the effective date of this policy. However, the term excludes the portions of units covered as Qualified Northwest Resources.

(b) After the Administrator has determined that the capacity of the Intertie is rated at approximately 7,900 MW, all resources located outside of the Northwest, other than the portions of extraregional resources covered as Qualified Northwest Resources.

15. "Qualified Northwest Resources" exclude BPA Resources, but include:

(a) Generating resources located inside the Northwest that were in commercial operation on the effective date of this policy. Regarding generating resources owned or controlled by Nonscheduling Utilities, it must be demonstrated that a relationship had been established by that date with a Scheduling Utility or BPA to serve Northwest loads.

(b) Scheduling Utility extraregional generating resources dedicated to Northwest loads on the effective date of this policy. This term includes pro rata portions of Montana Power Company's and Pacific Power and Light Company's shares of the Colstrip No. 4 generating station, based on the ratio of their respective regional loads to their respective total loads; and Idaho Power Company's share of Valmy No. 2.

(c) New regional resources of Scheduling Utilities, except for hydroelectric resources located in Protected Areas, needed to support power contracts receiving Assured Delivery service under this policy.

16. "Resource" means an identified electric generating unit or stack of particular electric generating units identified to supply power or capacity for sale over the Intertie.

17. "Scheduling Utility" means the Northwest portion of a non-Federal utility that operates a generation control area within the Northwest.

18. "Seasonal Exchange" means a transaction that takes advantage of seasonal diversity between Northwest and Southwest loads through transfers of firm power, at a prespecified delivery rate, from North to South during the Southwest's summer load season and

from South to North during the Northwest's winter load season. Seasonal Exchanges may involve payments of additional consideration to reflect the relative seasonal values of power throughout the western United States. Seasonal Exchange schedules of Northwest utilities will be referred to as "deliveries," and schedules of Southwest utilities will be referenced as "returns." A Scheduling Utility must be able to support its summertime firm power deliveries with generating resources that are surplus to its Northwest requirements. The sum of a Scheduling Utility's energy resources for each month in which deliveries are made (with special concern for August) must exceed its corresponding Northwest loads by an amount sufficient to support the Seasonal Exchange.

19. "Section 9(i)(3) resource" means a Scheduling Utility resource that BPA has granted priority in receiving BPA transmission, storage and load factoring services.

Section 2. Intertie Capacity Reserved for BPA.

The Administrator reserves for BPA's use Intertie Capacity sufficient to:

(a) Deliver the full amount of BPA's surplus firm power,

(b) Perform obligations under existing BPA transmission contracts listed in Exhibit C, to the extent such obligations differ from the conditions specified in this policy, and

(c) Provide Assured Delivery service for transactions not subject to limits under Exhibit B to this policy.

Section 3. Conditions For Intertie Access.

(a) All Intertie access will be granted pursuant to the conditions and procedures of this policy, unless otherwise specified in the three existing BPA transmission contracts listed in Exhibit C.

(b) BPA will provide Intertie access only for BPA Resources and the Qualified Northwest Resources of Scheduling Utilities, except to the extent that Qualified Extraregional Resources are permitted access under this policy.

(c) BPA will provide Assured Delivery and allocate remaining Intertie Capacity when providing such access will not substantially interfere with operating limitations of the Federal system. Examples of these limitations, which reflect BPA's obligation to operate in an economical and reliable manner consistent with prudent utility practices, include:

(1) The BPA reliability criteria and standards,

(2) Western Systems Coordinating Council minimum operating reliability criteria,

(3) North American Electric Reliability Council Operating Committee minimum criteria for operating reliability, and

(4) Coordination agreements among BPA, scheduling utilities and other Federal agencies regarding resource and river operations.

(d) Any utility that has contractual or ownership rights to transmission capacity to Southwest utilities must be fully utilizing such capacity prior to receiving any access to BPA Intertie Capacity.

Section 4. Assured Delivery for Intertie Access

Subject to the limitations and other conditions in this section and in other sections of this policy, BPA has determined that it can provide Assured Delivery to Scheduling Utilities without causing substantial interference with the Administrator's Power Marketing Program.

(a) *Access For Utilities Owning Or Controlling Southwest Interconnections.* Assured Delivery is intended primarily for Scheduling Utilities which lack interconnections with the Southwest. A utility with transmission access to Southwest utilities, through contract or ownership, must utilize all such capacity on a firm basis before receiving any Assured Delivery. A utility is eligible for Assured Delivery only to the extent that the sum of its Exhibit B amounts exceeds its own transmission capacity to the Southwest.

(b) *Waiver Of BPA Service Obligation.* Assured Delivery contracts must contain a waiver of BPA's obligation under the Scheduling Utility's power sales contract, up to the amount of power for which firm Intertie access is provided.

(c) *Transactions Not Subject To Exhibit B Limits Under This Policy*—(1) *Joint Ventures.* Joint ventures between BPA and utilities, such as firm displacement contracts, which allow BPA to increase its sales of surplus power qualify for Assured Delivery.

(2) *Sales In Lieu Of Exchanges.* BPA may offer to satisfy Scheduling Utility demands for Seasonal Exchanges by selling them incremental amounts of surplus firm power during winter months. Upon committing to purchase such incremental firm power at negotiated prices that reflect BPA's lost opportunities for summer sales, a Scheduling Utility will qualify for Assured Delivery (with mitigation) to wheel an equal amount of firm capacity and energy over the Intertie during summer months.

(3) *Conditions.* A Scheduling Utility may request at any time the Assured Delivery of transactions identified in sections 4(c)(1) and 4(c)(2). Relevant contracts must be presented for review when Assured Delivery is requested. BPA will satisfy a request within 60 days after a Scheduling Utility has demonstrated satisfaction of the requirements of this policy.

(d) *Transactions Subject To Exhibit B Limits Under This Policy*—(1) *Maximum Amounts Of Assured Delivery.* BPA will provide 800 MW of Assured Delivery for transactions, limited by Exhibit B amounts, that are identified in this policy. BPA will determine the amount of any additional Assured Delivery increment after conclusion of the Third AC participation process. Moreover, the 800 MW amount may be subject to some reduction if the DC terminal expansion project is not completed on schedule.

(2) *Firm Power Sales*—(A) *Existing Transmission Contracts.* BPA will provide Assured Delivery for the remaining term of the firm power sale contract identified in Exhibit C to this policy.

(B) *Exhibit B amounts*—(i) *Current maximum.* Each Scheduling Utility's maximum Assured Delivery amount for firm sales equals its average firm energy surplus, shown in Exhibit B to this policy. Except for Montana Power Company (MPC), Exhibit B represents projected Scheduling Utility surpluses for the 1988–89 operating year. In satisfaction of all obligations to MPC under Northwest Power Act section 9(i)(3), MPC's Exhibit B amount is set at 105 MW to facilitate long-term sales of firm power from its share of the Colstrip No. 4 coal-fired generating station.

(ii) *Future changes.* BPA may, at its discretion, revise Exhibit B to reflect changes in the firm power surpluses of individual utilities; however, the 361 MW Exhibit B average firm surplus total is not subject to increase. Any unutilized Assured Delivery amount is revoked if, upon revision, a utility's individual Exhibit B amount has declined or if a utility has sold firm power to another utility seeking to increase its Exhibit B average firm surplus amount. A Scheduling Utility may increase its individual Exhibit B amount by purchasing surplus firm power from BPA or any Scheduling Utility with an Exhibit B amount.

(iii) *Nature Of Transactions.* BPA will not provide Assured Delivery for transactions which a Scheduling Utility cannot demonstrate to be other than an advance arrangement to sell nonfirm energy. Nonfirm energy transactions

may receive Intertie access only under section 5 of this policy.

(C) *Shaping.* Firm power sales eligible for Assured Delivery may be shaped within the following ranges. During the months of September through December, a Scheduling Utility may deliver firm energy at a rate up to 1.8 times its Exhibit B average firm surplus amount. During the months of January through August, a Scheduling Utility may deliver firm energy at a rate no greater than 1.0 times its Exhibit B amount. However, total delivered energy may not exceed the Exhibit B annual firm energy maximum.

(3) *Seasonal Exchanges*—(A) *Existing Contracts.* BPA will provide Assured Delivery for the remaining term of the Seasonal Exchange contracts identified in Exhibit C to this policy.

(B) *Exhibit B Amounts.* Subject to the individual utility Seasonal Exchange maximums in Exhibit B, BPA will provide Assured Delivery to facilitate Seasonal Exchanges of Qualified Northwest Resources. The current Exhibit B (representing Intertie Capacity Available for Assured Delivery) is subject to revision at the discretion of BPA.

(4) *Mitigation*—(A) *Firm Sales And Seasonal Exchange Deliveries.* During any hour in which BPA has invoked Condition 1 allocation procedures to preschedule energy deliveries, each utility's Assured Delivery amount shall be deducted from its formula allocation to determine its share of energy scheduled on the Intertie. If the remainder is negative for a given utility, then that utility must pruchase sufficient energy from BPA, at BPA's then-applicable rate, to make up the difference.

(B) *Seasonal Exchange Returns*—(i) *Returns.* Exchange contracts must specify that all return energy be scheduled to either the AC Intertie point of interconnection at the California-Oregon border ("COB") or the DC Intertie point of interconnection at the Nevada-Oregon border ("NOB"). Exchange contracts must also specify prescheduled determinations of hourly energy returns.

(ii) *Cash out.* During any hour in which BPA has invoked Condition 1 or Condition 2 allocation procedures to preschedule energy deliveries, a utility may not utilize the cash-out provisions of a Seasonal Exchange contract. The rate of a cash out during Condition 3 shall not exceed the rate at which the exchange return could have been scheduled.

(5) *Satisfying Requests For Assured Delivery.* To allow sufficient time for contract negotiation, initial requests under this policy will be accepted until February 1, 1989. Thereafter, BPA will negotiate and execute Assured Delivery contracts. If Intertie Capacity remains available for Assured Delivery of transactions limited by Exhibit B amounts, subsequent requests must be received no later than 120 days before commencement of the next BPA operating year. All relevant power contracts must be presented for review no later than the date on which a request for Assured Delivery is made. BPA will not entertain Assured Delivery requests for firm power sales in excess of a utility's Exhibit B maximum.

Section 5. Formula Allocation Methods.

(a) *Limits On Intertie Capacity Available For Formula Allocation.* Generally, BPA will determine Intertie Capacity available for Formula Allocations after first taking into account the amount of Intertie Capacity necessary to satisfy requirements of the Administrator's Power Marketing Program, existing transmission contracts listed in Exhibit C, and Assured Delivery contracts executed by BPA pursuant to this policy. However, during Condition 1, BPA will not consider the Assured Delivery contracts subject to mitigation requirements in determining available Intertie capacity. BPA may reduce any allocation, if additional Intertie Capacity is required to minimize revenue losses associated with actions taken to protect fish in the Columbia River drainage basin.

(b) *Northwest Scheduling Utility Requirements.* BPA will make utilities aware of scheduling requirements before the policy is implemented.

(c) *Allocation Methods.*—(1) *Condition 1*—(A) *Until December 31, 1988.* Intertie Capacity will be allocated pursuant to the Exportable Agreement (BPA Contract No. 14-03-73155), when applicable.

(B) *After December 31, 1988.* Condition 1 will be in effect when the Federal system is in spill or in likelihood of spill, as determined by BPA. Available Intertie capacity will be allocated pursuant to the following procedure:

(i) Each hour, the maximum Condition 1 allocations for BPA and each Scheduling Utility will be based on the ratio of their respective hydroelectric generating capacities to the Northwest's total hydroelectric generating capacity, multiplied by the available Intertie capacity (the "Hydro Cap"). To the extent that the declarations of some Scheduling Utilities are less than their respective Hydro Caps, BPA will allocate the remainder, pro rata, to itself and to other Scheduling Utilities whose declarations are greater than, or equal to, their respective Hydro Caps. Examples of allocations under Condition 1 are shown in Exhibit A.

(ii) During Condition 1, whenever the Southwest market at BPA's applicable rate is less than the available Intertie capacity, BPA will allocate no more capacity than that market amount.

(iii) In calculating each Scheduling Utility's Hydro Cap, BPA will reduce the hydroelectric generating capacities of individual utilities by any Protected Area decrements determined pursuant to section 7.

(2) *Condition 2.* When Condition 1 is not in effect, but BPA and Scheduling Utilities declare amounts of energy that exceed available Intertie capacity, Formula Allocations for BPA and each Scheduling Utility will approximate, by hour, the ratio of each declaration to the sum of all declarations, multiplied by the available Intertie capacity. An example of an allocation under Condition 2 is shown in Exhibit A.

(3) *Condition 3.* When Condition 1 is not in effect and when the total surplus energy declared available by BPA and Scheduling Utilities is less than the total available Intertie Capacity, BPA and Scheduling Utilities' allocations will equal their declarations. The remaining Intertie capacity will be made available to Extraregional Utilities. Examples of the two possible allocation procedures under Condition 3 are shown in Appendix A.

(d) *Modified Allocations Upon Commercial Operation of the Third A.C. Interconnection.* When the market power of California Intertie owners is reduced upon commercial operation of the third AC interconnection, BPA will cease allocating individual Intertie capacity amounts to non-Federal utilities during Conditions 2 and 3. Instead, after allocating sufficient capacity to itself, BPA will to the extent practicable make the remaining Intertie Capacity available as a block to Scheduling Utilities, and make any residual amount under Condition 3 available to Extraregional Utilities. However, this provision will not be operative if the Administrator determines that:

(1) Even after commercial operation of the third AC, Intertie access continues to be impaired for California utilities presently lacking ownership in the southern portion of the Intertie, or

(2) Southwest utilities utilize some pro rata scheme to allocate energy purchases over the Intertie.

Section 6. Access for Qualified Extraregional Resources.

(a) *Assured Delivery.* Any request for Assured Delivery of power from a Qualified Extraregional Resource would be granted only by contract which, in addition to the Mitigation measures specified in section 4(d)(4)(B), must include benefits to BPA such as increased storage, improved system coordination or operation, or other consideration of value commensurate with the services provided. However, Canadian Extraregional Utilities will not be provided Assured Delivery service until the Administrator has determined that the capability of the Intertie is rated at approximately 7,900 MW. Proposed contracts would be evaluated by BPA and reviewed publicly to determine whether it would cause substantial interference with the Administrator's Power Marketing Program. An environmental review would also be conducted.

(b) *Formula Allocation.* Under Condition 3, energy from Canadian Qualified Extraregional Resources will have access to the Intertie to the extent that Intertie Capacity is available in excess of the amount used by BPA, Scheduling Utilities, and energy from U.S. Qualified Extraregional Resources. BPA may provide Qualified Extraregional Resources with some additional Formula Allocation, if the utility owner agrees by contract either to increased participation in the Pacific Northwest's coordinated planning and operation, or to provide other consideration of value, apart from the standard BPA wheeling rate, commensurate with the services provided.

Section 7. Fish and Wildlife Protection.

(a) *Purpose.* Hydroelectric projects constructed in Protected Areas may substantially decrease the effectiveness of, or substantially increase the need for, expenditures and other actions by BPA, under Northwest Power Act section 4(h), to protect, mitigate or enhance fish and wildlife resources. Intertie access will not be provided to facilitate the transmission of power generated by any new hydroelectric projects located in Protected Areas, licensed after the effective date of this policy. Upon expiration of a Federal Power Act license for an existing project located within a Protected Area, BPA will assist the licensee in developing any necessary protective conditions so that the project may continue to qualify for Intertie access.

(b) *Implementation.* This policy contemplates that BPA will implement, after review and possible modification, a comprehensive protected area program adopted by the Pacific Northwest Electric Power and Conservation Planning Council. In the meantime, BPA will adopt the Protected Area designations compiled by the Council staff. Exhibit D lists those stream reaches, using Environmental Protection Agency stream reach codes, currently designated by BPA as protected areas.

(c) *Enforcement.* If a Scheduling Utility or Nonscheduling Utility owns, or acquires the output from, a hydroelectric project covered under the restrictions of section 7(a), BPA will reduce that utility's Assured Delivery capacity and the Formula Allocation made available to it under the Condition 1 Hydro Cap by either the nameplate rating of the project (in the case of ownership), or the amount of capacity acquired.

Section 8. Other Enforcement Provisions.

Whenever the terms of this policy are not being met, BPA will inform the appropriate utility of the nature of the noncompliance and actions that may be taken to achieve compliance. If noncompliance is not corrected within a reasonable period, BPA may impose an appropriate sanction. Sanctions include denial of access for a resource and refusal to accept schedules.

Exhibit A—Formula Allocation Example of Formula Allocation Under Condition 1

Assumptions Used in This Example

1. The Exportable Agreement has expired (post-12/31/88) and Condition 1 as proposed is in effect.

2. The available Intertie Capacity for Formula Allocations is 3300 MW.

3. No assured Delivery contracts under the LTIAP have been negotiated.

4. Extraregional utilities are not allowed to declare or to receive an allocation under this condition.

Example of a Declaration and Allocation

(1) Util.	(2) Hydro capacity[1]	(3) Max. allocation	(4) Formula declaration	(5) Initial allocation	(6) Declarations allocation	(7) Adjusted allocation	(8) Final allocation
IPC	1,660	171	1,000	171	171	16	187
MPC	193	20	400	20	20	2	22
PP&L	1,250	129	1500	129	129	12	141
PGE	1,150	119	0	0			0
PSP&L	1,800	186	700	186	186	17	203
WWP	1,140	119	600	119	119	11	130
CHN	270	28	25	25			25
CLOK	290	31	0	0			0
GRT	620	64	50	50			50
DGLS	200	21	100	21	21	2	23
COW	154	16	0	0			0
P.O.	0	0	0	0			0
SNO	103	10	0	0			0
SCL	1,820	188	850	188	188	17	205
TCL	684	71	0	0			0
EWEB	81	8	0	0			0
BPA	20,485	2,119	9,500	2,119	2,119	195	2314
	31,900	3,300	14.725	3,028	2.953	272	3,300

[1] Utility's regional hydro capacity amounts are tentative pending release of the 1987 Pacific Northwest Coordination Agreement data.

Description

Column 1 = Utility declaring energy for Formula Allocation.
Column 2 = Utility's total regional Hydroelectric Capacity.
Column 3 = Utility's maximum initial allocation computed on the available Intertie Capacity for Formula Allocation.

$$\text{Formula: } \frac{\text{Utility's regional hydro}}{\text{Intertie total regional hydro}} \times \text{available capacity}$$

Column 4 = Utility's declaration for Formula Allocation.
Column 5 = Initial allocation based on lesser of declaration (column 4) or allocations based on regional hydro capacity (column 3).
Column 6 = Utilities eligible for allocation adjustment due to other utilities not declaring energy available up to the amount of their column 3 allocations.
Column 7 = The pro rata adjustment to each initial allocation.

$$\text{Formula: } \frac{\text{eligible util. initial alloc.}}{\text{avail. total elig. util. initial. alloc. allocation}} \times \text{total capacity for adjusted}$$

Column 8 = Utility's final allocation, limited to column 2.

Example of Formula Allocation Under Condition 2

Assumptions used in this example:

1. Condition 1 is not in effect.
2. The hourly energy from Scheduling Utilities available at any price is greater than the available Intertie Capacity.
3. Available Intertie Capacity equals 3100 MW.

Assumptions:

Beginning total Intertie Capacity.	5200 MW
PGE capacity	700 MW
PPL capacity	300 MW
Loop flow and capacity reduction.	500 MW
Assured Delivery	600 MW
Available Intertie Capacity	3100 MW

4. Extraregional Utilities are not able to declare or receive an allocation in this condition.

Example of the declaration and allocation:

(1)	Energy declaration (2)	Formula allocation (3)
BPA	2,000	904
IOU_1	1,300	587
IOU_2	1,960	886
IOU_3	400	181
PA_1	100	45
PA_2	200	90
PA_3	900	407
Total	6,860	3,100

Description

Column 1 = Utility declaring energy for Formula Allocation.
Column 2 = Utility's energy declaration.
Column 3 = Final Formula Allocation for available Intertie Capacity.

$$\text{Formula: } \frac{\text{Utility's declaration}}{\text{X available Intertie Capacity Total declarations}}$$

Two Examples of Formula Allocation Under Condition 3

Assumptions used in example #1:

1. Scheduling Utilities do not declare enough energy to cover the available Intertie Capacity.
2. Scheduling Utilities and Extraregional Utilities (EXR) together declare energy in excess of available Intertie Capacity.
3. Available intertie capacity equals 3100 MW. (Same assumptions as in Condition 2.)

Example #1 of the hourly declaration and allocation:

(1)	Energy declaration (2)	Formula allocation (3)
BPA	200	200
IOU_1	500	500
IOU_2	1,200	1,200
IOU_3	100	100
PA_1	50	50
PA_2	0	0
PA_3	250	250
Subtotal	2,300	2,300
EXR	1,200	800
Total	3,500	3,100

Assumptions used in example #2:

1. Scheduling Utilities and Extraregional Utilities together declare energy less than the available Intertie Capacity.
2. Available Intertie Capacity equals 3100 MW. (Same assumptions as in example for Condition 2.)

Example #2 of the hourly declaration and allocation:

(1)	Energy declaration (2)	Formula allocation (3)
BPA	0	0
IOU_1	500	500
IOU_2	600	600
IOU_3	100	100
PA_1	0	0
PA_2	0	0
PA_3	150	150
Subtotal	1,350	1,350
EXR	1,000	1,000
Total	2,350	2,350

Description for both example #1 and #2:

Column 1 = Utility declaring energy for Formula Allocation.
Column 2 = Each utility's energy declaration.
Column 3 = Final formula Allocation for Available Intertie Capacity.

Exhibit B—Intertie Capacity Available for Assured Delivery

A. Average Firm Surplus Allocations:

Utility	Average firm surplus (MW)
Chelan County PUD #1	10
Cowlitz County PUD #1	0
Douglas County PUD #1	[1] 0
Eugene Water and Electric Board	14
Grant County PUD #1	26
Seattle City Light	23
Snohomish County PUD #1	0
Tacoma City Light	[2] 3
Idaho Power Company	87
Montana Power Company	[3] 105
Puget Sound Power and Light	0
Washington Water Power	93
	361

NOTE: The Average Firm Surplus is taken directly from the PNUCC Northwest Regional Forecast of March 1987 except as noted below. It includes resources operational on the effective date of this policy. Export contracts are included as loads.

[1] Douglas County PUD is 2; but Douglas has previously requested to a show zero Average Firm Surplus.

[2] Tacoma Average Firm Surplus is shown in the Northwest Regional Forecast is in error.

[3] Montana Power Company's surplus was increased from 80 MW to 105 MW in settlement of obligations under Northwest Power Act section 9(i)(3).

B. *Intertie Capacity Available for Seasonal Exchanges:*

BPA will add numbers for utility Seasonal Exchange allocations when studies are completed on utility summer surplusses.

Exhibit C—Existing Agreements for Intertie Capacity

This is a list of existing BPA transmission contracts that were signed before the implementation of the Near-Term IAP and will continue to receive Intertie access under the Long-Term IAP.

Utility	BPA contract No.	Expiration date
Washington Water Power Co.	DE-MS79-81BP90165	07/01/91
Washington Water Power Co.	14-03-791101	09/01/88
Western Area Power Administration	DE-MS79-84BP91627	10/31/90

Exhibit D—Protected Areas

Exhibit D corresponds to the Northwest Power Planning Council protected area designations within the Columbia Basin, as specified in the Columbia River Basin Fish and Wildlife Program. Stream reaches designated as protected areas are identified by Environmental Protection Agency stream reach codes. Information about designations are contained on hard copy computer printouts or computer diskette copies which are available to the public upon request from the BPA Public Information Center—ALP, P.O. Box 3621, Portland, OR 97208. Toll-free numbers for the document request line are: 800–841–5867 for Oregon; 800–624–9495 for the other Western states; other areas may use commercial number 503–230–7334.

Issued in Portland, Oregon, on January 11, 1988.

Edward W. Sienkiewicz,

Acting Administrator.

[FR Doc. 88–1131 Filed 1–19–88; 8:45 am]

BILLING CODE 6540-01-M

Economic Regulatory Administration

Interest Rates on Violations; Policy

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice confirming and clarifying agency policy concerning manner of compounding interest on violations and other aspects of interest computation; schedule of interest rates.

SUMMARY: The Economic Regulatory Administration (ERA) hereby gives notice confirming and clarifying the manner of compounding interest and other aspects of interest computation described in an earlier Notice (46 FR 21412, April 10, 1981) (1981 Notice) in connection with remedial actions to eliminate or compensate for the effects of violations of the Mandatory Petroleum Price and Allocation Regulations, 10 CFR Parts 210, 211, and 212; and, for informational purposes, provides a comprehensive schedule of interest rates through March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert G. Heiss, Economic Regulatory Administration, Department of Energy, Room 5B–168, 1000 Independence Avenue SW., Washington, DC. 20585, (202) 586–5033.

SUPPLEMENTARY INFORMATION:

A. Introduction

The purpose of this notice is to meet the Federal Register publication requirements of section 552(a)(i) of the Administrative Procedure Act (APA), applicable to statements of general policy and rules of procedure.

B. 1981 Notice

On April 6, 1981, the Office of Enforcement (OE), ERA, issued a Notice of Change in Agency Policy Concerning Interest Rates on Violations. It announced that the agency had adopted a new interest rate policy, more nearly reflective of changes in commercial lending rates than its previous policy of computing interest charges on DOE regulatory violations at the rates used by the Internal Revenue Service (IRS) in assessing interest on delinquent federal income taxes, which by law could not be revised more frequently than every two years. The Notice stated that the new policy "should fully compensate for the value of funds unlawfully retained and deny to violators the benefit of the use of such funds over extended periods of time." The policy uses the rates employed by the Federal Energy Regulatory Commission (FERC), except in cases involving small gasoline retailers, for which another rate was prescribed. Beginning October 1, 1979, interest accrued on violation amounts is to be adjusted every quarter, based on the prime rate charged by commercial banks on short term loans, and compounded quarterly. The rate for future periods is determined every calendar quarter based on prime rate values determined by the Federal Reserve Board.

C. Compound Interest

1. Background

The 1981 Notice provided a detailed description of the interest policy in an Appendix to the Notice:

In those cases where full interest is computed as part of a CO [Consent Order] [1] or specified in an NOPV [Notice of Probable Violation] or a PRO [Proposed Remedial Order], interest should be computed as follows:

(1) At a rate of seven percent simple interest per annum prior to October 10, 1974;

(2) At a rate of nine percent simple interest per annum between October 10, 1974, and September 30, 1979; and

(3)a. At an average prime rate for each calendar quarter on or after October 1, 1979. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent of the prime rate value published in the Federal Reserve Bulletin for the fourth, third and second months preceding the first month of the calendar quarter.

b. The interest paid under clause (3)a. should be compounded quarterly.

Only subparagraph (3)b of the detailed description addresses the employment of the compound method of calculating interest. Pursuant to subparagraph (3)b, only interest accrued

[1] Consent Orders which allow payments to be made over a period of time, however, utilize the interest rate in effect on the date the Consent Order is signed by the firm, as stated elsewhere in the Appendix.

under (3)a (*i.e.*, interest accruing during the period commencing with the calendar quarter beginning October 1, 1979) is subject to compounding.

In a 1982 decision, *Twin Montana, Inc.*, 9 DOE Par. 82,576 (1982), on remand from FERC, the DOE's Office of Hearings and Appeals (OHA) recognized that the existing FERC interest policy applied compounding to all accumulated interest, including interest accumulated at the rates applicable prior to October 1, 1979. Nevertheless, OHA recognized that subparagraph (3)b of the Appendix to the 1981 Notice

> * * * makes clear that notwithstanding the FERC policy, the present DOE policy is that compounding is to apply only to the interest imposed for the period beginning October 1, 1979, coinciding with the application of the prime rate of interest.

Id. at 85,389. Furthermore, the Federal Energy Regulatory Commission subsequently upheld the rationality of ERA's different method of compounding. In *Propane Gas and Appliance Co. et al.*, 23 FERC Par. 61,113 at 61,264 (1983), FERC approved the Secretary of Energy's request that the Commission order the compounding only of interest accruing on or after October 1, 1979, in accordance with ERA's interest policy.

> The Commission finds that this proposed change should be adopted. Under the Commission's regulations, compound interest rates based on the prime were adopted for refunds by utilities, natural gas producers and pipelines beginning October 1, 1979, and the compound rates are applied to all interest prior to October 1, 1979, as well as interest accruing on or after that date. (footnote omitted) As DOE now explains, DOE has chosen not to compound interest accrued prior to application of the prime rate. While we have chosen differently with regard to refunds by utilities, producers, and pipelines, the time for the commencement of compounding can rationally be drawn at several points. Since DOE generally applies this date in all remedial orders * * *, we modify the proposed order accordingly.

Moreover, ERA has consistently applied this aspect of its interest policy in enforcement proceedings. *E.g., United States* v. *Exxon Corp.*, 561 F. Supp. 816 (D.D.C. 1983), *Aff'd*, 773 F.2d 1240 (Temp. Emer. Ct. App. 1985), *cert denied*, 474 U.S. 1105 (1986); *United States* v. *Sutton*, 795 F.2d 1040 (Temp. Emer. Ct. App. 1986), *cert. denied*, 107 S. Ct. 873 (1987); *Citronelle-Mobile Gathering, Inc.* v. *Herrington*, 826 F.2d 16 (Temp. Emer. Ct. App.), *cert. denied*, 108 S.Ct. 327 (1987); *Energy Reserves Group, Inc. et al.* v. *DOE, et al.*, Civ 77–1146, M.D.L. 378 (D. Kan., August 17, 1987). In *Exxon*, the District Court for the District of Columbia asssessed interest at the rates that would have applied to Exxon's overcharges had they been assessed in a DOE Remedial Order following administrative adjudication, 561 F. Supp. at 858; and, in an appendix to its opinion, quoted the Appendix to the 1981 Notice, including the compounding provision in subparagraph (3)b, as the applicable method of computation of interest adopted for purposes of the case, 561 F. Supp. at 864.

Three recent OHA decisions, however, *E.B. Brooks, Jr.*, 16 DOE Par. 83,020 (October 27, 1987) (*Brooks*), *Intercoastal Operating Co., et al.*, 16 DOE Par. 83,021 (October 29, 1987) (*Intercoastal*), and *R.P. Trading Co., et al.*, Case No. HRO–0231 (January 6, 1988), hold that ERA's interpretation of its interest policy was "inadvertent error" to the extent that it did not compound pre-October 1, 1979 interest. *Brooks*, 16 DOE at 86,224; *Intercoastal*, 16 DOE at 86,241; *R.P. Trading*, slip op. at 24–25.

2. Clarification

Because these recent decisions issued by OHA call into question the intended meaning of ERA's 1981 enforcement policy statement, ERA now confirms and clarifies its intent in this Notice in order to eliminate any uncertainty. ERA's intent as to the manner of compounding was expressed in subparagraph (3)b of the Appendix to the 1981 Notice. It was then, and remains now, ERA's policy that interest accruing prior to October 1, 1979, shall not be compounded, and thereafter compounding shall be employed on a quarterly basis.

The apparent source of OHA's conclusion that ERA misinterpreted its own policy is confusing about the interplay of two related but different concepet, namely, the rates to be applied, and the methods of computation of those rates. As the full text of the statement in the summary section of the 1981 Notice makes clear, ERA adopted the *rates* of interest employed by FERC. The 1981 Notice, however, does not say that ERA adopted the *method of computation* of interest employed by FERC. Indeed, subparagraph (3)b of the Appendix to the 1981 Notice sets forth a method of compounding which is different from the FERC method. Notwithstanding this difference, FERC ruled that ERA's method is rational, as discussed above.

Moreover, even if ERA's intent had not been clearly stated in the 1981 Notice, ERA's subsequent practice has created a consistent policy which ERA would only reconsider at this time in the face of exceptional circumstances. At the time ERA formulated its policy, many possible options existed which were not adopted, for example, compounding interest on a basis other than the calendar quarter, to name only one. An agency, however, should consider modification of a policy established many years earlier, and consistently adhered to since then, only if such action is compelled by a significant change in circumstances or other unusual situation which is not present in this circumstance.

ERA's intent, embodied in the 1981 Notice, was to seek interest computed in a manner and at rates which would achieve appropriate restitution. That intent was effected by the interest rates and methodology described in the Appendix, which continue to reflect a fair measure of restitutionary value.

Accordingly, in contested orders, ERA will continue to request that the OHA assess interest compounded in the manner specifically set forth in the 1981 Notice and as confirmed in this Notice.

D. Number of Days in Each Quarter

In computing interest, ERA has generally determined the number of days in each calendar quarter by using a year consisting of 365 days with no variation for leap years. The respective calendar quarters contain the following numbers of days:

Quarter	No. of days
Jan. 1–Mar. 31	90
Apr. 1–June 30	91
July 1–Sept. 30	92
Oct. 1–Dec. 31	92

E. Commencement Dates for Interest Calculations

In the Appendix to the 1981 Notice, ERA indicated that interest would be "computed from the date of the violations to the date of restitution * * *." For purposes of simplifying the computation, and in order to avoid possible disputes as to the exact date of occurrence of each regulatory violation, however, ERA has generally used the first day of the month following the month in which the alleged overcharges occurred as the commencement date, for refunds sought as restitution for overcharges alleged in a proposed remedial order. In contrast, payments made pursuant to remedial orders or consent orders accrue interest from the date payment was due or as specifically provided for in the particular order. Such orders generally specify a date certain or set forth a method by which a date certain can be determined.

F. Schedule of Interest Rates

In this Notice, for informational purposes, ERA is also providing a comprehensive schedule of interest rates through the end of calendar year 1987, as follows:

Violation period	Interest rate (percent)
Prior to October 10, 1974	7.00
Oct. 10, 1974–Sept. 30, 1979	9.00
Oct. 1, 1979–Dec. 31, 1979	11.70
Jan. 1, 1980–Mar. 31, 1980	14.28
Apr. 1, 1980–June 30, 1980	15.39
July 1, 1980–Sept. 30, 1980	18.22
Oct. 1, 1980–Dec. 31, 1980	11.74
Jan. 1, 1981–Mar. 31, 1981	14.03
Apr. 1, 1981–June 30, 1981	19.98
July 1, 1981–Sept. 30, 1981	18.27
Oct. 1, 1981–Dec. 31, 1981	20.31
Jan. 1, 1982–Mar. 31, 1982	18.46
Apr. 1, 1982–June 30, 1982	16.02
July 1, 1982–Sept. 30, 1982	16.50
Oct. 1, 1982–Dec. 31, 1982	15.72
Jan. 1, 1983–Mar. 31, 1983	12.62
Apr. 1, 1983–June 30, 1983	11.21
July 1, 1983–Sept. 30, 1982	10.50
Oct. 1, 1983–Dec. 31, 1983	10.63
Jan. 1, 1984–Mar. 31, 1984	11.00
Apr. 1, 1984–June 30, 1984	11.00
July 1, 1984–Sept. 30, 1984	11.84
Oct. 1, 1984–Dec. 31, 1984	12.87
Jan. 1, 1985–Mar. 31, 1985	12.44
Apr. 1, 1985–June 30, 1985	10.72
July 1, 1985–Sept. 30, 1985	10.44
Oct. 1, 1985–Dec. 31, 1985	9.59
Jan. 1, 1986–Mar. 31, 1986	9.50
Apr. 1, 1986–June 30, 1986	9.50
July 1, 1986–Sept. 30, 1986	8.81
Oct. 1, 1986–Dec. 31, 1986	8.19
Jan. 1, 1987–Mar. 31, 1987	7.50
Apr. 1, 1987–June 30, 1987	7.50
July 1, 1987–Sept. 30, 1987	7.80
Oct. 1, 1987–Dec. 31, 1987	8.25
Jan. 1, 1988–Mar. 31, 1988	8.85

G. Procedural Considerations

1. This Notice Is a Statement of Policy Within the Meaning of the Administrative Procedure Act, 5 U.S.C. 553 "General statements of policy," like interpretative rules and rules of agency organization, procedure, or practice, are excepted from the notice-and-comment requirements of section 553 of the APA by section 553(b)(A). The methods of determining interest set forth here are employed in consent orders, and in enforcement proceedings for the restitution of overcharges.

In addition, the methods of computing interest described in this notice are only imposed on firms by their consent or by order entered after agency adjudication, including notice and opportunity for hearing. Accordingly, they are matters of agency "policy", within the meaning of 5 U.S.C. 553(b)(A) both by their subject matter and by the manner in which they are employed, and the agency is also free to modify the policy relating to interest rates without following formal rulemaking procedures pursuant to 5 U.S.C. 553.

2. Applicability of Sections 501 (a), (b), and (c) of the DOE Organization Act

The rulemaking procedures imposed by Section 501 of the DOE Organization Act in addition to the requirements of 5 U.S.C. 553 do not apply to statements of policy such as that set forth herein. Congress, in the enactment of Section 501, did not intend to eliminate "the long-standing and judicially-approved APA exemption for rules of agency procedure." *Mobil Oil Corp.*, 4 DOE par. 83,014 at 86,189 (1979) (amendments to procedural rule governing issuance of remedial order), *aff'd*, 1981–1984 FERC Appeals Decision par. 46,093 (1980). *See also Amerada Hess Corp.*, 4 DOE par. 83, 021 (1979). Statements of policy, which are exempted from APA notice-and-comment requirements in the same clause as are rules of agency procedure, are likewise not subject to the public participation requirements of sections 501 (b) and (c).

Issued in Washington, DC, January 14, 1988.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 88–1136 Filed 1–20–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–680–000 et al.]

Central Illinois Light Co. et al.; Electric Rate and Corporate Regulation Filings

January 12, 1988.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Light Company

[Docket No. ER87–680–000]

Take notice that on January 6, 1988, Central Illinois Light Company (CILCO) tendered for filing an amendment to its original filing of this Docket with regard to § 35.27 of the Commission's Regulations. The original filing was made to revise CILCO's Wholesale Rate MW–4, applicable to the Village of Riverton, Illinois, to reflect changes in CILCO's tax structure due to the Tax Reform Act of 1986. CILCO made this filing in voluntary compliance with the Federal Energy Regulatory Commission (FERC) Order No. 475.

Comment date: January 26, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Power and Light Company

[Docket No. ER88–24–000]

Take notice that on January 6, 1988, Kansas Power and Light Company (KPL) tendered for filing pursuant to deficiency letter dated December 9, 1987, additional workpapers to reflect projected reductions in revenue credits from off-system sales. These additional workpapers show the calculated impact of the changed Federal tax rate on the otherwise applicable rate for the off-system customers.

Comment date: January 26, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions, or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1102 Filed 1–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF88–131–001]

Northwest Arkansas Resource Recovery Authority; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

January 13, 1988.

On November 30, 1988, Northwest Arkansas Resource Recovery Authority (Applicant), of 113 W. Mountain St., Fayetteville, Arkansas 72701 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Washington County, Arkansas. The electric power production capacity will be approximately 2.8 megawatts. The primary energy source will be municipal solid waste. The facility will be owned entirely by the Northwest Arkansas Resource Recovery Authority.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition 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. 88-1103 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI71-714-003 et al.]

APX Corp. (Formerly Pan Eastern Exploration Co.) Corporate Name Change

January 13, 1988.

Take notice that on January 4, 1988, APX Corporation (APX), of P.O. Box 1330, Houston, Texas 77251-1330 filed an application pursuant to section 7(c) of the Natural Gas Act and § 154.94 of the Federal Energy Regulatory Commission's Regulations, notifying the Commission that Pan Eastern Exploration Company has changed its name to APX Corporation.

Effective November 2, 1987, the corporate name of Pan Eastern Exploration Company was changed to APX Corporation as evidenced by the Certificate of Amendent of Certificate of Incorporation dated October 22, 1987.

Notice is hereby given that all the certificates and related rate schedules as listed in the attached Exhibit "A" are hereby redesignated to reflect the corporate name change from Pan Eastern Exploration Company to APX Corporation.

Lois D. Cashell,

Acting Secretary.

EXHIBIT "A".—APX CORPORATION

Formerly: Pan Eastern Exploration Company, FERC Gas Rate Schedule No., *Now:* APX Corporation FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser	State	County/Parish
1	CI 71-714	Panhandle Eastern Pipe Line Company	Kansas	Morton.
2	CI 71-714	Panhandle Eastern Pipe Line Company	Texas	Carson.
3	CI 71-714	Panhandle Eastern Pipe Line Company	Texas	Meade.
			Kansas	Morton.
4	CI 71-714	Panhandle Eastern Pipe Line Company	Kansas	Morton.
5	CI 71-714	Panhandle Eastern Pipe Line Company	Kansas	Stevens.
			Oklahoma	Beaver. Cimarron. Texas
6	CI 71-714	Panhandle Eastern Pipe Line Company	Kansas	Grant. Morton. Seward
7	CI 71-714	Panhandle Eastern Pipe Line Company	Oklahoma	Texas.
8	CI 71-714	Northern Natural Gas Company	Kansas	Stevens.
9	CI 71-714	Colorado Interstate Gas Corporation	Texas	Carson.
10	CI 71-714	Northern Natural Gas Company	Oklahoma	Beaver.
11	CI 71-714	Panhandle Eastern Pipe Line Company	Oklahoma	Roger Mills.
			Texas	Hemphill.
12	CI 76-342	Panhandle Eastern Pipe Line Company	Oklahoma	Woodward.
13	CI 77-138	Panhandle Eastern Pipe Line Company	Oklahoma	Beaver.
14	CI 77-531	Panhandle Eastern Pipe Line Company	Louisiana	Offshore.
15	CI 77-818	Panhandle Eastern Pipe Line Company	Oklahoma	Woods.
16	CI 78-725	Panhandle Eastern Pipe Line Company	Texas	Offshore.
17	CI 78-1264	Panhandle Eastern Pipe Line Company	Texas	Offshore.
18	CI 79-446	Panhandle Eastern Pipe Line Company	Texas	Offshore.
19	CI 79-475	Panhandle Eastern Pipe Line Company	Texas	Offshore.
20	CI 80-303	Panhandle Eastern Pipe Line Company	Louisiana	Offshore.
21	CI 80-485	Panhandle Eastern Pipe Line Company	Louisiana	Offshore.
22	CI 81-380	Panhandle Eastern Pipe Line Company	Louisiana	Offshore.
23	CI 81-428	Panhandle Eastern Pipe Line Company	Louisiana	Offshore.
24	CI 83-103-000	Panhandle Eastern Pipe Line Company	Texas	Offshore.
25	CI 83-357-000	Panhandle Eastern Pipe Line Company	Texas	Offshore.
26	CI 85-169-000	Panhandle Eastern Pipe Line Company	Texas	Offshore.

[FR Doc. 88-1104 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL88-6-000]

Boston Edison Co. v. City of Holyoke Gas and Electric Department; Filing

January 13, 1988.

Take notice that on December 28, 1987, Boston Edison Company (Edison) tendered for filing pursuant to sections 205 and 307(a) of the Federal Power Act (16 U.S.C. 842d and 825f(a)) and Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), a Complaint against City of Holyoke Gas and Electric Department. Edison states that the Complaint was filed because Holyoke violated section 205 of the Federal Power Act and its contract with Edison, which is a filed Commission rate schedule, by its refusal to pay the monthly charges for the Pilgrim 1 nuclear unit in which Holyoke has a long-term entitlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 13, 1988. 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 this filing are on file with the Commission and are available for public inspection. Answers to the

complaint shall also be due on or before February 13, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1105 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-142-000]

Columbia Gas Transmission Corp. Petition for Declaratory Order, Complaint and Request for Order Directing Compliance

In the matter of Columbia Gas Transmission Corp., Complainant *v.* Louisiana Intrastate Gas Corp., Respondent.

January 14, 1988.

Take notice that on December 17, 1987, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia, 25325-1273, filed in Docket No. CP88-142-000 pursuant to §§ 385.206, 385.207, 385.212, and 385.217 of the Commission's Rules of Practice and Procedure a petition for declaratory order, and complaint alleging that Louisiana Intrastate Gas Corporation (LIG) has failed to provide nondiscriminatory transportation as mandated by the Commission's regulations and to honor its contract with Columbia, and requesting that the Commission order LIG to provide such transportation for Columbia under the contract for certain reasons, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that on June 29, 1981, Columbia entered into a gas transportation agreement with LIG, an intrastate pipeline company,[1] whereby LIG agreed to transport gas for Columbia for a term of 15 years. It is stated that this agreement enabled Columbia to have delivered into its system gas which it purchased from certain of its producer/suppliers in the Moore-Sams Field in Point Coupee Parish, Louisiana. It is stated that on July 14, 1981, LIG filed the transportation agreement with the Commission in Docket No. CP81-416-000 and requested the Commission's authorization to perform the transportation service thereunder. It is further stated that transportation for Columbia was initiated by LIG on July 26, 1981, pursuant to the interim authorization of Section 311 of the NGPA, and subsequently the Commission on July 22, 1982, issued an order pursuant to section 311(a)(2) of the NGPA and § 284.127 of the Commission's Regulations authorizing LIG to transport up to 125,000 Mcf of gas per day for Columbia for the requested 15 year term.

Columbia states that after Commission authorization was granted, LIG continued to transport gas to Columbia under the 1981 agreement until October 9, 1987, when LIG summarily terminated the transportation. It is stated that on November 11, 1987, LIG wrote a letter to Columbia advising that the 1981 agreement was terminated as of October 9, 1987, and maintaining its position that this termination was in accordance with § 284.125(a) of FERC regulations, as the "grandfathered status" of the agreement terminated on October 9, 1987. Columbia states that LIG further represented that it was an open access transporter under the provisions of Order No. 436 and, accordingly, the transportation agreement became subject to the terms and conditions of Order No. 436 as of October 9. It is stated that LIG further advised that LIG would be willing to enter into an interim transportation agreement.

Columbia stated that by letter dated November 13, 1987, Columbia submitted to LIG a request for transportation under an interim agreement. It is stated that on November 16, 1987 Columbia and LIG executed the interim service agreement whereby LIG would provide essentially the same service as it provided under the 1981 agreement, except that the interim agreement was for a two-year term and included a provision under which LIG would have the right to terminate the agreement upon 30 days notice. It is further stated that on November 20, 1987, LIG recommended transporting gas for Columbia under the interim agreement.

Columbia requests that the Commission:

(1) Find that LIG illegally terminated transportation for Columbia.

(2) Find that the 1981 transportation agreement is in full force and effect and properly authorized under the Commission's Regulations.

(3) Order that LIG provide the transportation under the 1981 agreement for its full 15-year term.

(4) Order such other relief as may be appropriate.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 16, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). LIG also is ordered to file its answer by that date. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Answers to the complaint shall be made under Rules 206 and 213, (18 CFR 385.206 and 385.213(1986)), subject to the time limitation stated above.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1106 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-45-033]

Inter-City Minnesota Pipelines; Filing

January 14, 1988.

Take notice that on January 6, 1988, Inter-City Minnesoa Pipelines (Inter-City) tendered for filing Substitute Thirtieth Revised Sheet NO. 4 to its FERC Gas Tariff, Origional Volume No. 1 pursuant to the Commission's November 20, 1987 letter order. The proposed effective date is November 1, 1987. Inter-City states that this revised tariff sheet reflects a one-part rate for Rate Schedule SG-1 in Inter-City's Western (GL-28) Zone.

Inter-City states that a copy of this filing has been served on all customers of Inter-City and on the Minnesota Public Service Commission.

Any person desiring to be heard or to protest said filing should file a 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 385.214 or 385.211). All such protests or motions should be filed on or before January 22, 1988. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1107 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-48-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

January 14, 1988.

Take notice that on January 6, 1988, Transcontinental Gas Pipe Line Corporation ("Transco") tendered for filing First Revised Sheet Nos. 113, 114,

[1] LIG is managed and operated by Tenngasco Corporation, a Division of Tenneco, Inc.

126, 178, 318, 322, 364 and Original Sheet Nos. 114A, 126A and 178A to its FERC Gas Tariff, Second Revised Volume No. 1.

The proposed effective date of the revised tariff sheets is May 1, 1988.

Transco states that the purpose of the filing is to revise its currently effective Rate Schedules GSS, LGA and LSS to include provisions which allow the Buyer under such Rate Schedules to inject certain quantities of gas purchased from third party sellers into storage pursuant to the provisions of each such storage Rate Schedule.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR, 385.211 and 385.214). All such motions or protests should be filed on or before January 22, 1988. 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. 88-1108 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88-7-000]

Transcontinental Gas Pipe Line Corp.; Complaint

January 14, 1988.

In the matter of Transcontinental Gas Pipe Line Corp. v. Challenger Minerals, Inc., LGS Exploration Inc., et al., Decalta International Corp., et al., Santa Fe International Corp., and Enstar Corp., et al.

Take notice that on December 18, 1987, Transcontinental Gas Pipe Line Corporation (Transco) filed with the Commission a complaint against five independent producers, namely Challenger Minerals, Inc.; LGS Exploration, Inc., et al.; Decalta International Corporation, et al.; Santa Fe International Corporation, et al.; and Enstar Corporation, et al. (hereinafter referred to as Respondents). Respondents sell gas to Transco under five separate contracts. The complaint alleges that certain take-or-pay provisions as well as specific minimum take provisions contained in these contracts are unjust, unreasonable and unduly discriminatory under section 5 of the Natural Gas Act (NGA), and therefore are inoperative and of no force or effect. Transco requests the Commission to exercise its authority under section 5 of the NGA to determine the quantity and take provisions which would be just and reasonable for each contract, and to include as part of the makeup provisions of each contract the requirement that the seller deliver prepaid volumes at times and in quantities acceptable to the buyer, and repay all unrecoupable take-or-pay payments.

Transco asserts that the five contracts are objectionable because their high take-or-pay requirements coupled with their high prices restrain competition and prevent the free operation of supply and demand. Transco argues that four Respondents seek a windfall by seeking to be paid more than once for their gas, and that one Respondent (Challenger Minerals, Inc.) seeks a windfall in that it demands 100% takes of its gas because of alleged drainage, while demanding a price which makes the gas unmarketable. Transco urges the Commission to invalidate the take-or-pay provisions as it did with minimum commodity bills, asserting that take-or-pay provisions, like minimum commodity bills, serve to block the transmission of price signals to producers and to raise prices higher than the market would otherwise support. Transco argues that the adverse consequences of take-or-pay provisions have resulted directly from the elimination of minimum bills. According to Transco the elimination of the obligation of local distribution companies to maintain their traditional supply arrangements has made it impossible for pipelines to meet their take-or-pay commitments to producers.

Transco claims that respondents have refused to negotiate reasonable settlements of the take-or-pay provisions, and argues that if the problems presented by these provisions are not dealt with, the cost will fall not only on Transco and its customers but also on the vast majority of producers with whom Transco has settled. Transco argues that such a result would be unduly discriminatory. Transco requests that the complaint be set for an expedited hearing, with an initial decision to be issued within six months.

Any person desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, not later than 30 days after publication of this notice in the **Federal Register**. Answers to the complaint are due within the same time period. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the complaint are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1109 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3317-8]

State Implementation Plans; Approval of Post-1987 Ozone and Carbon Monoxide Plan Revisions for Areas Not Attaining the National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed policy; extension of public comment period.

SUMMARY: On November 24, 1987, EPA proposed its policy for approval of post-1987 ozone and carbon monoxide plan revisions for areas not attaining the national ambient air quality standards (52 FR 45044). The public comment period for that notice began on the date of publication and was scheduled to end on January 25, 1988. The EPA has received written request to extend the public comment period. The EPA has evaluated this request and is hereby granting a sixty (60)-day extension to the public comment period for the proposed policy notice.

DATES: Comments may now be submitted up to March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Brock Nicholson, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina, 27711, (919) 541-5517 or (FTS) 629-5517.

Date: January 13, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88–1114 Filed 1–20–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3318–2]

Florida; Marine Sanitation Device Standard for Destin Harbor (aka Old Pass Lagoon) Within the State

On October 9, 1987 (52 FR 37839), notice was published that the State of Florida has petitioned the Administrator, U.S. Environmental Protection Agency, to determine that adequate facilities for the safe and sanitory removal and treatment of sewage from all vessels are reasonably available for the waters of Destin Harbor. The petition was filed pursuant to section 312(f)(3) of Pub. L. 92–500.

Section 312(f)(3) states:

After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Florida certified that there are five pumpout facilities available to service vessels in Destin Harbor.

Pumpout Facility No. 1 is located on the dock of the East Pass Towers Yacht Club and will accommodate vessels with a draft of eight feet. This facility is open from 8:00 a.m. to 4:00 p.m. seven days a week and has a $2.00 fee per pumpout. Pumpout Facility No. 2 is on the dock at the Waterview Towers and will accommodate vessels with a draft of eight feet. This facility is open from 8:00 a.m. to 4:00 p.m. each day except Sunday and has a $2.00 fee per pumpout. Pumpout Facility No. 3 is on the dock at the Destin Harbor Resort and accommodates vessels with 10 feet drafts. The facility is open from 8:00 a.m. to 4:00 p.m. each day except Sunday. There is no charge per pumpout at this facility. Pumpout Facility No. 4 is on the dock at the Sandestin Yacht Club and accommodates vessels with 15 feet drafts. The facility is open from 6:30 a.m. to 6:00 p.m. seven days a week. There is no charge per pumpout at this facility. Pumpout Facility No. 5 is on the dock at the Dolphin Point Condominium, and accommodates vessels with a draft of six feet. The facility is open from 8:00 a.m. to 4:00 p.m. each day except Sunday. The pumpout service at this facility is free. All five pumpout facilities discharge into the city sewage system.

Vessel usage of Destin Harbor includes 125 charter fishing vessels, 21 commercial fishing vessels and 190 recreational boats for a total of 336 vessels. The channel depth into Destin Harbor is currently 12 feet; therefore, the City is certifying that all vessels can be accommodated by the five pumpout facilities.

There were no comments received by the Agency on the merits of the petition prior to the deadline for receipt of comments.

Following an examination of the petition and its supporting formation, and the fact that no comments on the petition were received prior to the closing date stated in the October 9, 1987, **Federal Register** notice, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Destin Harbor, within the State of Florida. This determination is made pursuant to section 312 (f)(3) of the Pub. L. 92–500.

Lee A. DeHihns III,

Acting Regional Administrator.

January 11, 1988.

[FR Doc. 88–1115 Filed 1–20–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3319–3]

Science Advisory Board, Environmental Health Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Science Advisory Board's Environmental Health Committee will be held on January 28–29, 1988, at the One Washington Circle Hotel, NW., Washington, DC 20037. The meeting will begin at 8:30 a.m. on January 28th and adjourn no later than 4:00 p.m. on January 29th. Based on the quick turnaround time the Agency needs on this review and the availability of the members, it is necessary to call this meeting on these datres.

The Committee will discuss draft reports on scientific reviews conducted by its Halogenated Organics Subcommittee on six health criteria and/or assessment documents including those for: para-dichlorobenzene, trichloroethylene, dichloramethane, polychlorinated biphenyls, 1–2-dichloropropane, and cis- and trans-dichloroethylene. The Committee will also receive four reports from the Drinking Water Subcommittee including: a review of the xylene health criteria document, an evaluation of the Office of Drinking Water's report to Congress on treatment technologies, a review of the scientific basis for filtration and coliform standards and an assessment of the water distribution research program. EPA staff will brief the Committee on a request for Science Advisory Board review of issues related to inorganic arsenic. The Committee will also hear reports of activities of the Office of Research and Development and conduct other committee business.

An agenda for the workshop is available from Ms. Renee Butler, Staff Secretary, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–2552.

The meeting will be open to the public. Any member of the public wishing to attend, obtain information or otherwise participate in these meetings must contact Dr. C. Richard Cothern, Executive Secretary, Environmental Health Committee, by telephone at (202) 382–2552 or by mail to: Science Advisory Board (A–101F), 401 M Street, SW., Washington, DC 20460 no later than c.o.b. on January 22, 1988.

Date: January 17, 1988.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 88–1268 Filed 1–20–88; 8:45a.m.]

BILLING CODE 6560–50–M

[FRL–3318–3; Public Notice No. 87FL115]

Extension of Comment Period and Period for Regional Action on Proposed 404(c) Determination To Prohibit, Deny, or Restrict the Specification or Use of Three East Everglades Areas as Disposal Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension or public hearing comment period and period for regional action on proposed 404(c) determination.

SUMMARY: On November 18, 1987, a public hearing was held in Homestead, Florida, pursuant to Public Notice No. 87FL115 issued October 16, 1987, 52 FR 38519. This hearing concerned a Proposed Determination by EPA Region

IV published in that Notice to prohibit, deny, or restrict specification or three East Everglades wetlands properties described therein as disposal sites for dredged or fill materials under authority of section 404(c) or the Clean Water Act (33 U.S.C. 1344(c). At the request of the attorney representing the Henry Rem Estate, the owner of one of these wetlands properties, the post-hearing comment period provided for in 40 CFR 231.4(f) was extended until the close of business, December 21, 1987. Also the time period provided in 40 CFR 231.5(a) for Regional Action on the Proposed Determination was extended until January 22, 1988. To allow further time for Regional consideration of the administrative record, the time Period for Regional Action is now being further extended, under authority of 40 CFR 231.8, until close of business February 9, 1987.

FOR FURTHER INFORMATION CONTACT: Robert F. McGhee, Chief Marine and Estuarine Branch, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–2127.

Date: January 14, 1988.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 88–1142 Filed 1–20–88; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Organization; Farm Credit System Financial Assistance Corp.

AGENCY: Farm Credit Administration.

ACTION: Notice; charter and articles of incorporation of the Farm Credit System Assistance Corporation.

SUMMARY: On January 11, 1988, the Farm Credit Administration (FCA) chartered the Farm Credit System Financial Assistance Corporation (the Financial Assistance Corporation) pursuant to § 6.20, Title VI, Subtitle B of the Farm Credit Act of 1971, as amended by the Agricultural Credit Act of 1987, Pub. L. 100–233 (1987). The purpose of the Financial Assistance Corporation is to carry out a program to provide capital to institutions of the Farm Credit System that are experiencing financial difficulties. The texts of the Charter and Articles of Incorporation are set forth below:

Charter—Farm Credit System Financial Assistance Corporation

The Farm Credit Administration hereby charters a corporation pursuant to § 6.20, Title VI, Subtitle B of the Farm Credit Act of 1971, as amended (the Act), to be known as the Farm Credit System Financial Assistance Corporation (the Financial Assistance Corporation). The Financial Assistance Corporation is an institution of the Farm Credit System and a Federally chartered instrumentality, the purpose of which is to carry out a program to provide capital to institutions of the Farm Credit System that are experiencing financial difficulty.

By this Federal charter incorporating the attached original of the Articles of Incorporation of the Financial Assistance Corporation, the Farm Credit Administration hereby authorizes the Financial Assistance Corporation to exercise all powers duly conferred under the Act and the applicable regulations of the Farm Credit Administration promulgated thereunder, and the Articles of Incorporation of the Financial Assistance Corporation, as same shall be in effect.

In witness whereof, the Chairman of the Farm Credit Administration Board has executed this charter and caused the seal of the Farm Credit Administration to be affixed hereto, this 11th day of January, 1988.

Farm Credit Administration.

Frank W. Naylor, Jr.,

Chairman of the Board.

Articles of Incorporation of Farm Credit System Financial Assistance Corporation

Article I

Name

The name of the corporation is "Farm Credit System Financial Assistance Corporation," herein referred to as "the Corporation."

Article II

Duration and Office

1. *Duration.* The corporate existence of the Corporation shall commence on the approval of these Articles of Incorporation and the issuance of a charter by the Farm Credit Administration and shall continue until dissolved in accordance with law.

2. *Principal Office.* The principal office of the Corporation shall be located in the coterminous United States as determined by the Board of Directors.

Article III

Statutory Authority

The Corporation is established pursuant to § 6.20 of the Farm Credit Act of 1971, as amended (Act), and is an institution of the Farm Credit System and an instrumentality of the United States subject to regulation and examination by the Farm Credit Administration.

Article IV

Purposes and Powers

1. *Purposes.* The Corporation is formed for the sole purpose of carrying out a program to provide capital to institutions of the Farm Credit System that are experiencing financial difficulty.

2. *Powers.* To achieve the purpose stated above, the Corporation shall have the powers provided in the Act, including the following:

(a) To operate under the direction of its Board of Directors; and

(b) To adopt, alter, and use a corporate seal, which shall be judicially noted; and

(c) To provide for such officers, employees, and agents, including joint employees with the Funding Corporation, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons; and adopt a salary scale for officers and employees of the Corporation in accordance with the directives of the Board; and

(d) To prescribe by the Board its bylaws, not inconsistent with law, which shall provide for the manner in which its officers, employees, and agents are selected; its property is acquired, held, and transferred; its general business is conducted; and the privileges granted by law are exercised and enjoyed; and

(e) To enter into contracts and make advance, progress, or other payments with respect to such contracts; and

(f) To sue and be sued in its corporate name and complain and defend, in courts of competent jurisdiction; and

(g) To acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and otherwise exercise all the usual incidents of ownership or property necessary and convenient to its business; and

(h) To obtain insurance against loss; and

(i) To modify or consent to modification of any contract or agreement to which it is a party or in which it has an interest under the Act; and

(j) To borrow from any commercial bank on its own individual responsibility on such terms and conditions as it may determine with the approval of the FCA; and

(k) To deposit its securities and its current funds with any member of the Federal Reserve System or any insured

State nonmember bank as defined in section 3(b) of the Federal Deposit Insurance Act and pay fees therefor and receive interest thereon as may be agreed; and

(l) To exercise such incidental powers as may be necessary to carry out its powers, duties, and functions in accordance with the Act.

Article V

Shareholders

1. *Qualifications.* The shareholders of this Corporation shall be the institutions of the Farm Credit System.

2. *Capital Stock.* Stock shall be issued with a par value of $5.00 to System Institutions in accordance with section 6.29 of the Act. Such stock shall not be transferable.

Article VI

Board of Directors

1. *Authority.* Subject to the reservations of authorities expressed in these Articles and applicable law, the entire business and affairs of the Corporation shall be directed by a Board of Directors.

2. *Membership.*

(a) The Board of Directors shall consist of the Board of Directors of the Federal Farm Credit Banks Funding Corporation, established pursuant to section 4.9 of the Act.

(b) The Board of Directors shall elect annually a Chairman from among the members of the Board.

3. *Quorum.* No business may be transacted at a meeting of the Board of Directors unless a quorum of the members of the Board is present, and a vote to approve an action requires a majority vote of the members voting.

4. *Rules and Records.* The Board of Directors shall adopt such rules as it may deem appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

5. *Compensation.* The members of the Board of Directors shall receive compensation for the time devoted to meetings and other activities of the Board and reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Board of Directors in amounts not exceeding levels set by the Farm Credit Administration Board.

6. *Chief Executive Officer.* A Chief Executive Officer of the Corporation shall be selected by the Board of Directors and shall serve at the pleasure of the Board.

7. *Bylaw Provision.* The Board of Directors may prescribe bylaws, not inconsistent with law or these Articles, that shall provide for the manner in which:

(a) its officers, employees and agents are selected;

(b) its property is acquired, held and transferred;

(c) its general business is conducted; and

(d) the privileges granted by law are exercised and enjoyed.

Article VII

Amendments

These Articles of Incorporation may be amended from time to time provided no such amendment shall be effective until it has been approved by the Farm Credit Administration.

January 14, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-1143 Filed 1-20-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service, Planning Subcommittee Meeting

1. The Planning Subcommittee will hold its second meeting on:

February 2, 1988, 9:30 a.m., 1919 M Street, NW., Room 856 Washington, DC 20554.

2. The purpose of this meeting is to receive progress reports from the various working parties and discuss the schedule of upcoming activities.

3. The agenda of the meeting is as follows:

a. Call to order by the Chairman
b. Adoption of the minutes of the first meeting
c. Reports by the Chairmen of Working Parties 1 through 6 and Advisory Group 2.
d. Discussion of procedures
e. Schedule of future activities
f. Other business
g. Date and location of next meeting
h. Adjournment

4. This meeting is open to the public.

5. Parties may submit written statements prior to or at the time of the meeting. Oral Statements and discussion will be permitted under the direction of the Chairman.

6. For further information please contact:

Chairman J.A. Flaherty (212) 975-2213 or
William Hassinger (202) 632-6460.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-1093 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-31]

Window Notice for the Filing of FM Broadcast Applications

Released: January 11, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning January 11, 1988 and ending February 17, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—282 A

Eutaw, AL
Gonzales, CA
Shafter, CA
Pinckneyville, IL
Charlestown, IN
Williamsburg, KY
Bunkie, LA
Two Harbors, MN
Bonne Terre, MO
State College, MS
Murphy, NC
Old Fort, NC
Surgoinsville, TN
Seymour, WI

Channel—259 A

Palmyra, NY
Paulding, OH
Commerce, OK
Mt Carmel, PA
Wakefield-Peacedale, RI
Black River Falls, WI
Mayville, WI

Channel—226 A

Clinchco, VA

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-1092 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1706]

Petitions for Reconsideration and Applications for Review of Actions in Rulemaking Proceedings

January 13, 1988.

Petitions for reconsideration and applications for review have been filed

in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and coping in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions and applications must be filed February 8, 1988.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: An Indefinite Extension of the Part 15 Interim Provisions for Cordless Telephones. (RM-5320).

Number of petitions received: 1.

SUBJECT: Review of Technical and Operational Requirements: Part 73–C Noncommercial Educational FM Broadcast Stations. (MM Docket No. 87–140).

Number of petitions received: 1.

SUBJECT: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Terrell, Texas and Daingerfield, Texas).

Number of petitions received: 1.

Application for Review

SUBJECT: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Woodstock and Broadway, Virginia).

Number of applications received: 1.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–1091 Filed–1–20–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Hartke Communications Corp.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Hartke Communications Corporation, Rockledge, FL.	BPH–861103MA	87–556
B. Rockledge Community Broadcasters, Inc., Rockledge, FL.	BPH–861104MA	
C. Rockledge Radio, Ltd., Rockledge, FL.	BPH–861104MB	
D. Skinner Broadcasting, Inc., Rockledge, FL.	BPH–861104MC	
E. T.C. Broadcasting, Inc., Rockledge, FL.	BPH–861105MA	
F. Ben L. Umberger, Rockledge, FL.	BPH–861105MB	
G. Space Coast Communications, Inc., Rockledge, FL.	BPH–861105MC	
H. Peace FM Limited Partnership, Rockledge, FL.	BPH–861105MD	
I. Shaw Enterprises, Inc., Rockledge, FL.	BPH–861105ME	
J. Rockledge Broadcasting Associates Limited Partnership, Rockledge, FL.	BPH–861105MF	
K. Michael H. Kahn d/d/a Orion Communications, Ltd., Rockledge, FL.	BPH–861105MH	
L. Leslie E. Green, Rockledge, FL.	BPH–861105MI	
M. Roberta Roe Johnson d/b/a Buttercup Broadcasting Company, Rockledge, FL.	BPH–861105MJ	
N. D.V.R. Broadcasting (A General Partnership), Rockledge, FL.	BPH–861105MK	
O. Brevard Broadcasting Company, Rockledge, FL.	BPH–861105ML	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, B, M, O
2. Comparative, All
3. Ultimate, All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–1090 Filed 1–20–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, 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.: 202–009831–008.

Title: New Zealand/U.S. Atlantic and Gulf Shipping Lines Rate Agreement.

Parties:

Pacific America Container Express Line (PACE Line);
Columbus Line.

Synopsis: The proposed amendment would expand the geographic scope of the agreement to include U.S. Pacific ports and all U.S. interior and coastal points via such ports. The parties have requested a shortened review period.

Agreement No.: 217–010051–014.

Title: Mediterranean Force Majeure Agreement.

Parties:

Compania Trasatlantica Espanola;
Costa Container Line;
Farrell Lines, Inc.;
Italia di Navigazione, S.p.A.;
Jugolinija;
Lykes Bros. Steamship Co., Inc.;
A.P. Moller Maersk Line;
Nedlloyd Lijnen, B.V.;
Sea-Land Service, Inc.;
Zim Israel Navigation Co., Inc.

Synopisis: The proposed amendment would admit Trans Freight Lines as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 203–011063–004.

Title: U.S./Jamaica Discussion Agreement.

Parties:

Crowley Caribbean Transport, Inc.;
R.B. Kirkconnel & Bro. Ltd.;
Sea-Land Service, Inc.;
Zim Israel Navigation Co.

Synopsis: The proposed amendment would add Calypso Container Lines as a

party to the agreement. The parties have requested a shortened review period.

Agreement No.: 207–011144–001.
Title: Australia-New Zealand Direct Line Service Agreement.
Parties:

Pacific Australia Direct Line;
Australia-New Zealand Container Line Limited (ANZCL).

Synopsis: The proposed amendment would substitute as a party ANZCL in place of its parent company, The Shipping Corporation of New Zealand. It would exclude certain additional cargoes from carriage, clarify provisions governing the duration of the agreement, change the governing law and make other miscellaneous changes.

Agreement No.: 203–011164.
Title: U.S./Middle East Discussion Agreement.
Parties:

The "8900" Lines;
Jugolinija Line.

Synopsis: The proposed agreement would permit the parties to discuss and agree upon rates, charges, rules, regulations, service contracts and other matters in the trade from U.S. Pacific coastal points and U.S. and Canadian inland points via U.S. Atlantic and Gulf ports, Canadian Atlantic or St. Lawrence River ports, and from such ports to Saudi Arabian ports on the Red Sea, ports in the Arabian Gulf and adjacent waters in the range west of Karachi, and northeast of Aden, but excluding both Aden and Karachi, and to all inland points in Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates via such ports.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 15, 1988.

[FR Doc. 88–1154 Filed 1–20–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bankers Advisory Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 29, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Bankers Advisory Corp.*, Washington, DC, and Federal Bancorp Systems, Ltd, Washington, DC; to become bank holding companies by acquiring 100 percent of the voting shares of Central Banc Corporation, Balch Springs, Texas, and thereby indirectly acquire First Bank, Balch Springs, Texas, and Central National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, January 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–1062 Filed 1–20–88; 8:45 am]

BILLING CODE 6210–01–M

Chemical New York Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applciations must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 5, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical New York Corporation*, New York, New York; to acquire Chemical Futures, Inc., New York, New York, and thereby act as a futures commission merchant pursuant to § 225.25(b)(18), and providing investment advice on financial futures and options on futures pursuant to § 225.25(b)(19) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *AmSouth Bancorporation*, Birmingham, Alabama; to acquire ATM Network, Inc., Panama City, Florida, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by February 12, 1988.

Board of Governors of the Federal Reserve System, January 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–1063 Filed 1–20–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Donald J. Parks 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 February 5, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Donald J. Parks*, North Little Rock, Arkansas, and Frances Parks, North Little Rock, Arkansas; to acquire 13.83 percent of the voting shares of National Banking Corp., North Little Rock, Arkansas, and thereby indirectly acquire National Bank of Arkansas in North Little Rock, North Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, January 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1064 Filed 1-20-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, February 1-3, 1988, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of the meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Subcommittee on Planning and Budget will be closed to the public as indicated below in accordance with the provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, to discuss the 1989 Presidential Budget.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summmary of the meeting and rosters of the Board members, upon request.

Name of Committee: National Cancer Advisory Board
Executive Secretary: Mrs. Barbara Bynum, Building 31, Room 10A03, Bethesda, Maryland 20892 (301/496-5147)
Date of Meeting: February 1 and 3, 1988
Place of Meeting: Building 31C, Conference Room 6
Open:
February 1, 8:30 a.m. to recess
February 3, 8:00 a.m. to adjournment
Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Planning and Budget
Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496-5515)
Date of Meeting: February 1
Place of Meeting: Building 31C, Conference Room 6
Closed Session: February 1—following adjournment of the NCAB meeting this subcommittee meeting will be closed to the public for approximately 30 minutes.
Closure Reason: Discussion of the FY 89 Presidential Budget.
Open: February 1—Immediately following the closed session of the subcommittee meeting.
Agenda: Discussion of Budget issues and the biennial report.

Name of Committee: Subcommittee on Cancer Information
Executive Secretary: Mr. Paul Van Nevel, Building 31, Room 10A29, Bethesda, MD 20892 (301/496-6631)
Date of Meeting: February 1
Place of Meeting: Building 31C, Conference Room 7
Open: Following adjournment of NCAB meeting.
Agenda: Discussion of the NCI Information Programs.

Name of Committee: AIDS Subcommittee
Executive Secretary: Dr. Maryann Roper, Building 31, Room 11A48, Bethesda, MD 20892 (301/496-1927)
Date of Meeting: February 1
Place of Meeting: Building 31C, Conference Room 8
Open: 7 p.m. to adjournment
Agenda: The Subcommittee will discuss specific issues regarding AIDS which were raised at the previous NCAB meeting.

Name of Committee: Subcommittee on Innovations in Surgical Oncology
Executive Secretary: Dr. Michael A. Friedman, Landow Building, Room 4A04, Bethesda, MD 20892 (301/496-6056)
Date of Meeting: February 1
Place of Meeting: Building 31C, Conference Room 7
Open: 7 p.m. to adjournment
Agenda: Discussion of the research initiatives in surgical oncology.

Name of Committee: Subcommittee on Special Actions for Grants
Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496-5147)
Date of Meeting: February 2
Place of Meeting: Building 31C, Conference Room 6
Closed: 8:30 a.m. to adjournment
Agenda: Review and discussion of individual grant applications.

Name of Committee: Subcommittee on Cancer Centers
Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496-5515)
Date of Meeting: February 2
Place of Meeting: Building 31C, Conference Room 6
Open: Following adjournment of the Subcommittee on Special Actions for Grants.
Agenda: Discussion of the ongoing review of the Cancer Centers Program.

Name of Committee: Subcommittee on Environmental Carcinogenesis
Executive Secretary: Dr. Richard Adamson, Building 31, Room 11A03, Bethesda, MD 20892 (301/496-6618)
Date of Meeting: February 2
Place of Meeting: Building 31C, Conference Room 8
Open: 6:30 p.m. to adjournment
Agenda: Overview of Changes in the NCI Chemical and Physical

Carcinogenesis Program and the Prevention Program.

Name of Committee: Subcommittee on Cancer Control for the Year 2000
Executive Secretary: Dr. Peter Greenwald, Building 31, Room 10A52, Bethesda, MD 20892 (301/496–6616)
Date of Meeting: February 2
Place of Meeting: Building 31C, Conference Room 7
Open: 6:30 p.m. to adjournment
Agenda: Discussion of issues on cancer control.

Name of Committee: Subcommittee on Organ Systems Program
Executive Secretary: Dr. Andrew Chiarodo, Blair Building, Room 722, Bethesda, MD 20892 (301/427–8818)
Date of Meeting: February 2
Place of Meeting: Building 31C, Conference Room 6
Open: 7 p.m. to adjornment
Agenda: Discussion of issues regarding the Organ Systems Program.

Dated: January 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

Catalog of Federal Domestic Assistant Program Nos.: (13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower and 13.399; Project grants and contracts in cancer control)

[FR Doc. 88–1132 Filed 1–20–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; National Heart, Lung, and Blood Advisory Council and Its Research Subcommittee and Training Subcommittee; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 11–12, 1988, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Training Subcommittee of the above Council will meet on February 10; the Research Subcommittee at 1 p.m. in Building 31, Conference Room 9 and the Training Subcommittee at 8 p.m. in Building 31, Conference Room 10.

The Council meeting will be open to the public on February 11 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. on February 11 to adjournment on February 12 for the review, discussion and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Training Subcommittee of the above Council on February 10, will be closed from 1 p.m. and 8 p.m., respectively, to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Frances A. Pitlick, Director, Division of Extramural Affairs, Westwood Building, Room 7A–17, National Institutes of Health, Bethesda, MD 20892, (301) 496–7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Research Research, National Institutes of Health)

Dated: January 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1133 Filed 1–20–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Heart, Lung, and Blood Research Review Committee B; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, on March 24, 1988, in Building 31, Conference Room 9.

This meeting will be open to the public on March 24 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 10 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1134 Filed 1–20–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Heart, Lung, and Blood Research Review Committee A; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 24–25, 1988, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 24 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood

Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 24 from approximately 10 a.m. until adjournment on March 25 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, MD 20892, (301) 496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health)

Dated: January 11, 1988.

Betty J. Beveridge,

Committee, Management Officer, NIH.

FR Doc. 88–1135 Filed 1–20–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–08–4212–12]

Las Cruces District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of postponement of meeting.

SUMMARY: This notice announces the postponement of the Las Cruces District Advisory Council meeting previously scheduled for February 9, 1988, and announced in the **Federal Register** January 7, 1988 (53 FR 450). The new date for the meeting is March 22, 1988. The agenda for the meeting remains the same as previously announced. The times for the meeting also remain unchanged: 10:00 a.m. to approximately 3:30 p.m. with a public comment period at 1:00 p.m.

ADDRESS: The meeting will be held in the conference room of the Las Cruces District Office, 1800 Marquess, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Jim Fox, District Manager, (505) 525–8228.

H. James Fox

District Manager.

January 8, 1988.

[FR Doc. 88–1077 Filed 1–20–88; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–940–4212–12; A–22098]

Exchange of Mineral Estate With the State of Arizona and Partial Opening Orders; Correction

January 12, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice provides a correction regarding a partial opening order of reconveyed mineral estate to the United States from the State of Arizona. The mineral estate in 1,240 acres lie within an existing withdrawal application and is closed to the operation of the general mining laws and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office (602) 241–5534.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 87–15020 on page 25084 in the issue of Thursday, July 2, 1987, the following mineral estate was erroneously opened to entry:

Gila and Salt River Meridian, Arizona

T. 3 N., R. 7 W.,
Sec. 32, N½, SW¼, N½SE¼.
T. 5 N., R. 14 W.,
Sec. 32, SW¼SW¼.
T. 6 N., R. 15 W.,
Sec. 16, all.

The reconveyed mineral estate described above shall remain closed to the general mining laws and mineral leasing laws. The land is currently under withdrawal application for the Central Arizona Project, serial numbers AR–031307 and A–997, and shall remain segregated until an appropriate opening order is issued by the Bureau of Land Management authorized officer.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–1076 Filed 1–20–88; 8:45 am]

BILLING CODE 4310–32–M

[AZ 020–41–5410–10–ZAEC; A–22598]

Receipt of Conveyance of Mineral Interest Application; Arizona

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Dennis G. and Marilyn A. Gnau have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 13 N., R. 2 E.
Sec. 17, Lots 2, 3, 4, SW¼NE¼, W½SE¼.
Containing 227.64 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, February 18, 1987, whichever occurs first.

Henri R. Bisson,

District Manager.

Date: January 7, 1988.

[FR Doc. 88–1065 Filed 1–20–88; 8:45 am]

BILLING CODE 4310–32–M

[AZ 020–41–5410–10–ZAEB; A–23133]

Receipt of Conveyance of Mineral Interest Application; Arizona

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Michael and Gloria Pollack have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 4 E.
Sec. 10, W½NE¼.
Containing 20.6 acres, more or less.

Information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The

segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, December 9, 1987, whichever occurs first.

Henri R. Bisson,

District Manager.

Date: January 7, 1988.

[FR Doc. 88-1066 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ 020-41-5410-10-ZAEK; A-22887]

Receipt of Conveyance of Mineral Interest Application; Arizona

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Saddlebrooke Development Company has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 10 S., R. 14 E.
Sec. 23, E½;
Sec. 26, All;
Sec. 27, E½.

Containing approximately 1,100 acres.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patient or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, July 10, 1987, whichever occurs first.

Henri R. Bisson,

District Manager.

Date: January 7, 1988.

[FR Doc. 88-1067 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Report on Implementation of Title VIII of the Alaska National Interest Lands Conservation Act; Availability

ACTION: Notice of Availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a draft report on implementation of the subsistence management and use provisions of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3121, for eventual submission to the President of the Senate and the Speaker of the House of Representatives. In accordance with the provisions of section 813, the report is being made available to the public for comment.

DATE: Comments on the report must be submitted on or before March 7, 1988.

ADDRESS: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, [Attn: Ron Thuma].

FOR FURTHER INFORMATION CONTACT: Ron Thuma, Subsistence Specialist, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3371.

Copies of the section 813 report have been sent to all participating Federal and State agencies, local advisory committees and regional council members. Additionally, all others who have already requested copies have been added to the mailing list. Individuals wanting copies of the draft report for review should contact Mr. Thuma. Copies of the report are also available for review in the Anchorage regional office of the Service at the above address, and at the following other Service locations:

U.S. Fish and Wildlife Service, Public Affairs, 18th and C Streets NW., Room 2347, Department of the Interior, Washington, DC 20240

U.S. Fish and Wildlife Service, Public Affairs, Lloyd 500 Building, 500 NE Multnomah Street, Portland, OR 98232

U.S. Fish and Wildlife Service, Public Affairs, 500 Gold Avenue SW, Room 1306 Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Public Affairs, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Public Affairs, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Public Affairs, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Public Affairs, 134 Union Bulevard, Lakewood, CO 80225.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service has produced a draft of the 1987 periodic report to Congress on subsistence management and use of fish and wildlife on Federal lands, as required by section 813 of ANILCA. The Service produced this comprehensive document in consultation with other Federal land managing agencies in Alaska, and with the Alaska Department of Fish and Game. The report provides an overview of subsistence management and use in Alaska, based on consultations with various public agency personnel and information from existing literature and studies.

As required by section 813, the report includes

(1) An evaluation of the results of the monitoring undertaken by the Secretary pursuant to section 806 of ANILCA.

(2) The status of fish and wildlife populations on public lands that are subject to subsistence uses.

(3) A description of the nature and extent of subsistence uses and other uses of fish and wildlife on public lands.

(4) The role of subsistence uses in the economy and culture of rural Alaska.

(5) Comments on the Secretary's report by the State, the local advisory committees and regional advisory councils and other appropriate persons and organizations.

(6) A description of those actions taken, or which may need to be taken, to permit the opportunity for continuation of subsistence activities on public lands.

(7) Such other recommendations the Secretary deems appropriate.

During the public review period it is hoped that reviewers will provide additional information and documentation where appropriate. Public comments that point out substantive errors, misconceptions or mischaracterizations in the draft will be considered for incorporation into the final report. Other comments received will be included as a supplement to the report.

Date: December 31, 1987.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 88-1126 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-18788]

ConAgra, Inc.; Purchase Exemption; Longmont Transportation Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: ConAgra, Inc. (ConAgra), a noncarrier, seeks an exemption from the requirement of prior regulatory approval

for its purchase of the assets and motor common and contract carrier operating authority of Longmont Transportation Co., Inc. (LTC) (MC–141668). ConAgra has filed a separate application seeking transfer of LTC's broker authority. (MC–FC–83123).

Under the terms of the transaction, ConAgra will purchase certain assets of Longmont Turkey Processors Inc., a noncarrier, and of its wholly owned subsidiary, LTC. ConAgra intends to operate the newly acquired carrier under the same name and, thus, has created a new subsidiary with the same name, Longmont Transportation Co., Inc., (Longmont) to receive LTC's assets and operating authority.

The rights being transferred authorize: (1) The common carrier transportation of general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii), and (2) the contract carrier transportation of general commodities (except classes A and B explosives, household goods, and commodities in bulk, between points in the United States (except Alaska and Hawaii), under continuing contracts with shippers and receivers of such commodities.

ConAgra presently controls, directly or indirectly, eight motor carriers: Armour Food Express Company (MC–14036 and MC–152245); Balcom Chemicals, Inc. (MC–174324); Lynn Transportation Company, Inc. (MC–133604), U.S. Tire, Inc. (MC–170511); Yellowstone Valley Chemicals, Inc. (Yellowstone) (MC–185117); ConAgra Transportation Inc. (Transportation) (MC–150422); Monfort Transportation Co., (Monfort) (MC–144572); and Miller Bros, Co., Inc. (Miller) (MC–117699). Yellowstone also holds property broker authority and Transportation holds water carrier authority in No. W–1333.

Under 49 U.S.C. 11343 (a)(5), the Commission's prior approval is required for the acquisition of a carrier by a person that is not a carrier but that controls any number of carriers. Here, ConAgra already controls eight carriers. Therefore, its purchase of LTC's operating authority is subject to the Commission's jurisdiction and can be carried out only under Commission regulation or exemption from regulation.

ConAgra argues that its purchase of LTC's authority and creation of Longmont will promote the national transportation policy enabling Longmont to continue to provide quality transportation services within the ConAgra family. ConAgra asserts that the transaction is of limited scope in that it involves the addition of only a single carrier to an existing system whose affiliation already has been approved by the Commission. Finally, petitioner states that the transaction will not threaten shippers with an abuse of market power because of the competitive structure of the motor carrier industry.

DATES: Comments must be received by February 22, 1988.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC–F–18788 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Peter A. Greene, Esq., Thompson, Hine and Flory, 1920 N. Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Jasneth C. Metz, (202) 275–7974, [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers,* 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: January 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88–1145 Filed 1–20–88; 8:45 am]

BILLING CODE 7035–01–M

[No. MC–F–18750]

ConAgra, Inc.; Control Exemption; Sipco Truck Line, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: ConAgra, Inc. (ConAgra), a noncarrier, seeks an exemption from the requirement of approval and authorization for its indirect acquisition of control, through stock ownership, of Sipco Truck Line, Inc. (Sipco) (MC–194964). Sipco is a wholly-owned subsidiary of Swift Independent Packing Company, which, in turn, is a wholly-owned subsidiary of Swift Independent Corporation (SIC). ConAgra proposes to achieve control of Sipco by acquiring at least a 50 percent stock interest in Swift Independent Holding Corporation (Swift), the majority shareholder of SIC, and the right to purchase or to designate a third party to purchase Swift's remaining outstanding common stock.

ConAgra presently controls, directly or indirectly, eight motor carriers: Armour Food Express Company (MC–140364 and MC–152245); Balcom Chemicals, Inc. (MC–174324); Lynn Transportation Company, Inc. (MC–133604); U.S. Tire, Inc. (MC–170511); Yellowstone Valley Chemicals, Inc. (Yellowstone) (MC–185117); ConAgra Transportation, Inc. (Transportation) (MC–150422); Monfort Transportation Company (Monfort) (MC–144572); and Miller Bros. Co., Inc. (Miller) (MC–117699). Yellowstone, Monfort, and Miller also hold property broker authority, and Transportation holds water carrier authority in No. W–1333. Sipco holds motor contract and Texas intrastate authority.

Under 49 U.S.C. 11343(a)(5), the Commission's approval and authorization are required for the acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers. Here, ConAgra already controls eight carriers. Therefore, its proposed acquisition of Sipco is subject to the Commission's jurisdiction and can be carried out only under Commission regulation or an exemption from regulation.

ConAgra argues that its acquisition of control of Sipco will promote the National Transportation Policy by bringing Sipco into a corporate family possessing a well established identity and already providing high quality specialized motor carrier service. ConAgra asserts that the transaction is of limited scope in that it involves the addition of only a single carrier to an existing system whose affiliation already has been approved by the Commission. Finally, petitioner states that the transportation will not threaten shippers with an abuse of market power because of the competitive structure of the motor carrier industry.

DATE: Comments must be received by February 22, 1988.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC–F–18750, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Peter A. Greene, Thompson, Hine, and Flory, 1920 N Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Richard L. Gagnon (202) 275–7711 [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC, offices of the Interstate Commerce Commission during normal business hours (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: January 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88–1146 Filed 1–20–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31201]

The Baltimore Belt Railroad Co. et al., and CSX Transportation, Inc.; Merger Exemption

The Baltimore Belt Railroad Company, Curtis Bay Railroad Company, The Lancaster, Cecil and Southern Railroad Company, Metropolitan Southern Railroad Company, Washington County Railroad Company, The Winchester and Potomac Railroad Company, and The Winchester and Strasburg Railroad Company (the subsidiaries), CSX Transportation, Inc. (CSXT), and CSX Corporation (CSX) have filed a notice of exemption for the merger of the subsidiaries into CSXT, with CSXT as the surviving corporation. The merger was expected to be consummated on December 29, 1987.

Each of the subsidiaries is a nonoperating company whose properties are being operated by, in the name of, and for the account of CSXT, a Class 1 rail common carrier. CSXT owns 100 percent of the voting equity securities of all of the subsidiaries except Washington County (of which it owns 99.69 percent) and the Winchester and Potomac (of which it owns 98.32 percent). The voting equity securities of CSXT, In turn, are 100 percent owned by CSX. CSX will thus control the merged entity.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201, and Peter J. Shudtz, CSX Corporation, 901 East Cary Street, P.O. Box C–32222, Richmond, VA 23219.

Decided: January 12, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–1006 Filed 1–20–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act; Empresa Lineas Maritimas Argentinas, S.A., et al.

In accordance with Departmental policy, 28 CFR 50.7, section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d), notice is hereby given that on December 23, 1987 a proposed consent decree in *United States* v. *Empresa Lineas Maritimas Argentinas, S.A., et al.*, Civil Action No. H–87–2396 was lodged with the United States District Court for the Southern District of Texas. The proposed consent decree involves claims by the United States for recovery of response costs incurred in response to releases and threatened releases of hazardous substances from the vessel M/V RIO NEUQUEN while the vessel was moored at Port of Houston Authority Dock Number Nine during July and August, 1984. These claims were brought against defendants Empresa Lineas Maritimas Argentinas, S.A.; Bernardo Chemical Ltd.; Casa Bernardo Ltd; and Strachan Shipping Company pursuant to RCRA and CERCLA.

The proposed consent decree requires the defendants to pay $500,000 in reimbursement of the United States' response costs of $537,313.65. In return the defendants are given a release from claims for past costs.

The Department of Justice will receive for a period of thirty (30) days from the date of 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* v. *Empresa Lineas Maritimas Argentinas, S.A., et al.*, D.J. Ref. No. 90–11–3–92.

The proposed consent decree may be examined at the Office of the United States' Attorney for the Southern District of Texas, Courthouse and Federal Building, 515 Rusk Avenue, Houston, Texas 77002 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Washington, DC 20530. A copy 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. 88–1070 Filed 1–20–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; Sulphur Springs, TX, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Sulphur Springs and The State of Texas* was lodged in the United States District Court for the Eastern District of Texas on December 30, 1987.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, during the operation of a sewage treatment plant which is owned and operated by the City of Sulphur Springs, Texas

("City"). The proposed decree contains interim control measures and effluent limitations and requires the City to comply with its NPDES permit by July 1, 1988. The proposed decree further requires the City to implement an EPA-approved pretreatment program and to enforce all industrial user permits. It also contains a $30,000 civil penalty for past violations.

The Department of Justice will recieve for a period of thirty (30) days from the date of this publication comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Sulphur Springs and The States of Texas*, D.J. Ref. No. 90–5–1–1–2734.

The proposed decree may be examined at the Office of the United States Attorney, 110 North College, Suite 600, Tyler, Texas, the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Ave., NW., Washington DC 20530. A copy of the proposed 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 $1.50 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–1069 Filed 1–20–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Tr e 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: February 9, 1988, 9:30 a.m., Rm. S4215 A&B Frances 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 13th day of January 1988.

Christopher Hankin,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 88–1140 Filed 1–20–88; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket No. 88–04]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on the Next Generation Fighter (NGF).

DATE AND TIME: February 9, 1988, 9:30 a.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Kirkpatrick, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2803.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on the Next Generation Fighter, chaired by Mr. William Webb, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

February 9, 1988

9:30 a.m.—Welcome.
9:45 a.m.—Opening Remarks.
10 a.m.—NASA High Performance Aircraft Overview.
10:30 a.m.—Overviews from United States Air Force, United States Navy, and Industry.
1 p.m.—Overviews (Continued).
4 p.m.—Adjourn.

January 12, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–1053 Filed 1–20–88; 8:45 am]

BILLING CODE 7510–01–M

[Notice 88–02]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. (2–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Advanced Propulsion.

DATE AND TIME: February 10, 1988, 9 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 225, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Reck, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2847.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on Advanced Propulsion, chaired by Dr. Eugene Covert, is comprised of seven members. The meeting will be open to the public up to the seating

capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

February 10, 1988

9 a.m.—Review Sensitivity Analysis.
11 a.m.—Development Rate Index.
1:30 p.m.—Proposed Gas Turbine Research.
3 p.m.—Adjourn.

Janauary 12, 1988.

Ann Bradley,

Advisory committee Managment Officer, National Aeronautics and Space Administration.

[FR Doc. 87–1051 Filed 1–20–88; 8:45 am]

BILLING CODE 7510–01–M

[Notice 88–03]

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 High Temperature Superconductivity.

DATE AND TIME: February 10, 1988, 8:30 a.m. to 5 p.m..

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Martin M. Sokoloski, Office of Aeronautics and Space Administration, Washington, DC 20546, 202/453–2748.

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 problems. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on High Temperature Superconductivity, chaired by Mr. Steven Dorfman, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

February 10, 1988

8:30 a.m.—Welcome.
9:15 a.m.—Other Agency Programs.
11 a.m.—Proposed NASA Program.
1:30 p.m.—Industrial Programs.
2:30 p.m.—Team Deliberations.
5 p.m.—Adjourn.

January 12, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–1052 Filed 1–20–88; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Hearing

AGENCY: National Commission To Prevent Infant Mortality.

ACTION: Notice of an open hearing.

SUMMARY: In accordance with Pub. L. 99–660, notice is given of the second hearing of the National Commission to Prevent Infant Mortality. The title of the hearing is "International Infant Mortality Comparisons".

DATE: February 1, 1988.

TIME: 9:30 a.m.–12:30 p.m.

ADDRESS: The United Nations, 46th and 1st Avenues—New York Visitors Entrance.

FOR FURTHER INFORMATION CONTACT: Anne B. Hockett, 202–472–1364.

Rae K. Grad,

Executive Director.

[FR Doc. 88–1100 Filed 1–20–88; 8:45 am]

BILLING CODE 6820–SK–M

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–325/324

Carolina Power & Light Co.; Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Carolina Power & Light Company (the licensee), for the Brunswick Steam Electric Plant, Unit Nos. 1 and 2, located in Southport, North Carolina.

Environmental Assessment

Identification of Proposed Action:

The exemption would grant relief from 10 CFR Part 50, Appendix J, paragraph III.A.3, which requires that all Type A (Containent Integrated Leak Rate) tests be performed in accordance with ANSI N45.4–1972, Leakage Rate Testing of Containment Structures for Nuclear Reactors." ANSI N45.4 requires that leakage calculations be performed using the Point to Point Method or the Total Time method. The licensee would rely, instead, on the Mass-Point method described in ANSI/ANS 56.8–1981, "Containment System Leakage Testing."

The licensee's request for exemption and the bases therefor are contained in a letter dated August 5, 1987.

The Need for the Proposed Action:

The proposed exemption is from the Standard (ANSI N45.4–1972) referenced in 10 CFR Part 50, Appendix J, which requires the containment leakage calculations be performed using either the Point-to-Point or Total Time method. The licensee has performed the calculations using the Mass-Point method, a newer method that has been accepted by the NRC staff. Additionally, the revised Standard (ANSI/ANS 56.8–1981, "Containment Leakage Testing") specifies the use of the Mass-Point method exclusively; and the new Standard is proposed to be incorporated into a planned revision of Appendix J.

Evironmental Impacts of Proposed Action:

The proposed exemption would permit the use of the Mass-Point method in performing leakage calculations. The Mass-Point method has been accepted by the NRC staff as a more accurate technique that will increase confidence in the integrity of the containment. This exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action:

Because it has been concluded that there is no measurable impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative to the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of the Brunswick Unit 1 and 2 operations and would result in reduced operational flexibility.

Alternative Use of Resources:

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Brunswick Steam-Electric Plant, Units 1 and 2," dated January 1974.

Agencies and Persons Consulted:

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application for exemption previously listed, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Bethesda, Maryland this 14th day of January 1988.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Acting Director, Project Directorate II–1, Division of Reactor Projects–I/II.

[FR Doc. 88–1150 Filed 1–20–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the licensee for an amendment to Facility Operating License No. NPF–47 issued to Gulf States Utilities Company (GSU), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana. The notice of Consideration of Issuance of Amendment was published in the **Federal Register** on September 9, 1987 (52 FR 30410).

The amendment, as proposed by the licensee, would modify Section 3.8.1.1 and Bases Section 3/4.8.1 of the River Bend Station, Unit 1, Technical Specifications by (1) deleting the requirements to demonstrate that the diesel generators (DGs) are operable by starting and running them loaded for a period of one hour when one or both offsite circuits are inoperable; and (2) modify the current requirement that with one diesel generator inoperable "due to any cause other than preplanned preventative maintenance or testing "the remaining diesel generators be demonstrated operable by starting and running loaded for a period of one hour. The proposed amendment would delete the phrase "due to any cause other than preplanned preventative maintenance or testing" and add the phrase "as the result of a valid failure."

With regard to item (1), above, the licensee contends that adequate assurance of DG operability is maintained by the diesel generator testing frequencies specified in the normal Technical Specification surveillance requirements. In addition GSU references IE Information Notice No. 84–69 and Supplement 1 which warn against the danger of losing both the diesel generator and an offsite power supply when they are operated in parallel. They are especially vulnerable in this mode to grid disturbances when the offsite power system is in a degraded mode such as may be the case when an offsite power source is lost. In order to meet the present River Bend Technical Specification which requires loading of the diesel generators for a period of an hour when an offsite power source is lost, a diesel generator must be operated in parallel with a remaining offsite power source to achieve the required loading.

While the staff agrees there is a danger of losing both the diesel generator and an offsite power supply when they operated in parallel, the staff also concludes that it is necessary to provide additional assurance of diesel generator operability when an offsite power source is lost, since there is a greater likelihood of needing the diesel generators during this period. The staff therefore concludes that GSU's proposal to completely delete the operability test requirement of the diesel generators when offsite power supplies are lost is not acceptable.

With regard to item (2), above, the revised Action statements would require that with a diesel generator inoperable as a result of a valid failure the remaining diesel generators be demonstrated operable by starting and running loaded for a period of one hour.

GSU's reason for proposing this change is to reduce the number of unnecessary test starts on redundant diesel generators when the cause for inoperability on the original diesel generator is clearly not a common mode or generic type failure which could also affect the availability of the redundant diesel generators. The licensee states that if a DG was discovered inoperable while in the standby service mode (i.e., no failure during a valid test) then the potential common-mode/generic failure can be investigated and operability of the remaining diesel generators verified without increased testing. According to GSU's discussion, therefore, a valid failure is only one that occurs to a diesel generator while it is operating during a valid test, and any inoperability of a diesel generator discovered while it is in the standby mode would not be a valid failure and would not require testing of the redundant diesel generators under the proposed technical specification.

The staff does not agree that inoperability of a diesel generator discovered while it is in standby versus inoperability as a result of a failure during operation forms a correct basis for determining the action to be taken with regard to whether the inoperability has common-mode/generic implications. The same cause for inoperability could be discovered while the diesel generator is in the standby mode or undergoing a test based solely on circumstance, and yet in one case a test of the remaining diesel generators would be required and in the other the test would not be required. Further, the testing of the remaining diesel generators is needed not only to verify there is no common-mode problem but also to provide added assurance of the availability of the remaining onsite AC source when one of them is lost. The staff concludes that this additional assurance is necessary regardless of whether the initial failure has common-made implications and further concludes that the proposed technical specification change is not acceptable.

With regard to the above testing to provide added assurance of the availability of the remaining onsite AC sources, GSU references IE Information Notice 84–69 and Supplement 1 which warn that when a diesel generator is

operated connected to offsite or nonvital loads, the emergency power system is not independent of disturbances on the nonvital and offsite power systems that can adversely affect emergency power availability. GSU states that assurance of availability is therefore lessened by a demonstration of operability requiring connection of the diesel generators to offsite and nonvital loads at a time when one other diesel generator is already inoperable. The staff agrees there is an increased danger of losing both the diesel generator and an offsite power supply when they are operated in parallel; however, the staff still concludes that it is necessary to provide added assurance of the remaining onsite AC sources when one of them is lost.

By February 22, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may fill a written petition for leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated August 7, 1987, and (2) the Commission's Safety Evaluation forwarded to the licensee by letter dated January 14, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Bethesda, Maryland, this 14th day of January, 1988.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Acting Project Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–1148 Filed 1–20–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Wisconsin Public Service Corp. et al; Application

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under 10 CFR 50.80 of the corporate reorganization of Wisconsin Power and Light Company (WPL), one of the co-owners and co-licensees for the Kewaunee Nuclear Plant.

By letter dated December 28, 1987, WPL advised the Commission they are in the process of implementing a corporate restructuring which will result in the creation of a holding company, WPL Holdings, Inc., which will own all of the outstanding common stock of WPL. WPL would continue to be the co-owner of Kewaunee. WPL is authorized to possess but not to operate the facility; facility operation is carried out by another NRC licensee. Pursuant to the proposed reorganization, WPL Holdings, Inc., would become the sole holder of WPL's common stock and the current holders of WPL's common stock would become holders of shares of the common stock of WPL Holdings, Inc., on a share-for-share basis.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer of control is qualified to have the control of the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission.

Dated at Bethesda, Maryland, this 13th day of January 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III–3, Division of Reactor Projects.

[FR Doc. 88–1149 Filed 1–20–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–368]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Prior Hearing: Arkansas Power and Light Company; Correction

The United States Nuclear Regulatory Commission issued a notice in the **Federal Register** on January 14, 1988 (53 FR 968) that it is considering issuance of an amendment to Facility Operating License No. NPF–6, issued to Arkansas Power and Light Company for operation of the Arkansas Nuclear One, Unit 2 (ANO–2) located in Russellville, Arkansas. The date in the first line of the last paragraph of the first column on page 969 of the earlier notice is changed from February 11, 1988 to February 16, 1988, for the deadline by which the licensee may file a request for hearing with respect to issuance of the amendment to the subject facility operating license. This is also the date by which any person whose interest may be affected by this proceeding and who wishes to particiapte as a party in the proceeding must file a written petition for leave to intervene.

Dated at Bethesda, Maryland, this 15th day of January 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88–1151 Filed 1–20–88; 8:45am]

BILLING CODE 7590–01–M

[Docket No. 50–336]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing: Northeast Nuclear Energy Company; Correction

The United States Nuclear Regulatory Commission issued a notice in the **Federal Register** on January 12, 1988 (53 FR 766) that it is considering issuance of an amendment to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company for operation of the Millstone Nuclear Power Station, Unit, 2, located in New London County, Connecticut. The date on page 766 of the earlier notice is changed from February 10, 1988 to February 11, 1988, for the deadline by which the licensee may file a request for hearing with respect to

issuance of the amendment to the subject facility operating license. This is also the date by which any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene.

Dated at Bethesda, Maryland, this 15th day of January 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-1152 Filed 1-20-88; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meeting of the Prospective Payment Assessment Commission on Tuesday, February 2, 1988, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The full commission will convene its meeting at 8:30 a.m. in Regency Rooms A and B on the second concourse, and is open to the public.

Donald A. Young,

Executive Director

[FR Doc. 88-1252 Filed 1-20-88; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16226; File No. 812-6858]

Application for Exemption; Nationwide Life Insurance Co. et al.

January 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of amended application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Nationwide Life Insurance Company and Nationwide VLI Separate Account-2.

Relevant 1940 Act Sections: Exemption under Section 6(c) from Sections 2(a)(35), 26(a)(2), 27(a)(1) and 27(c)(2) and paragraphs (b)(1), (b)(13)(i)(B) and (c)(4)(ii) of Rule 6e-3(T) under the 1940 Act.

Summary of Application: Applicants seek an order exempting them from certain sections of the 1940 Act and Rule 6e-3(T) to permit the offer of flexible premium variable life insurance policies as described in the application.

Filing Date: The application was filed on August 29, 1987, and an amendment thereto was filed on November 25, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemptions will be granted. Any interested persons 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 February 8, 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, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Attorney (202) 272-2058, or Lewis B. Reich, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Nationwide Life Insurance Company ("Nationwide") is a stock life insurance company incorporated under the laws of the State of Ohio and admitted to do business in all states and the District of Columbia. The Nationwide VLI Separate Account-2 ("Separate Account") is a separate investment account of Nationwide, established under the laws of the State of Ohio and registered as a unit investment trust under the 1940 Act. It was established for the purpose of funding flexible premium variable life insurance policies ("Policy or Policies") issued by Nationwide.

2. The Policies will be distributed through Nationwide Financial Services, Inc. ("NFS"). NFS, a registered broker-dealer under the Securities Exchange Act of 1934, is a member of the National Association of Securities Dealers. The Policies will be sold by licensed insurance agents who are registered representatives of broker-dealers.

3. The assets of the Separate Account will consist of shares of the Nationwide Separate Account Trust, Fidelity Variable Insurance Products Funds, American Life/Annuity Series and Advisers Management Trust ("Funds").

4. The owner of a Policy pays a premium for life insurance coverage on the person insured. The Policies may provide for a cash value which is payable if a Policy is surrendered during the insured's lifetime. The death benefit and cash value of the Policies, however, may increase or decrease to reflect the investment performance of the Separate Account sub-accounts to which premium is allocated. There is no guaranteed cash value.

5. Upon issuance, a Policy will immediately provide for the payment of life insurance proceeds in excess of any initial premium paid. Death benefit proceeds will exceed the Policy's cash value so long as the Policy remains in force.

6. A Policy owner may choose one of two death benefit options. Under Option 1, the death benefit will be the greater of the specified amount or the applicable percentage of the cash value. Under Option 2, the death benefit will be the greater of the specified amount plus the cash value, or the applicable percentage of cash value. The actual proceeds payable on the insured's death will be the death benefit less any outstanding Policy loans, less any unpaid Policy charges.

7. At the time of application, a Policy owner elects to have the cash value allocated among one or more of the Separate Account sub-accounts. Such election is subject to any minimum contribution limitations which may be imposed by the Funds. Shares of the Funds, as specified by a Policy owner, are purchased at net asset value for the respective sub-accounts. No less than 10% of Cash Value may be allocated to any one sub-account.

8. At the time a Policy is issued, its cash value is based on the Nationwide Separate Account Trust-Money Market Fund sub-account as if the Policy had been issued and the premium invested on the date the premium was received in good order by Nationwide. When a Policy is issued, the cash value will be held in the Nationwide Separate Account Trust-Money Market Fund sub-account until the expiration of the period in which a Policy owner may exercise his or her short term right to cancel the Policy. At the expiration of that period, the Cash Value will be allocated among the sub-accounts of the Separate Account in accordance with a Policy owner's instructions. On any date, the Cash Value of a Policy equals the Cash Value on the preceding valuation date, plus any premium

applied since the previous valuation date, plus or minus any investment results, and less any Policy charges.

9. Nationwide makes a monthly deduction equal to the Policy Administration Charge, if any, plus the cost of insurance charge from the cash value of each Policy. The deductions are allocated among the sub-accounts of the Separate Account in the same proportion that a Policy owner's cash value in that sub-account bears to a Policy owner's total cash value, exclusive of any Policy loan.

10. A monthly Policy Administration Charge is deducted to reimburse Nationwide for expenses related to the underwriting, issuance, and maintenance of the Policies. Currently, no Policy Administration Charge is deducted from the cash value for any Policy for which the total of premiums paid is $25,000 or more. For Policies for which the total of premium payments made is less than $25,000, the current Policy Administration Charge is $10 per month; however, for all Policies, the Policy Administration Charge is guaranteed not to exceed $20 per month. Applicants represent that the Policy Administration charge is not discriminatory and will never be taken at a level in excess of Nationwide's actual cost in administering any Policy to which such charge applies. Applicants further represent that the current charge of $10 per month on Policies for which the total of premium payments made is less than $25,000, will not subsidize the cost of administering Policies on which total premium payments exceed $25,000.

11. A separate monthly cost of insurance is used to obtain the monthly cost of insurance for the insured's initial specified amount and for each subsequent increase in the specified amount. Each rate is based on the insured's sex, attained age, and rate class. The rates for a standard rate class will never be greater than the guaranteed maximum monthly cost of insurance rates, which are based on the 1958 Commissioner's Standard Ordinary Mortality Table, Age Last Birthday ("1958 CSO Mortality Table"), with appropriate increase for rate classes other than standard.

12. Nationwide will deduct, on a daily basis, from the assets of the Separate Account, an amount equivalent on an annual basis to .95%, for the first 10 policy years, and .50% thereafter, consisting of a mortality and expense risk charge, a distribution expense charge, a premium tax recovery charge, and an income tax charge.

13. The mortality risk assumed by Nationwide under the Policies is that the insured will not live as long as expected under the guaranteed 1958 CSO Mortality Table. The expense risk assumed is that actual expenses incurred in issuing and administering the Policies will exceed the expenses assumed and charges assessed.

14. Nationwide assumes risks associated with the non-recovery of expenses due to the Policies which lapse or are surrendered during the first 10 policy years. To compensate Nationwide for assuming these risks, a daily charge is deducted from the assets of the sub-accounts of the Separate Account which is computed daily, and is equal on an annual basis to .50% of the assets of the Separate Account for all policy years.

15. Nationwide pays any state premium taxes attributable to a particular Policy when incurred by Nationwide. Nationwide expects to pay an average state tax rate of 2.5% of premium for all states. To reimburse Nationwide for the payment of state premium taxes associated with the Policies, during the first 10 policy years, Nationwide deducts a daily charge computed on a daily basis from the assets of the sub-accounts, which is equal on an annual basis to .20% of the assets of the Separate Account during the first 10 policy years and 0% thereafter. Applicants represent that premium tax charges assessed will not exceed the actual cost of premium taxes paid and will not include any interest element.

16. Nationwide incurs sales and distribution expenses in marketing and issuing the Policies. Some of these expenses will be recovered from the Deferred Sales Charge on Policies surrendered during the first 9 policy years. Nationwide will deduct a daily distribution Expense Charge from the assets of the sub-accounts of the Separate Account during the first 10 policy years. This charge will be computed and deducted on a daily basis, and equal on an annual basis to .25% of the assets of the Separate Account during the first 10 policy years and 0% thereafter.

17. Nationwide does not currently assess any charge for income taxes incurred as a result of the operations of the Separate Account, but reserves the right to assess a charge for such taxes if Nationwide determines that such taxes may be incurred.

18. If a Policy is surrendered at any time during the first 9 policy years, a deferred sales charge will be assessed. For Policy years 10 and thereafter, no deferred sales charge will be assessed on surrender of the Policy. In no event will the deferred sales charge exceed 8% of the initial premium paid; nor will the sum of any deferred sales charge actually deducted and the cumulative total of the Distribution Expense Charge collected on any Policy exceed 9% of premiums paid for that policy.

Cost of Insurance Charge:

19. Applicants seek relief from section 2(a)(35) and paragraphs (b)(1)(and (c)(4)(ii) of Rule 6e-3(T).

20. As indicated in representation 11 above, the maximum cost of insurance rates allowable under the Policies is based on the 1958 Commissioner's Standard Ordinary Mortality Table (hereinafter "1958 CSO Table"), even though the current cost of insurance rates for some insureds may be based on the 1980 Commissioner's Standard Ordinary Table (hereinafter "1980 CSO Table"). Rates based on the 1958 CSO Table will be shown in the Table of Guaranteed Maximum Insurance Rates contained in the Policy filed with the insurance departments of the jurisdictions in which the Policies will be offered. The current cost of insurance rates for some insureds may be lower than or equal to the 1980 CSO Table rates based upon Nationwide's current expectations of future experience. Rates may be increased in the future, up to the maximums permitted under the Policy, as determined by Nationwide, based upon expectations of future experience.

21. Applicants request the above exemptions to the extent that paragraph (c)(4)(ii) prescribes that the amount excluded from sales load for cost of insurance is limited to the "cost of insurance for the period based upon the 1980 Commissioner's Standard Ordinary Mortality Table and net interest at the annual effective rate specified for purposes of paragraph (c)(8)(i)(B) of this Rule." Applicants seek an exemption to the extent necessary to permit the exclusion of amounts for the actual cost of insurance charges deducted under the Policy, which for standard underwriting risk classes is guaranteed never to exceed amounts based on the 1958 CSO Table.

22. Applicants believe that the regulation of cost of insurance rates more appropriately rests with the jurisdiction of the state insurance departments of those states in which the Policies will be sold. Furthermore, prior to the adoption of Rule 6e-3(T), the Commission had not taken a position that the cost of insurance charges for variable life insurance products must be based on the 1980 CSO Table rather than the 1958 CSO Table. In its original form, Rule 6e-2 permits companies to demonstrate compliance with the sales load provisions of the 1940 Act by

excluding from the definition of "sales load" cost of insurance charges based on the 1958 CSO Table. However, in Rule 6e-3(T), the Commission took the position that the 1980 CSO Table must be used for the same purposes. Subsequently, the Commission amended Rule 6e-2 to permit cost of insurance rates to be based on either the 1958 or 1980 CSO Table, depending on which table relates to the rates guaranteed by the Policy. Applicants submit that the relief sought is identical to relief sought and obtained by other companies now issuing variable life insurance policies and is consistent with the position recently taken by the Commission in its amendment of Rule 6e-2.

Sales Load:

23. Applicants seek relief from section 27(a)(1) of the 1940 Act and sections (b)(13)(i)(B) of Rule 6e-3(T).

24. Nationwide deducts no front-end sales load from premiums paid for the Policies. The sole sources of recovery of sales and distribution expenses incurred are the assessment of a Distribution Expense Charge during the first 10 policy years and a Deferred Sales Charge against certain surrenders occurring during the first 9 years after issuance of a Policy. The Deferred Sales Charge, when applicable, is assessed as a percentage of the initial premium paid, ranging from 8% in year 1, to 4% in year 9, and 0% thereafter. If additional premium payments are made, as permitted by the Policies, no Deferred Sales Charge attaches to such premium payments. The Distribution Expense Charge is equal on an annual basis to .25% of the assets of the Separate Account, during the first 10 Policy years.

25. Applicants submit that the cumulative level of sales charges will be monitored on a Policy basis so that the sum of the Deferred Sales Charge deducted on surrender and the cumulative Distribution Expense Charges collected can never exceed 9% of the total premiums paid, as provided in section 27(a)(1) of the 1940 Act. Therefore, the total sales load under the Policies will remain in full compliance with section 27(a)(1), and thus no exemptive relief from that section appears needed.

26. Paragraph (b)(13)(i) of Rule 6e-3(T) affords automatic relief from section 27(a)(1), "to the extent that sales load, as defined in paragraph (c)(4) of this Rule, deducted does not exceed that permitted by either subparagraph (A) or (B) below * * *" Applicants made an election in their S-6 registration statement, in a supplemental letter filed on September 16, 1987, to rely on subparagraph (B), which limits sales load to "9 per centum of payments made * * *" Because of the reference in paragraph (c)(4)(ii) of the Rule to the 1980 CSO Table, for sales load computation purposes, Applicants are concerned that their use of the 1958 CSO Table, for certain insureds, may make the Policies ineligible to rely on the automatic relief from section 27(a)(1) that is afforded by paragraph (b)(13)(i), if any such relief is needed at all. Applicants submit that, for purposes of sales load computation and compliance with paragraph (b)(13)(i)(B), as elected, Applicants should be permitted to utilize the mortality table guaranteed in the Policies, which fully complies with state insurance laws.

Income Tax Charge:

27. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit Nationwide to deduct any Income Tax Charge from the assets of the Separate Account.

28. Applicants submit that the exemptions afforded by Rule 6e-3(T)(b)(13)(iii) from sections 26(a) and 27(c)(2) could be narrowly interpreted to include only administrative fees associated with the operation of the Separate Account. Applicants, therefore, seek exemptive relief to the extent necessary to deduct fees for any income taxes incurred by Nationwide and properly chargeable against the assets of the Separate Account, in addition to the premium tax deduction specifically permitted by the Rule. Applicants assert that if any Income Tax Charge, presently unanticipated, is imposed in the future, it will be limited to the tax liability actually incurred on such gains, with no interest element. If any Income Tax Charge is ever implemented, it will be deducted from the Separate Account only as taxes become due, and will not be deducted and accumulated in Nationwide's general account prior to the time and taxes are due. Such charge, if any, will be permitted by the policies and by state insurance laws, and will be fully disclosed in the prospectus if the charge is implemented.

29. Applicants submit that all other charges under the Policies are permitted by, and in conformance with the requirements of, subsection (b)(13)(iii) of Rule 6e-3(T). Applicants further submit that the relief requested by the Application is identical to that requested by Nationwide Life Insurance Company and its Nationwide VLI Separate Account (File No. 812-6234) on October 25, 1985, as amended February 25, 1986 and March 4, 1986, and granted by an Order in Release No. IC-15057, on April 23, 1986.

Applicants' Undertakings:

Applicants agree that if the requested Order is granted it will be expressly conditioned on Applicants, compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-1169 Filed 1-20-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24560]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 14, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 8, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company, et al. (70-7393)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its wholly owned subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company and The Peoples Natural Gas Company, each located at CNG Tower, Pittsburgh, Pennsylvania 15222-3199, Consolidated Gas Transmission Corporation and Consolidated System LNG Company,

both located at 445 West Main Street, Clarksburg, West Virginia 26301, CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130, West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802, CNG Development Company, CNG Trading Company, both located at One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, The East Ohio Gas Company, The River Gas Company, both located at 1717 East Ninth Street, Cleveland Ohio 44115, and Hope Gas, Inc., Union National Center West, Clarksburg, West Virginia 26301, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50 thereunder.

By order dated June 12, 1987 (HCAR No. 24412), the Commission authorized the Consolidated system companies to engage in intra-system financings through June 15, 1988. Consolidated now proposes, in addition, to issue and sell Euro-commercial notes to dealers in commercial paper from time to time through June 15, 1988 of up to $100 million at any one time outstanding, pursuant to an exception from competitive bidding. Consolidated also seeks to have the five percent short-term debt limitation under section 6(b) of the Act raised to 42% through June 15, 1988. Such an increase would permit Consolidated to have outstanding at any time up to $400 million aggregate principal amount of short-term notes.

For the Commission, by the Division of Investment management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-1168 Filed 1-20-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2305]

Hawaii; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 8, 1988, I find that the City and County of Honolulu in the State of Hawaii constitute a disaster loan area due to damages from severe storms, flooding, and mudslides beginning on or about December 11, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 10, 1988 and for economic injury until the close of business on October 11, 1988 at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, CA 95853, or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 230506 for physical damage and for economic injury the number is 659400.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: January 14, 1988.

Michael E. Deegan,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-1137 Filed 1-20-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2306]

South Dakota; Declaration of Disaster Loan Area

The City of Deadwood, South Dakota, constitutes a disaster loan area because of damages from a fire which occurred on December 15, 1987. Applications for loans for physical damage may be filed until the close of business on March 14, 1988, and for economic injury until the close of business on October 14, 1988, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, CA 95853, or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 230605 for physical damage and for economic injury the number is 659500.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: January 14, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-1138 Filed 1-20-88; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will meet on Wednesday, February 3, 1988, at 9:00 a.m. until 3:00 p.m., at the Holiday Inn, West Memorial Highway, Bismarck, North Dakota.

At the hearing, private sector executives, local officials, trade associations, small and minority business entrepreneurs, will present testimony regarding the challenges they face in the development of their businesses, along with proposed solutions to these problems for possible implementation by the Federal Government. This hearing will focus on the particular issues facing small American Indian owned businesses.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Minority Small Business Outreach, U.S. Small Business Administration, 1441 L Street NW., Room 602, Washington, DC 20416, telephone (202) 653-6526.

Jean M. Nowak,

Director, Office of Advisory Councils.

January 7, 1988.

[FR Doc. 88-1139 Filed 1-20-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0345]

Queneska Capital Corp.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Queneska Capital Corporation (Applicant), 123 Church Street, Burlington, Vermont 05401, with

the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The proposed officers, directors, manager, and shareholder of the Applicant are as follows:

Name and address	Position	Percentage of ownership
Albert W. Coffrin, III, 37 Colonial Square, Burlington, VT 05401.	President, Manager, Director.	0
Susan D. Struble, 33 South Bay Circle, Colchester, VT 05446.	Vice President, Director.	0
Ethan A. Allen, Jr., 99 Van Sicklen Road, Williston, VT 05495.	Director, Assistant Secretary, Assistant Treasurer.	0
Gisele L. Marcoux, 196 Roosevelt Highway, No. 2, Colchester, VT 05446.	Secretary	0
Edward W Haase, 39 Stirling Place, Burlington, VT 05401.	Treasurer	0
Dudley W. Davis, Sunset Cliff, Burlington, VT 05401.	Director	0
Michael R. Tuttle, 3 Martindale Road, Shelburne, VT 05482.	Director	0
The Merchants Bank, 123 Church Street, Burlington, VT 05401.	Investment Advisor.	100

The Applicant will begin operations with a capitalization of $1,500,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to conduct its business in the states of Vermont, Massachusetts, New York and New Hampshire.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L. Street, NW., Washington, DC 20416.

A copy of the Notice will be published in newspapers of general circulation in Burlington, Vermont.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 12, 1988.

[FR Doc. 88-1078 Filed 1-20-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1155]

Shipping Coordinating Committee; National Committee for the Prevention of Marine Pollution; Meeting

The National Committee for the Prevention of Marine Pollution (NCPMP), a subcommittee of the Shipping Coordinating Committee, will conduct a special meeting on February 3, 1988, at 9:30 am in Room 3200 of the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC.

The purpose of this special meeting will be to receive comments from the public to ascertain the desirability of U.S. ratification of Annex III (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms, or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons) of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating thereto (MARPOL 73/78). Previous U.S. positions on Annex III including the draft revised text (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form), the potential for U.S. ratification, and its eventual entry into force internationally will also be discussed.

Annex III of MARPOL 73/78 Requirements: The Draft Revised Annex III Regulations would apply to all ships carrying harmful substances in packaged form. For the purposes of the Annex, "harmful substances" are those substances identified as marine pollutants in the International Maritime Dangerous Goods (IMDG) Code, and "packaged form" is defined as forms of containment specified in the schedules for marine pollutants in the IMDC Code.

The Annex would establish detailed requirements concerning packaging, marking/labelling, documentation, stowage, and if necessary quantity limitations for preventing or minimizing pollution of the marine environment by harmful substances. Jettisoning of harmful substances in packaged form would be prohibited except when necessary for the purposes of securing safety of the ship or saving life at sea. The washing of leakages overboard would be regulated provided that compliance would not impair the safety of the ship and persons onboard.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information or documentation pertaining to the NCPMP meeting, contact either Commander D.B. Pascoe or Lieutenant G.T. Jones, U.S. Coast Guard Headquarters (G-MER-3), 2100 Second Street, SW., Washington, DC 20593-0001, Telephone: (202) 267-0419.

Dated: January 14, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-1297 Filed 1-20-88; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1156]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on the Carriage of Dangerous Goods; Meeting

The Working Group on the Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on February 4, 1988 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting will be to prepare for the 40th Session of IMO Subcommittee on the Carriage of Dangerous Goods (CDG/40), scheduled for February 22 through 26, 1988.

The tentative agenda for CGD/40 includes the following:

1. Amendments to the International Dangerous Goods (IMDG) Code:

a. Review of technical details of the implementation of the IMDG Code.

b. Carriage of dangerous goods on short sea voyages.

c. Revision of Class 7—Radioactive materials.

d. Revision of Class 1—Explosives.

e. Revision of Class 3—Flammable Liquids.

f. Revision of Class 5.1—Oxidizers.

g. Revision of Class 4—Flammable Solids.

h. Revision of Class 2—Gases.

2. Amendments to:

a. The Emergency Procedures for Ships Carrying Dangerous Goods (EmS).

b. The Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG).

3. Intermediate Bulk Containers (IBCs) for dangerous goods.

4. Portable tanks and road tank vehicles for dangerous goods.

5. Inclusion of provisions on marine pollutants in the IMDG Code:

a. Revision of the individual schedules of the IMDG Code to cover the marine pollution aspect.

b. Development of new schedules for marine pollution for inclusion in the IMDG Code.

c. Amendments to the existing provisions of the IMDG Code to cover the marine pollution aspect.

d. Development of new provisions necessary for inclusion in the IMDG Code to cover the marine pollution aspect.

e. Establishment of criteria for immersion testing of packages containing marine pollutants.

6. Revision of the list of substances annexed to the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973.

7. Safety aspects of section 2 on search and recovery of packaged goods lost at sea of the Manual on Chemical Pollution.

8. Requirements for the carriage of irradiated nuclear fuel in purpose-built and non-purpose-built ships.

9. Development of guidelines to ensure the reporting to IMO of incidents involving dangerous goods on board ship or in a port area.

10. Revision of MSC/Circ. 360/ Rev. 1.

11. Relations between CDG and other organizations.

Members of the public may attend up to the seating capacity of the room. Persons wishing to discuss any of the above agenda items or other subjects dealing with the IMDG Code should attend or otherwise contact the Coast Guard.

For further information, contact either Commander Ronald W. Tanner or Lieutenant Commander Phillip C. Olenik, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street, SW., Washington, DC 20593–0001; Telephone: (202) 267–1577.

Dated: January 14, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88–1296 Filed 1–20–88; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87–086]

Rules of the Road Advisory Council; Meeting Cancellation

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: On December 4, 1987, (52 FR 233) a notice was published in the Federal Register announcing meetings to be held by the Rules of the Road Advisory Council in Seattle, Washington scheduled for January 25–27, 1988. Due to budgetary constraints, the Coast Guard has cancelled the meetings. A notice will be published in the **Federal Register** announcing future meetings of the Council. Members of the public may present written statements to the Council at any time.

Additional information may be obtained from Commander Charles K. Bell, Executive Director, Rules of the Road Advisory Council, U.S. Coast Guard (G–NSS–2), Washington, DC 20593–0001, Telephone (202) 267–0414.

Dated: January 15, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 88–1128 Filed 1–20–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–005]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on March 2, 1988, in Room 3442–44–46 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street SW., Washington, DC. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.

2. Discussion of the following topics:

(a) Port Facilities and Operations;

(b) Tankbarge-Construction, Certification, Operations;

(c) Personnel Manning and Licensing;

(d) Personnel Safety and Workplace Standards;

(e) Existing Regulations Review and Restructure;

(f) IMO/MARPOL Initiatives;

(g) Miscellaneous:

(1) Air Quality/Vapor Control;

(2) Bridge to Bridge Radiotelephone Issues;

(3) NAV Rules Update.

3. Presentation of any new items for consideration of the Subcommittees.

4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Capt. J.J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593–0001 or by calling (202) 267–1477.

Dated: January 15, 1988.

J.J. Smith,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 88–1129 Filed 1–20–88; 8:45 am]

BILLING CODE 4910–04–M

[CGD 88–006]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on March 3, 1988, in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m. Attendance is open to the public. The agenda, which includes docketed rulemakings where indicated, is expected to be as follows:

1. Approval of minutes from October 1987 TSAC meeting.

2. Reports on the following items:

(a) Licensing of Pilots (CGD 84–060);

(b) Inland Radar Observer Courses;

(c) Assistance Towing Licensing (CGD 87–017);

(d) Licensing of Maritime Personnel (CGD 81–059);

(e) Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks (CGD 85–061);

(f) Drydock and Tailshaft Requirements;

(g) Hazardous Substances Regulations (CGD 86–034);

(h) Tankerman Requirements (CGD 79–116);

(i) IMO Status Report Annex V of MARPOL 73/78;

(j) ABS Rules for Towing Vessels;

(k) IMO Status Report: Global Maritime Distress and Safety System;

(l) Operating A Commercial Vessel While Intoxicated (CGD 84–099);

(m) Drug Detection for Merchant Marine Personnel (CGD 86–067);

(n) Mandatory Alcohol and Drug Testing Following Serious Marine Incidents (CGD 86–080);

(o) OSHA's Proposed Benzene Standard;

(p) Air Quality Vapor Control;
(q) Bridge to Bridge Radiotelephone Issues;
(r) NAV Rules Update;
(s) Any other matter properly brought before the Committee. Where appropriate, reports on the above items may be followed by TSAC discussion, deliberation, and recommendations concerning these subjects, including rulemaking projects.
3. Summary of Action Items.
4. Adjournment.

With advance notice, and at the discretion of the Chairman, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 25 copies of written material should be submitted to the Executive Director no later than March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Capt. J.J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593–0001, (202) 267–1477.

Dated: January 15, 1988.

J.J. Smith,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 88–1130 Filed 1–20–88; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Docket No. 046CE; Petition Notice PE 88–1]

Petition of the British Aerospace Public Limited Company for Exemption From Certain Ground Load and Landing Gear Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for exemption.

SUMMARY: This notice publishes for public comment the petition of the British Aerospace Public Company (BAe). The petitioner requests exemption from certain ground load and landing gear requirements of the Federal Aviation Regulations (FAR), Part 23, to permit certification of the Jetstream Model 3201 in the Commuter Category with the landing gear and associated structure complying with the design standards of Part 25.

The purpose of this notice is to improve the public's awareness of this aspect of the FAA's regulatory activities. Publication of this notice is not intended to affect the legal status of the petition or its final disposition.

DATE: Comments must be received on or before March 21, 1988.

ADDRESS: Send comments on this petition in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ACE–7), Docket No. 046CE, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected in Room 1558 weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bobby Sexton, Standards Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition as they may desire. Communications should identify the docket and petition notice number and be submitted in triplicate to the address indicated above. All communications received on or before the closing date for comments will be considered before taking action on the petition. All comments received will be available for examination in the FAA docket. Persons wishing the FAA to acknowledge receipt of their comments in response to this notice should submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 046CE." The postcard will be date stamped and returned to the commenter.

Normally, the FAA only summarizes petitions for exemption for publication in the **Federal Register**. In the case of this petition by the British Aerospace Public Limited Company (BAe), however, the FAA has elected to publish the petition verbatim. As Exhibit A of their petition, BAe provided a comparison between Part 23 and Part 25 relative to ground loads and landing gear requirements. That exhibit is not published in this notice but is available as a part of the docket file. The FAA further wishes commenters to provide comments on material and discussions provided by British Aerospace Public Limited Company. This discussion will assist the FAA in evaluating of the merits of the petition.

Although this notice sets forth the contents of the petition as received by the FAA without changes, it should be understood that its publication to receive public comment is in accordance with FAA procedures governing petitions for exemption; it does not propose a regulatory rule for adoption, represent an FAA position, or otherwise commit the FAA on the merits of the petition. The FAA intends to proceed to consider the petition under the applicable procedures of FAR Part 11 and reach a conclusion on the merits of the proposals after it has had an opportunity to evaluate the petition carefully in light of the comments received and other relevant matters presented. A summary of the disposition of this exemption will be published in the **Federal Register**.

The Petition

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petition for exemption from the British Aerospace Public Limited Company dated November 24, 1987.

Issued in Washington, DC, on January 12, 1988.

John H. Cassady,

Associate Chief Counsel.

[FR Doc. 88–1061 Filed 1–20–88; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The New Sweden Colony," (see list [1]) imported

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the New Jersey State Museum in Trenton, New Jersey, beginning on or about February 6, 1988, to on or about May 15, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

C. Normand Poirier,

Acting General Counsel.

Date: January 19, 1988.

[FR Doc. 88–1342 Filed 1–20–88; 10:10 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 13
Thursday, January 21, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 26, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 28, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1987-31—Terry L. Claasen on behalf of the Chicago Board of Options Exchange.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-1269 Filed 1-19-88; 2:28 pm]

BILLING CODE 6715-01-M

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee Meeting

TIME AND DATE: The meeting will commence at 9:00 a.m. on Friday, January 29, 1988, and continue until 10:00 a.m.

PLACE: The Loews L'Enfant Plaza Hotel, Marquette Room, 480 L'Enfant Plaza, Washington, DC 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
—Meeting of December 17, 1987
3. Review of FY 1988 Appropriations
4. Presentation of the Corporation's Audit Report
5. Review of FY 1987 Budget Interest & Expenses
6. Allocation of FY 1987 Carryover Funds
7. Review of Monthly Expenditures for October and November
8. Schedule of Expenditures for Training Programs

Discussion and Public Comments follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: January 19, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-1303 Filed 1-19-88; 4:06 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The meeting will commence at 1:00 p.m. on Thursday, January 28, 1988, and continue until all official business is completed.

PLACE: The Loews L'Enfant Plaza Hotel, Marquette Room, 480 L'Enfant Plaza, Washington, DC 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
—Meeting of December 17-18, 1987
3. Consideration of Proposed Revisions to Part 1607, Governing Bodies

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: January 19, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-1304 Filed 1-19-88; 4:06 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Board or Directors; Meeting

TIME AND DATE: A closed Executive Session will commence at 8:00 p.m. on Thursday, January 28, and continue until 11:00 p.m. in the Lasalle Room. The open meeting will commence at 8:30 a.m. on Friday, January 29, 1988, until 9:00 a.m. and then continue at 10:30 a.m. until all official business is completed.

PLACE: The Loews L'Enfant Hotel, (Executive Session) Lasalle Room, Marquette Room, 480 L'Enfant Plaza, Washington, DC 20024.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5 (a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

Executive Session (Closed)

1. Personnel and Personal Matters.
2. Kitigation and Investigation Matters.

Board of Directors Meeting (Open)

1. Approval of Agenda.
2. Election of Chairman and Vice Chairman.
3. Approval of Minutes—Meeting of December 19, 1987.
4. Report from the Audit and Appropriations Committee.
5. Report from the Operations and Regulations Committee and Consideration of Part 1607, Governing Bodies.
6. Consideration of Proposed Resolution Regarding Denial of Access to Information.
7. Report by Douglas J. Besharov of the American Enterprise Institute on "Maximizing Access to Justice".

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: January 19, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-1337 Filed 1-19-88; 5:07 pm]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 18, 25, February 1, and 8, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 18

Wednesday, January 20

10:00 a.m.
Briefing on Status of Sequoyah Restart (Public Meeting)
2:00 p.m.
Briefing on NRC Technical Training Program (Public Meeting)

Thursday, January 21

2:00 p.m.
Briefing on Regulation of Transportation of Radioisotopes and Results of the Modal Study (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 25—Tentative

Tuesday, January 26

2:00 p.m.
Briefing by GE on New Standardized Plants (Public Meeting)

Thursday, January 28

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 1—Tentative

Tuesday, February 2

10:00 a.m.
Briefing on NRC Human Factors Programs (Public Meeting)
2:00 p.m.
Status of NRC Research Initiatives in Response to NAS Report (Public Meeting)

Wednesday, February 3

2:00 p.m.
Briefing on Status of State, Local, and Indian Tribe Programs (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 8—Tentative

Thursday, February 11

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634–1410.

Andrew L. Bates,

Office of the Secretary, January 14, 1988.

[FR Doc. 88–1182 Filed 1–19–88; 9:30 am]

BILLING CODE 7590–01–M

federal register

Thursday
January 21, 1988

Part II

Environmental Protection Agency

40 CFR Part 421

Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Final Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[OW-FRL-3258-1]

Nonferrous Matals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: EPA is promulgating amendments to the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that conduct primary tungsten operations. EPA proposed these amendments on Janaury 22, 1987 (52 FR 2480) in accordance with a settlement agreement which resolved a lawsuit challenging the final nonferrous metals manufacturing phase I regulation for this subcategory. The challenged regulation was promulgated by EPA on March 8, 1984, 49 FR 8742.

These final amendments include: (1) Certain modifications of the effluent limitations for "best practicable technology" (BAT), "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct dischargers; and (2) certain modifications to the pretreatment standards for new and existing indirect dischargers (PSNS and PSES).

DATES: In accordance with 40 CFR 100.01 (45 FR 26048), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on Feburary 4, 1988. This regulation shall become effective March 7, 1988.

The compliance date for the BAT regulations is as soon as possible, but in any event, no later than March 31, 1989. The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSNS) is the date the new source begins operations. The compliance date for pretreatment standards for existing sources (PSES) is February 22, 1988.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in a United States Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The record for the final rule will be available for public review not later than March 28, 1988.

ADDRESSES: Address question on the final rule to Mr. Ernst P. Hall, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention Nonferrous Metals Manufacturing Rules (WH-552). The basis for this amendment is detailed in the record.

The record for the final rule will be available for public review in EPA's Public Information Reference Unit, Room 2904 (Rear) (EPA Library), 401 M Street, SW., Washington DC. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of this notice:

I. Legal Authority

The regulation described in this notice is promulgated under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217).

II. Background

A. Rulemaking and Settlement Agreement

On February 17, 1983, EPA proposed a regulation to establish Best Practicable Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT) effluent limitations guidelines and New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) for the nonferrous metals manufacturing phase I point source category (48 FR 7032). EPA published the final nonferrous metals manufacturing phase I regulation on March 8, 1984 (49 FR 8742). Those regulations affected 80 direct dischargers and 85 indirect dischargers. The preambles to the proposed and final nonferrous metals manufacturing phase I regulation describe the history of the rulemaking.

After publication of the nonferrous metals manufacturing phase I regulation, the Aluminum Association, Inc., Kaiser Aluminum and Chemical Corp., Reynolds Metals Company, the Aluminum Recycling Association, the American Minimg Congress, Kennecott, Amax, St. Joe Minerals, ASARCO Inc., Mallinckrodt, Inc., NRC Inc., and the Secondary Lead Smelters Association filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Fourth Circuit (*Kennecott* v. *EPA*, 4th Cir. No. 84-1288 and Consolidated Cases). On December 26, 1985 the Fourth Circuit denied petitions to review the regulations for the primary lead, primary zinc, primary copper, metallurgical acid plants, secondary lead and the columbium-tantalum subcategories (780 F. 2d 445). The Supreme Court denied two petitions for a writ of certiorari on October 7, 1986. 107 U.S. 67.

Earlier in November of 1985 four aluminum parties in the consolidated lawsuits entered into two settlement agreements with EPA which resolved issues raised by the petitioners related to the primary aluminum and secondary aluminum subcategories. In accordance with the Settlement Agreements, EPA published a notice of proposed rulemaking on May 20, 1986 and solicited comments regarding certain amendments to the final nonferrous metals manufacturing phase I regulation for these subcategories (50 FR 18530). EPA has issued a final rule promulgating these amendments (52 FR 25552).

Similarly, EPA entered into another agreement on June 26, 1986 with AMAX, Inc. and GTE Products Corp., two companies affected by the regulations for the primary tungsten subcategory.

B. Effect of the Settlement Agreement for Primary Tungsten

As part of this latest Settlement Agreement, on June 26, 1986 the parties jointly requested the United States Court of Appeals for the Fourth Circuit to stay the effectiveness of those

portions of 40 CFR Part 421 which EPA is amending. The Court granted this request on July 9, 1986.

Copies of the Settlement Agreement have been sent to all EPA Regional Offices and to applicable State permit-issuing authorities. All limitations and standards contained in the final nonferrous metals manufacturing phase I regulation published on March 8, 1984 which are not specifically listed in the attached final amendments are not affected by today's rulemaking.

III. Amendments to the Nonferrous Metals Manufacturing Phase I Regulation

Below are descriptions of today's amendments to the nonferrous metals manufacturing phase I regulation. The amendments are based upon proper operation of the same technologies as those which formed the basis of the final regulation that was promulgated on March 8, 1984. See the preamble to the regulation at 49 FR 8742, for the Agency's findings with respect to these technologies.

1. Treatment Effectiveness Concentration for Ammonia Steam Stripping of High Sulfate Wastewater

EPA is amending the BPT and BAT limitations and NSPS, PSES and PSNS for ammonia in §§ 421.102(d), 421.103(d), 421.104(d), 421.105(d), and 421.106(d), when ammonia is treated under a specific set of circumstances. EPA promulgated treatment effectiveness concentration values for ammonia steam stripping that applied regardless of the composition of the influent being treated (49 FR 8812, March 8, 1984). The petitioners indicated that although they could meet these values for most of their streams, the wastestream from the ion-exchange raffinate process step could not be treated to this level because it contains unusually high concentrations of sulfates. Sulfates at such high concentrations, they stated, could interfere with steam stripping performance by plugging the stripper column.

As part of the settlment, EPA is suspending, under limited circumstances, the ammonia treatment effectiveness concentration value for the ion-exchange raffinate building block. These circumstances are: (a) Where influent (called "mother liquor") to or effluent (called "raffinate") from this process contains sulfates at concentrations exceeding 1000 ppm ("high sulfate influent or effluent"); (b) where the high sulfate influent or effluent is treated by ammonia steam stripping; and (c) where this high sulfate raffinate or mother liquor is not commingled with other wastestreams before treatment for steam stripping for ammonia removal.

In the event a plant satisfies all three of these conditions, mass limitations would be established on a Best Professional Judgement ("BPJ") basis by a permit writer pursuant to 40 CFR 125.3(c)(2) and (3) using the regulatory flows used as the basis for the promulgated effluent limitation guidelines and standards established in this proceeding and treatment effectiveness concentration values determined by the permit writer.

EPA is taking this action because of engineering concerns that the treatment effectiveness concentrations for ammonia may not be achievable for these high sulfate wastestreams in this subcategory. This is because sulfates (particularly calcium sulfate) at this concentration could interfere with the ammonia steam stripper by plugging the column. This could necessitate more frequent column cleaning and downtime than the Agency anticipated in promulgating the rule, and prevent achieving the concentration values.

EPA lacks operating data on ammonia steam stripping of wastewater where sulfate concentrations exceed 700 ppm, and has been informed in the phase II nonferrous manufacturing rulemaking that sulfate plugging problems would interfere with steam stripper performance should sulfate concentrations exceed 1000 ppm. (Comments of Teledyne Wah Chang, Sept. 28, 1984, pg. 5). Petitioners in the phase I primary tungsten litigation made the same points to the Agency. Thus, at least on an interim basis, EPA believes that 1000 ppm sulfates is a reasonable level to differentiate high sulfate and low sulfate streams.

The only building block in the primary tungsten subcategory that contains these high sulfate concentrations is ion exchange raffinate. Thus, today's action is limited to that building block. In addition, since commingling this stream would dilute sulfates to levels which do not interfere with steam stripper performance, EPA is suspending the ammonia concentration value only for uncommingled ion-exchange raffinate wastewater.

Due to the absence of ammonia treatment data under these conditions, EPA is unable to establish an alternative concentration for ammonia at this time. Tungsten industry petitioners expressed their belief to the Agency that they could achieve a one-day maximum of 351.8 mg/l and a monthly average of 154.7 mg/l under these conditions. Based on these representations, this should be the outer bound of any BPJ limitation.

As part of the settlement agreement, the petitioners agreed that any of their primary tungsten facilities treating the ion-exchange raffinate wastestream or mother liquor to the ion-exchange process under these conditions will provide the Agency with one year of operating data (daily observations), beginning from the time the steam stripper is in full-scale, steady state operation. These data shall include at a minimum: (a) Sulfate and ammonia concentrations and pH levels in the feed to, and effluent from, the steam stripper unit; (b) the sulfate and ammonia concentrations and pH levels in the effluent from the ion-exchange process if the mother liquor is being treated and not the raffinate; (c) the total suspended solids concentrations in the feed to and the effluent from the steam stripper unit; (d) the wastewater feed rate to the steam stripper unit; (e) the steam rate of the steam stripper unit (pounds of process steam/gallon of wastewater processed); (f) steam flux through the column (pounds of steam on column only per gallon of feed), (g) steam stripper unit back pressure in the various column sections, and (h) date and time of operation including dates and times for disruption of operation for cleaning or repair. These companies will also monitor for total dissolved solids in the feed to and effluent from the steam stripper unit once a week for the first month and monthly thereafter for the following five months, and submit the data to EPA. If these companies elect to treat high sulfate mother liquor, they agreed that treatment effectiveness concentrations from such treatment can be applied when determining the ammonia mass allowance for the ion-exchange raffinate building block.

The Agency notes that today's action is limited to situations where sulfates are present in high concentrations. The Agency is not taking any action for situations where other compounds (for instance phosphates; carbonates, or chlorides) are present.

2. Regulatory Flows for the Alkali Leach Condensate Building Block

EPA is adding a new building block for this process. This building block was omitted in the promulgated rule because the Agency believed this condensate would be accounted for through other building blocks, primarily the raffinate building block. The petitioners indicated that the flow allowance for the raffinate building block does not represent long-term performance and as such is inadequate because alkali leach condensate is a discrete process stream. Today's notice regulates the same

pollutants regulated in other primary tungsten building blocks. The flow basis for this building block is the flow at the sole plant with this unit operation.

3. Change in Production Normalizing Parameter ("PNP")

EPA is modifying the production basis for determining the amount of pollutant which may be discharged to the amount of the element tungsten produced or processed. In the final regulation, EPA used the chemical salt form of tungsten which was believed appropriate for the processing step or building block being regulated. However, the petitioners stated that the chemical formulas were incorrect and confusing. Using the element tungsten produced or processed, rather than a chemical compound, as a PNP makes the production basis clear and unambiguous. This proposed change will affect all of the building blocks except for § 421.102(i)–(k), 421.103(i)–(k), 421.104(i)–(k), 421.105(i)–(k) and 421.106(i)–(k) which were already based on the amount of elemental tungsten produced.

IV. Environmental Impact of the Amendments to the Nonferrous Metals Manufacturing Phase I Regulation

The amendments described above affect two facilities in the primary tungsten subcategory. These amendments would allow a greater discharge of ammonia, lead and zinc for these facilities than was allowed by the March 1984 regulation. EPA estimates that the increase above the promulgated limits in the amount of ammonia will be no greater than 11.3 kkg at these two facilities. Lead and zinc discharges would increase by approximately 18.6 kg/yr from the one affected facility. The change in the production basis for the regulation would not result in any increase in pollutants discharged.

V. Economic Impact of the Amendments

These amendments do not alter the model technologies for complying with the nonferrous metals manufacturing phase I regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 49 FR 8742). EPA concluded at that time that the regulation was economically achievable.

Since today's amendments are based on the same model technologies, EPA's conclusions as to economic impact and achievability are unaffected.

VI. Public Participation and Response to Major Comments

Since proposal of these amendments, two commenters have submitted comments on the proposal. The most significant of these comments are summarized below:

1. All commenters supported the Agency's proposed changes to the promulgated nonferrous metals manufacturing phase I regulation, and recommend they be promulgated as proposed.

2. One commenter pointed out certain typographical errors in the proposal. The Agency appreciates these corrections and has made these revisions to the final amendments.

3. Limitations for existing indirect discharges are essentially unaffected by these amendments since (to the Agency's knowledge) no indirect discharger operates either of the building blocks principally affected by the amendments. The Agency also did not receive comment from any indirect discharges. Consequently, the Agency is adopting the earliest compliance date provided by the Administrative Procedures Act.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, which modestly reduces regulatory requirements, is not a major rule.

VIII. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the March 8, 1984 final nonferrous metals manufacturing phase I regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (40 FR 8775). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these proposed amendments, since the amendments slightly reduce the regulatory requirements.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 421

Metals, Nonferrous metals manufacturing, Water pollution control, Waste treatment and disposal.

Dated: January 10, 1988.

Lee M. Thomas,

Administrator.

For the reasons stated above, EPA amends 40 CFR Part 421 as follows:

PART 421—NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 421 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act") 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 421.102 is amended by revising paragraphs (a)—(1) and by adding new paragraphs (m) and (n) to read:

§ 421.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

* * * * *

(a) Subpart J—Tungstic Acid Rinse.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	17.230	8.205
Zinc	59.900	25.030
Ammonia (as N)	5,469.000	2,404.00
Total suspended solids	1,682.000	800.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(b) Subpart J—Acid Leach Wet Air Pollution Control.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	15.040	7.162
Zinc	52.280	21.840
Ammonia (as N)	4,773.000	2,098.000
Total suspended solids	1,468.000	698.300
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(c) Subpart J—Alkali Leach Wash.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(d) Subpart J—Alkali Leach Wash Condensate.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	8.057	3.837
Zinc	28.011	11.700
Ammonia (as N)	2,557.000	1,124.000
Total suspended solids	786.200	374.100
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(e) Subpart J—Ion Exchange Raffinate (Commingled With Other Process or Nonprocess Waters).

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	37.160	17.700
Zinc	129.200	53.970
Ammonia (as N)	11,790.000	5,185.000
Total Suspended solids	3,627.000	1,726.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(f) Subpart J—Ion Exchange Raffinate (Not Commingled With Other Process or Nonprocess Waters).

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	37.160	17.700
Zinc	129.200	53.970
Ammonia (as N) [2]	11,790.000	5,185.000
Total suspended solids	3,627.000	1,726.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.
[2] The effluent limitation guideline for this pollutant does not apply if (a) the mother liquor feed to the ion exchange process or the raffinate from the ion exchange process contains sulfates at concentrations exceeding 1000 mg/l; (b) this mother liquor or raffinate is treated by ammonia steam stripping; and (c) such mother liquor or raffinate is not commingled with any other process or nonprocess waters prior to steam stripping for ammonia removal.

(g) Subpart J—Calcium Tungstate Precipitate Wash.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of calcium tungstate (as W) produced	
Lead	31.000	14.760
Zinc	107.800	45.020

BPT Effluent Limitations—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia (as N)	9,838.000	4,325.000
Total suspended solids	3,026.000	1,439.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(h) Subpart J—Crystallization and Drying of Ammonium Paratungstate.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium paratungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(i) Subpart J—Ammonium Paratungstate Conversion to Oxides Wet Air Pollution Control.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic oxide (as W) produced	
Lead	11.600	5.523
Zinc	40.320	16.850
Ammonia (as N)	3,681.000	1,618.000
Total suspended solids	1,132.000	538.500
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(j) Subpart J—Ammonium Paratungstate Conversion to Oxides Water of Formation.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic oxide (as W) produced	
Lead	0.026	0.013
Zinc	0.092	0.038
Ammonia (as N)	8.398	3.692
Total suspended solids	2.583	1.229
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(k) Subpart J—Reduction to Tungsten Wet Air Pollution Control.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	12.940	6.161
Zinc	44.970	18.790
Ammonia (as N)	4,106.000	1,805.000
Total suspended solids	1,263.000	600.700
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(l) Subpart J—Reduction to Tungsten Water of Formation.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.205	.098
Zinc	.714	.298
Ammonia (as N)	65.190	28.660
Total suspended solids	20.050	9.536
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(m) Subpart J—Tungsten Powder Acid Leach and Wash.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	1.008	0.48
Zinc	3.504	1.464
Ammonia (as N)	319.900	140.700
Total suspended solids	98.400	46.800
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(n) Subpart J—Molybdenum Sulfide Precipitation Wet Air Pollution Control.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.000	.000
Zinc	.000	.000
Ammonia (as N)	.000	.000
Total suspended solids	.000	.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

3. Section 421.103 is amended by revising paragraphs (a)—(1) and by adding new paragraphs (m) and (n) to read:

§ 421.103 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

(a) Subpart J—Tungstic Acid Rinse.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	11.490	5.333
Zinc	41.850	17.230
Ammonia (as N)	5,469.000	2,404.000

(b) Subpart J—Acid Leach Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	1.003	0.466
Zinc	3.653	1.504
Ammonia (as N)	477.400	209.900

(c) Subpart J—Alkali Leach Wash.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(d) Subpart J—Alkali Leach Wash Condensate.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	5.372	2.494
Zinc	19.570	8.057
Ammonia (as N)	2,557.000	1,124.000

(e) Subpart J—Ion Exchange Raffinate (Commingled With Other Process or Nonprocess Waters).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)	11,790.000	5,185.000

(f) Subpart J—Ion Exchange Raffinate (Not Commingled With Other Process or Nonprocess Waters).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N) [1]	11,790.000	5,185.000

[1] The effluent limitation for this pollutant does not apply if a) the motor liquor feed to the ion exchange process or the raffinate from the ion exchange process contains sulfates at concentrations exceeding 1000 mg/1; b) this mother liquor or raffinate is treated by ammonia steam stripping; and c) such mother liquor or raffinate is not commingled with any other process or nonprocess waters prior to steam stripping for ammonia removal.

(g) Subpart J—Calcium Tungstate Precipitate Wash.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of calcium tungstate (as W) produced	
Lead	20.670	9.594
Zinc	75.280	31.000
Ammonia (as N)	9,838.000	4,325.000

(h) Subpart J—Crystallization and Drying of Ammonium Paratungstate.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of ammonium paratungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(i) Subpart J—Ammonium Paratungstate Conversion to Oxides Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of tungstic oxide (as W) produced	
Lead	0.773	0.359
Zinc	2.817	1.160
Ammonia (as N)	368.200	161.900

(j) Subpart J—Ammonium Paratungstate Conversion to Oxides Water of Formation.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of tungstic oxide (as W) produced	
Lead	0.018	0.008
Zinc	0.064	0.026
Ammonia (as N)	8.398	3.692

(k) Subpart J—Reduction to Tungsten Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of tungsten metal produced	
Lead	0.862	0.400
Zinc	3.142	1.294
Ammonia (as N)	410.600	180.500

(l) Subpart J—Reduction to Tungsten Water of Formation.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of tungsten metal produced	
Lead	0.137	0.064
Zinc	0.499	0.205
Ammonia (as N)	65.190	28.660

(m) Subpart J—Tungsten Powder Acid Leach and Wash.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	0.672	0.312
Zinc	2.448	1.008
Ammonia (as N)	319.900	140.700

(n) Subpart J—Molybdenum Sulfide Precipitation Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

4. Section 421.104 is amended by revising paragraphs (a)–(1) and by adding new paragraphs (m) and (n) to read:

§ 421.104 Standards of performance for new sources.

* * * * *

(a) Subpart J—Tungstic Acid Rinse.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	11.490	5.333
Zinc	41.850	17.230
Ammonia (as N)	5,469.000	2,404.000
Total suspended solids	615.400	492.300
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(b) Subpart J—Acid Leach Wet Air Pollution Control.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	1.003	0.466
Zinc	3.653	1.504
Ammonia (as N)	477.400	209.900
Total suspended solids	53.720	42.970
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(c) Subpart J—Alkali Leach Wash.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(d) Subpart J—Alkali Leach Wash Condensate.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	5.372	2.494
Zinc	19.570	8.057
Ammonia (as N)	2,557.000	1,124.000
Total suspended solids	287.800	229.600
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(e) Subpart J—Ion Exchange Raffinate (Commingled With Other Process or Nonprocess Waters).

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)	11,790.000	5,185.000
Total suspended solids	1,327.000	1,062.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(f) Subpart J—Ion Exchange Raffinate (Not Commingled With Other Process or Nonprocess Waters).

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N) [2]	11,790.000	5,185.000
Total suspended solids	1,327.000	1,062.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.
[2] The new source standard for this pollutant does not apply if (a) the mother liquor feed to the ion exchange process or the raffinate from the ion exchange process contains sulfates at concentrations exceeding 1000 mg/l; (b) this mother liquor or raffinate is treated by ammonia steam stripping; and (c) such mother liquor or raffinate is not commingled with any other process or nonprocess waters prior to steam stripping for ammonia removal.

(g) Subpart J—Calcium Tungstate Precipitate Wash.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of calcium tungstate (as W) produced	
Lead	20.670	9.594
Zinc	75.280	31.000
Ammonia (as N)	9,838.000	4,325.000
Total suspended solids	1,107.000	885.600
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(h) Subpart J—Crystallization and Drying of Ammonium Paratungstate.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium paratungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(i) Subpart J—Ammonium Paratungstate Conversion to Oxides Wet Air Pollution Control.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per million pounds) of tungstic oxide (as W) produced	
Lead	0.773	0.359
Zinc	2.817	1.160
Ammonia (as N)	368.200	161.900
Total suspended solids	41.430	33.150
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(j) Subpart J—Ammonium Paratungstate Conversion to Oxides Water of Formation.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic oxide (as W) produced	
Lead	0.018	0.008
Zinc	0.064	0.026
Ammonia (as N)	8.398	3.692
Total suspended solids	0.945	0.756
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(k) Subpart J—Reduction to Tungsten Wet Air Pollution Control.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.862	.400
Zinc	3.142	1.294
Ammonia (as N)	410.600	180.500
Total suspended solids	46.200	36.960
pH	(1)	(1)

[1]Within the range of 7.0 to 10.0 at all times.

(l) Subpart J—Reduction to Tungsten Water of Formation.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.137	.064
Zinc	.499	.205
Ammonia (as N)	65.190	28.660
Total suspended solids	7.335	5.868
pH	(1)	(1)

[1]Within the range of 7.0 to 10.0 at all times.

(m) Subpart J—Tungsten Power Acid Leach and Wash.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.672	.312
Zinc	2.448	1.008
Ammonia (as N)	319.900	140.700
Total suspended solids	36.000	28.800
pH	(1)	(1)

[1]Within the range of 7.0 to 10.0 at all times.

(n) Subpart J—Molybdenum Sulfide Precipitation Wet Air Pollution Control.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.00	.000
Zinc	.000	.000
Ammonia (as N)	.000	.000
Total suspended solids	.000	.000
pH	(1)	(1)

[1]Within the range of 7.0 to 10.0 at all times.

5. Section 421.105 is amended by revising paragraphs (a)–(l) and by adding new paragraphs (m) and (n) to read:

§ 421.105 Pretreatment standards for existing sources.

* * * * *

(a) Subpart J—Tungstic Acid Rinse.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	11.490	5.333
Zinc	41.850	17.230
Ammonia (as N)	5,469.000	2,404.000

(b) Subpart J—Acid Leach Wet Air Pollution Control.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	1.003	0.466
Zinc	3.653	1.504
Ammonia (as N)	477.400	209.900

(c) Subpart J—Alkali Leach Wash.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(d) Subpart J—Alkali Leach Wash Condensate.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	5.372	2.494
Zinc	19.570	8.057
Ammonia (as N)	2,557.000	1,124.000

(e) Subpart J—Ion Exchange Raffinate (Commingled With Other Process or Nonprocess Waters).

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)	11,790.000	5,185.000

(f) Subpart J—Ion Exchange Raffinate (Not Commingled With Other Process or Nonprocess Waters).

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)[1]	11,790.000	5,185.000

[1] The pretreatment standard for this pollutant does not apply if (a) the mother liquor feed to the ion exchange process or the raffinate from the ion exchange process contains sulfates at concentrations exceeding 1000 mg/l; (b) this mother liquor or raffinate is treated by ammonia steam stripping; and (c) such mother liquor or raffinate is not commingled with any other process or nonprocess waters prior to steam stripping for ammonia removal.

(g) Subpart J—Calcium Tungstate Precipitate Wash.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of calcium tungstate (as W) produced	
Lead	20.670	9.594
Zinc	75.280	31.000
Ammonia (as N)	9,838.000	4,325.000

(h) Subpart J—Crystallization and Drying of Ammonium Paratungstate.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium paratungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(i) Subpart J—Ammonium Paratungstate Conversion to Oxides Wet Air Pollution Control.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic oxide (as W) produced	
Lead	0.773	0.359
Zinc	2.817	1.160
Ammonia (as N)	368.200	161.900

(j) Subpart J—Ammonium Paratungstate Conversion to Oxides Water of Formation.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic oxide (as W) produced	
Lead	0.018	0.008
Zinc	0.064	0.026
Ammonia (as N)	8.398	3.692

Subpart J—Reduction to Tungsten Wet Air Pollution Control.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.862	.400
Zinc	3.142	1.294
Ammonia (as N)	410.600	180.500

(l) Subpart J—Reduction to Tungsten Water of Formation.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.137	.064
Zinc	.499	.205
Ammonia (as N)	65.190	28.660

(m) Subpart J—Tungsten Powder Acid Leach and Wash.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.672	.312
Zinc	2.448	1.008
Ammonia (as N)	319.900	140.700

(n) Subpart J—Molybdenum Sulfide Precipitation Wet Air Pollution Control.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds of tungsten metal produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

6. Section 421.106 is amended by revising paragraphs (a)–(l) and by adding new paragraphs (m) and (n) to read:

§ 421.106 Pretreatment standards for new sources.

* * * * *

(a) Subpart J—Tungstic Acid Rinse.

PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	11.490	5.333
Zinc	41.850	17.230
Ammonia (as N)	5,469.000	2,404.000

(b) Subpart J—Acid Leach Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of tungstic acid (as W) produced	
Lead	1.003	0.466
Zinc	3.653	1.504
Ammonia (as N)	477.400	209.900

(c) Subpart J—Alkali Leach Wash.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of sodium tungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000

PSNS—Continued

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
Ammonia (as N)	0.000	0.000

(d) Subpart J—Alkali Leach Wash Condensate.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of sodium tungstate (as W) produced	
Lead	5.372	2.494
Zinc	19.570	8.057
Ammonia (as N)	2,557.000	1,124.000

(e) Subpart J—Ion Exchange Raffinate (Commingled With Other Process or Nonprocess Waters).

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)	11,790.000	5,185.000

(f) Subpart J—Ion Exchange Raffinate (Not Commingled With Other Process or Nonprocess Waters).

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)(1)	11,790.000	5,185.000

[1] The pretreatment standard for this pollutant does not apply if a) the mother liquor feed to the ion exchange process or the raffinate from the ion exchange process contains sulfates at concentrations exceeding 1000 mg/l; b) this mother liquor or raffinate is treated by ammonia steam stripping; and c) such mother liquor or raffinate is not commingled with any other process or nonprocess waters prior to steam stripping for ammonia removal.

(g) Subpart J—Calcium Tungstate Precipitate Wash.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of calcium tungstate (as W) produced	
Lead	20.670	9.594
Zinc	75.280	31.000
Ammonia (as N)	9,838.000	4,325.000

(h) Subpart J—Crystallization and Drying of Ammonium Paratungstate.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of ammonium paratungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(i) Subpart J—Ammonium Paratungstate Conversion to Oxides Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of tungstic oxide (as W) produced	
Lead	0.773	0.359
Zinc	2.817	1.160
Ammonia (as N)	368.200	161.900

(j) Subpart J—Ammonium Paratungstate Conversion to Oxides Water of Formation.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of tungstic oxide (as W) produced	
Lead	0.018	0.008
Zinc	0.064	0.026
Ammonia (as N)	8.398	3.692

(k) Subpart J—Reduction to Tungsten Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of tungsten metal produced	
Lead	.862	.400
Zinc	3.142	1.294
Ammonia (as N)	410.600	180.500

(l) Subpart J—Reduction to Tungsten Water of Formation.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/ million lbs) of tungsten metal produced	
Lead	.137	.064
Zinc	.499	.205
Ammonia (as N)	65.190	28.660

(m) Subpart J—Tungsten Powder Acid Leach and Wash.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (parts per million) of tungsten metal produced	
Lead	.672	.312
Zinc	2.448	1.008
Ammonia (as N)	319.900	140.700

(n) Subpart J—Molybdenum Sulfide Precipitation Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (parts per million) of tungsten metal produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

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January 21, 1988

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3280-1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to revise the regulation codified in Subpart L of 40 CFR Part 86, that makes nonconformance penalties (NCPs) available for specific Federal emission standards, to include a provision which will waive payment of penalties to EPA for those heavy-duty vehicles and engines (hereinafter collectively referred to as HDVs) which are certified under the Federal NCP process and entered into commerce in the State of California under a California NCP program. EPA proposes to waive the amount due under 40 CFR 86.1113(g) provided the identical nonconformance penalty is paid to the State of California. However, EPA would reserve the right to collect any penalties which have been waived if a manufacturer fails to pay the quarterly penalty to the State of California when due, or if the amount of the penalty paid to the State of California is less than that which would have been due to EPA under the regulations.

DATES: *Public Hearing:* EPA will hold a public hearing on this notice on February 23, 1988 beginning at 9:00 a.m. Any person desiring to testify at the hearing must notify the Agency by February 3, 1988. In the event no requests to testify are received, the hearing will be cancelled and notice given in the **Federal Register**. Requests for or questions about the hearing should be directed to the EPA contact person listed below. Any person desiring to participate in the hearing should, prior to the hearing, submit an outline of the points to be discussed and the time needed to discuss these points. Pursuant to section 307 of the Clean Air Act, the record of the hearing, will be kept open for 30 days following its conclusion to provide an opportunity for submission of rebuttal and other information.

Public Comment: All comments should be received within 30 days of the publication of this notice, within 30 days following the conclusion of the public hearing if held, or by February 23, 1988, whichever is later. Comments should be submitted to the Public Docket Number A–87–14 at the address provided below.

ADDRESSES: The hearing, if held, will take place at the Holiday Inn Embarcadero, 1355 Harbor Drive, San Diego, California 92101. Copies of materials relevant to this rulemaking are contained in and written comments should be submitted to Public Docket Number A–87–14, Central Docket Section, U.S. Environmental Protection Agency, Room 4, South Conference Center (LE–132), Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:00 am and 3:00 pm on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Tesoriero or Mr. Anthony Erb, Manufacturers Operations Division (EN–340F), Office of Mobile Sources, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone (202) 382–2487 or (202) 382–2536, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

Section 206(g) of the Clean Air Act (Act) requires EPA to issue a certificate of conformity for HDVs which exceed a section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by EPA by regulation. Congress intended NCPs as a temporary relief for perceived problems with technology-forcing heavy-duty emission standards which othewise might force some manufacturers out of the market place.

On August 30, 1985 (50 FR 35374) EPA published a final rule promulgating the administrative aspects of the NCP program. On December 31, 1985 (50 FR 53454), EPA promulgated a final rule making NCPs available for specific emission standards taking effect in model years 1987 and 1988. The regulations are codified in Subpart L of 40 CFR Part 86. These regulations did not specifically prohibit or allow NCPs and HDVs destined for the California market. However, since California HDV emission standards are the same or more stringent than EPA's and its regulations do not allow for NCPs, a manufacturer currently cannot obtain a California certificate of conformity for a nonconforming vehicle based on payment of an NCP to EPA.

On December 8, 1986 the Executive Director of the State of California Air Resources Board (CARB) sent to EPA a letter describing a proposed California NCP program. A copy of this letter is available in the Public Docket Number A–87–14. It pointed out that the availability of NCPs for Federal HDVs has created a disparity between California and Federal HDV requirements. Unless the California NCP program is implemented, beginning with the 1988 model year, fewer HDV models will be available for sale in California than in neighboring states and California consumers may be encouraged to purchase and register higher emitting HDVs in other states. Assuming this occurs, these HDVs, along with other Federally certified vehicles engaging in interstate commerce, would travel a substantial number of miles on California highways each year and contribute to emissions within the State.

The December 8, 1986 letter also stated that to address this situation, the California Legislature had enacted Assembly Bill 3683 (AB 3683). This new law authorizes CARB to implement an NCP program applicable to sales of HDVs in California which do not meet CARB emission standards, but which have already been certified under the Federal NCP program, contingent upon the following factors:

(1) That Federal emission standards and test procedures applicable to the specified HDVs are identical to the emission standards adopted by the CARB; [1] and

(2) that it is established that payment of nonconformance fees to the State of California may substitute for payment of nonconformance fees to the Federal Government.

The law (AB 3683) specifies that the fees to be established are to be identical to those established by EPA for the same HDVs. All fees collected pursuant to AB 3683 are to be deposited in the State of California Air Pollution Control Fund and will provide a mechanism for funding measures to mitigate emission increases within the State from HDVs certified under the NCP process, thereby ensuring protection of California's ambient air quality.

In the December 8, 1986 letter, the CARB requested that EPA provide

[1] The CARB has interpreted this requirement to mean that the specific pollution standards for which California will make NCPs available and test procedures for those individual pollutants must be identical in order for the CARB to implement an NCP program. Thus, under California's interpretation, the state would not necessarily offer NCPs for every standard for every HDV, since California standards are not all identical to Federal standards. However, California would offer NCPs for each standard which is identical to the corresponding Federal standard.

assistance in establishing a California NCP program. In such a program, manufacturers desiring to enter nonconforming HDVs into commerce in the State of California under the NCP process would be charged only a single fee and that fee would be remitted to the State of California for the purpose of mitigating any resultant emission increases that would occur within the State of California.

General Motors Corporation has stated its desire to utilize certain NCPs for HDVs it desires to sell in California during the 1988 model year in order to avoid lost sales and the resultant hardships placed on consumers and secondary manufacturers. Other manufacturers may have the same needs and concerns.

II. Proposed Action

This action proposes to revise 40 CFR Part 86, Subpart L in order to allow California to collect and retain NCPs applicable to HDVs being distributed in commerce in California. As provided in the regulations in 40 CFR Part 86, Subpart L, EPA would assess NCPs on nonconforming HDVs for which the manufacturer seeks Federal certification but which are intended for sale in California. EPA, would waive its collection of the NCP for HDVs entered into commerce in California and for which the manufacturer has paid the appropriate amount of penalty (as discussed later in this notice) to the State of California.[2] (EPA's authority to revise the NCP regulations in this manner is discussed in section VI of this notice.)

The intent of this proposed action is to ensure continued availability of all models of HDVs for consumers in the State of California, and provide a mechanism whereby the effect of increased emissions from HDVs which are certified using the Federal NCP process and used principally in the State of California may be mitigated.

This allowance is to be made only for those HDVs for which California has:

(1) Adopted emission standards and test procedures which are identical to the corresponding Federal emission standards and test procedures for which Federal NCPs are currently available, and

(2) Adopted nonconformance penalty fees, requirements and other procedures identical to corresponding Federal nonconformance penalty fees, requirements and other procedures.

Further, the manufacturer must submit to EPA adequate documentation quarterly of the amount claimed to be subject to waiver. As adequate demonstration of payment to California, EPA would accept a copy of a bank draft (or equivalent) to the State of California, along with the cover letter to California from the manufacturer explaining the purpose of the payment. As adequate demonstration that the HDVs are introduced in commerce for California, EPA would accept a statement on the emissions label of the HDVs that the vehicle or engine is designated for introduction in commerce for the State of California only. Other forms of demonstration of either the payment or the HDV destination could be acceptable and should be approved by EPA in advance of the required payments. EPA would reserve the right to collect any waived penalty if the manufacturer has not paid the amount due to California for any quarter or, to collect the difference between the California and the Federal penalty if the amount paid to California is less than that which would be due to EPA for the number of HDVs entered into commerce in the State of California during that quarter.

III. Anticipated Effects

The CARB has stated that it can have regulations in effect as early as January 1988. However, the CARB regulations cannot be implemented until it is established that EPA will waive its collection of the NCP for California HDVs upon payment of a equal sum to California. EPA's final rule, assuming EPA adopts one, likely would not be published before April 1988. Therefore, there may be an interim period of approximately three months between California's and EPA's promulgation of their respective final rules.

The CARB has indicated it would allow HDVs which were certified under the Federal NCP process to enter commerce in California during the interim period provided the NCP payment is not collected by EPA and California is allowed to collect the appropriate NCP payment for those HDVs when and if the final EPA rule is promulgated.

At the manufacturer's request, the Administrator could temporarily waive collection of the NCP as provided in § 86.1113–87(g)(1), for vehicles which are introduced in commerce in California prior to the conclusion of rulemaking on this matter. If the final rule allows EPA to waive collection of the NCP payment, the appropriate NCP payment for the interim period would then be made to California. If the final rule does not permit EPA to waive the NCP payment, EPA would collect the NCP for the interim period.

Beginning with the 1991 model year, the Federal averaging program will allow an HDV manufacturer to use averaging to determine compliance with the Federal NO_x and Particulate standards. Averaging allows manufacturers to control some vehicles more and others less, so long as the average emissions comply with the standards. Calculation of California NCPs may become more difficult beginning in the 1991 model year due to the implementation of the Federal averaging program for HDVs.[3] However, the issue of how to calculate NCPs with averaging will be addressed in the NCP Phase III rulemaking, for which the notice of proposed rulemaking is expected to be published in the Federal Register this year. EPA is deferring all averaging issues to the NCP Phase III rulemaking.

IV. Description of Proposed Regulation Revisions

The specific areas proposed to be revised in Chapter 1 of Title 40, Code of Federal Regulations are described in the following paragraphs.

In § 86.1113–87 (Calculation and payment of penalty) the language would be amended to specify that, for the purpose of NCP calculations and assessment, Federal and California HDVs of the same model year are to be considered together and the production for each should be combined to determine the total production for a model year.

The indexes "i" and "n" in the NCP formula (representing a year, and the number of model years for which the NCP has been available for an HDV subclass, respectively) have the same value for Federal and California HDVs of the same model year. This ensures that the California NCP rate will be the same as the Federal NCP rate, even though the manufacturer begins to use California NCPs in a different model year than the model year in which NCPs first became available under the Federal NCP program.

Paragraph (g)(1) would be revised to allow waiver of payment of a portion of the amount of the NCP assessed by EPA, provided the manufacturer pays the

[2] This entire proposal is contingent upon California requesting, and EPA approving, a waiver of Federal preemption under section 209(b) of the Act for the California NCP program. Such a waiver request and EPA decision under section 209(b) will be addressed in future Federal Register notices.

[3] Under certain scenarios, it may be difficult to calculate the portion of the NCP that will be waived to California. This difficulty may arise due to a manufacturer's use of the Federal averaging program and the possible inclusion of averaging data in the calculation of the NCP amount.

waived amount to California under a California NCP program for those HDVs introduced into commerce in the State of California. The waiver of the portion of the amount of the NCP assessed would be contingent upon EPA approving a waiver of Federal preemption for California's NCP program under section 209(b) of the Clean Air Act. Such a waiver would be applicable only if the Administrator finds that for the pollutants for which NCPs are currently available: (1) California emission standards, test procedures, NCP rates and NCP requirements are identical to corresponding Federal emission standards, test procedures, NCP rates and NCP requirements; and (2) the criteria for granting a waiver under section 209 of the Act have been met.

EPA would reserve the right to collect a waived amount (in full or in part, as appropriate) if the manufacturer has not demonstrated either that it has paid California an amount equal to the penalty which has been assessed under the Federal NCP rule, or that the HDVs claimed to have been introduced into commerce in California were, in fact, introduced into commerce in California.

The formula for determining the waived portion of any penalty is described in § 86.1113–87(g)(1)(iii). The following example is based on that formula. Assume for a particular HDV subclass that in the second year the NCP is available, the penalty is calculated by the formulas of § 86.1113–87(a) to be $200 per HDV (i.e., $NCP_2 = \$200$). Also, assume that in the first production quarter of the second year, a manufacturer distributes into commerce in California 50 HDVs of that subclass under the NCP provisions. The waived amount for the first quarter of that second year is:

$$W_{1,2} = 50 \times 200 = \$10,000$$

In this example, $10,000 of the Federal NCP payment for the first quarter is waived if the manufacturer demonstrates to EPA that the 50 HDVs were, in fact, distributed in commerce in California and that the manufacturer paid the State of California a $10,000 NCP payment for those same HDVs.

Section 86.1113–87(g)(3)(i) would be revised to expand the list of information to be submitted quarterly by the manufacturer. It would be expanded to include the identification, quantity and evidence of introduction of any HDVs subject to California NCPs, and documentation of the NCP payment to California.

The existing NCP regulations also provide for a partial refund to the manufacturer of the engineering and development component of the penalty. This would occur if the manufacturer certifies a conforming configuration, as demonstrated by conducting a Production Compliance Audit (PCA), to replace a configuration for which NCPs have been paid. The proposed revised regulations at § 86.1113–87(h) would specify that EPA would be responsible only for a portion of any such refund for a configuration sold in both California and other states, in proportion to the amount of NCP payment for HDVs of that configuration paid to EPA.[4] Formulas are provided in the proposed revised regulations to clarify the calculation of the refund(s) [5].

For example, assume a manufacturer produced 1,00 HDVs of a particular subclass in the first year NCPs were available and paid NCPs to EPA for 900 HDVs and to California for 100 HDVs. Assume the NCP for the first year (NCP_1) was $200. Assume the manufacturer produced 100 engines of the subclass in the second year and paid NCPs (assume $NCP_2 = \$250$) to EPA for 90 HDVs and to California for 10 HDVs, after which the manufacturer certified a conforming replacement configuration for the second year. As provided in the proposed regulatory language in section 86.1113(h), the discount factor for the second model year (D_2) = 0.79. The F_E and $_D$ is specified to be 0.06 for purposes of this example.

$$R_{tot} = 0.79 \times 0.06 \times \$200 \times 1,100 = \$10,428.00$$

$$R_{Cal} = (110/1,100) \times (10,428.00) = \$1,042.80$$

$$R_{EPA} = \$10,428.00 - \$1,042.80 = \$9,385.20$$

In the example, the total refund that is due to the manufacturer would be $10,428.00. Of this, $1,042.80 would be refunded by the State of California and $9,385.20 would be refunded by EPA.

[4] EPA anticipates that California's NCP regulations would provide that the state would pay a share of the refund, proportionate to the number of vehicles of that configuration sold in California.

[5] It should be noted that the base penalty amount, "NCP_i," is the appropriate factor for calculation of the refund of a portion of the engineering and development component of the penalty regardless of the model year the certification and PCA of the replacement configuration takes place. The engineering and development factors described in § 86.1105–87 were derived based on the ratio of the engineering and development component of the estimated cost of compliance with the standard compared to the total estimated cost of compliance with the standard. Therefore, an accurate estimate of the engineering and development component is determined by using NCP_i as the base penalty amount. If NCP_n were used as the penalty amount then the calculated engineering and development portion of the penalty would be erroneously inflated by the usage and yearly adjustment factors. These factors were included in the NCP formula to increase the penalty with time and usage, but they do not relate to the actual costs, including the engineering and development costs, of complying with the standard.

V. Potential Impacts of the Proposed Rule Revisions

A. Economic Impact

Because the use of NCPs is optional, manufacturers have flexibility to choose whether or not to use NCPs for California HDVs based on their ability to comply with emission standards. If manufacturers elect not to use NCPs to introduce HDVs into California, these manufacturers and the users of their products will not incur any additional costs related to NCPs.

The use of NCPs may provide some direct cost savings to HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer that desires to market in California and has difficulty certifying HDVs in conformance with emission standards, or fails an emissions audit, has only two alternatives: Fix the nonconforming engines or vehicles, perhaps at prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and introduce into commerce upon payment of a penalty for each HDV that exceeds the standard until an emission conformance is achieved.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only way to continue to introduce HDVs into commerce in California. Hence, this proposed rule may be considered to have a favorable economic impact on some manufacturers.

The CARB has pointed out that many of the HDVs marketed in California are incomplete vehicles and are completed by secondary manufacturers based on specific customer needs. Without California NCPs, these secondary manufacturers and their customers within the State of California will likely suffer adverse economic impacts due to the inability of the primary manufacturer to deliver the required HDVs and the resulting inability of the secondary manufacturers within the State of California to produce the product the consumers require.

B. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA cannot be sure to what extent NCPs will be used for HDVs entered in commerce in California.

If manufacturers are able to market all their engines in California without using NCPs, all HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the Federal rulemakings that established the emission regulations will not be affected.

If some manufacturers do elect to participate in the NCP program, some HDVs will be introduced into commerce in California that will be emitting pollutants above applicable standards. However, Congress contemplated such a possibility when it mandated that EPA provide Federal NCPs. The magnitude of this reduced environmental benefit is proportional to the number of HDVs subject to NCPs and their degree of nonconformance; the upper limits on the availability of NCPs exclude gross emitters from being introduced into commerce. In previous rulemakings concerning NCPs, EPA estimated that an NCP would not be used for more than 10 percent of the HDVs for which NCPs are available in the first year that they were available and that they would be used for less than one percent in the third year. These percentages are not expected to be different for the State of California. The long-term environmental impact from NCP usage is expected to be very small, if any, due to the high penalty rates and the annual adjustment factor that rapidly increases penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit refers not to an increase in emissions from previous levels, but from levels that would otherwise occur from tightened emission standards without NCPs.

Because the emission impacts of the NCPs in the State of California are anticipated to be very small, compared to the total emissions of California HDVs which in fact comply with emissions of California HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time, no specific air qualify impact analysis has been made regarding this proposal.

Further, the NCP payment to the State of California will be used to mitigate any emission increases that occur as a result of NCPs. This may lead to some improvement over the potential situation wherein consumers, in order to meet their specific vehicle needs, may purchase vehicles certified under the existing Federal NCP process in bordering states for primary use on California roadways.

VI. Public Participation

EPA solicits comments from all interested parties. Whenever applicable, full supporting data should be submitted to allow EPA to make maximum use of the comments.

VII. Statutory Authority

Section 206(g) of the Act, 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for heavy-duty vehicles or engines which exceed a section 202(a) emissions standard, but do not exceed a "practicable" upper limit determined by EPA, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking.[6] The provision authorizes Federal NCP regulations. The purposes of section 206(g), in general, are to encourage EPA to promulgate stringent HDV standards while giving those manufacturers unable to meet certain standards a temporary means of continuing to market nonconforming HDVs, while creating incentives for such manufacturers to bring the HDVs into conformance or to discontinue their manufacture. Since the California NCPs and HDV standards would be identical to the Federal NCP's and standards for the pollutants for which NCPs are currently available, waiving payment of NCPs to EPA based on payment of identical NCPs to California will continue to carry out the purpose and intent of section 206(g). Moreover, EPA would retain authority to collect NCPs in any case in which the California NCP program did not result in the manufacturer actually paying adequate penalty to California. Thus, the proposed amendment is within the scope of the authority granted by section 206(g).

VIII. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Administrator is required to prepare an initial regulatory flexibility analysis or to certify that this proposed regulation would not have a significant economic impact on a substantial number of small business entities. None of the affected HDV primary manufacturing entities meet the requirements for classification as a small business. Moreover, as already discussed, the NCP waiver program can be expected to have salutary effects on manufacturers, both primary and secondary. Thus, I certify that this proposed rule would not have a significant adverse impact on a substantial number of small entities.

[6] Section 206(g) of the Act does not expressly require that NCPs be paid to EPA.

IX. Information Collection Requirements

This rule requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this proposed rule have been submitted to OMB. Comments on these requirements should be submitted to OMB, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

X. Administrative Designation

Under Executive Order 12991, the Administrator has determined that this proposed regulation is not "major" and therefore not subject to the requirement of a draft Regulatory Impact Analysis.

(A) The proposed NCP waiver program for the California HDVs would not result in an annual adverse effect on the economy of $100 million or more. NCPs, in general, merely provide a temporary, economically viable, alternative to other possible actions at least as costly as NCPs that may be utilized when a manufacturer is unable to comply with a standard. This concept is more fully discussed in the Economic Impact section.

(B) The proposed NCP waiver program for California HDVs will not result in adverse cost or price impacts above those that would otherwise occur from compliance with the emission standards themselves.

(C) The proposed NCP waiver program will not have 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.

As required by Executive Order 12291, this Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any written OMB comments and EPA's response to those comments are available for inspection in the public docket for this rulemaking.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Air pollution control, Environmental protection, Gasoline, Diesel, Motor vehicles.

Dated: January 7, 1988.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, Part 86, Subpart L, Chapter 1 of the Title 40, Code of Federal Regulations is proposed to be amended as follows:

PART 86—[AMENDED]

1. The authority citation for Part 86 is revised to read as follows:

Authority: Sections 202, 203, 206, 207, 208, 215, 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

2. In § 86.1113–87 of Subpart L, paragraphs (a)(4), (g)(1), (g)(3)(i), and (h) are revised to read as follows:

§ 86.1113–87 Calculation and payment of penalty.

(a) * * *

(4) The terms in the above formulas have the following meanings and values, which may be determined separately for each subclass and pollutant for which an NCP is offered. The production of Federal and California designated engines or vehicles shall be combined for the purpose of this section in calculating the NCP for each engine or vehicle.

NCP_n = NCP for year n for each applicable engine or vehicle

CL = Compliance level for year n for applicable engines or vehicles

S = Emission standard

UL = Upper limit as determined by § 86.1104–87. Except, if the upper limit is determined by § 86.1104–87(c), the value of UL in paragraph (a)(2) of this section shall be the prior emission standard for that pollutant.

UL' = Upper limit as determined by § 86.1104–87(c). This value is not used in the above formulas.

X = Compliance level above the standard at which NCP_1 equals COC_{50}

$$X = \left(\frac{COC_{50}}{(F)(MC_{50})} \right) + S$$

PR_1 = Penalty rate when CL < X

PR_2 = Penalty rate when X < CL < applicable upper limit n

$\prod_{i=1} AAF_i$ = Running product, i.e., $(AAF_1)X(AAF_2)X \ldots X(AAF_n)$

i = An index representing a year. It represents the same year for both Federal and California designated engines or vehicles of the same production model year.

n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass (i.e., n = 1 for the first year that the NCP is available, and so on until n = n for the n^{th} year that the NCP is available). The factor "n" is based on the model year the NCP is first available, as specified in section 86.1105–87 for the engine or vehicle subclass and pollutant for both Federal and California designated engines and vehicles.

COC_{50} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit

COC_{90} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit

MC_{50} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3)

AAF_i = Annual adjustment factor for year i

$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (year i−1)

A_i = Usage adjustment factor in year i: $A_i = 0.10$ for $i = 2$; $A_i = 0.08$ for $i > 2$

I_i = Percentage increase in overall consumer price index in year i

* * * * *

(g)(1) Except as provided in paragraph (g)(2) of this section, the nonconformance penalty or penalties assessed under this subpart must be paid as follows:

(i) By the quarterly due dates, i.e., within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter.

(ii) The penalty shall be payable to U.S. Environmental Protection Agency, NCP Fund, P.O. Box 360277M, Pittsburgh, PA 15251, except as provided in paragraph (g)(1)(iii) of this section.

(iii) Payment of a portion of the amount due each quarter under this section for any vehicle(s) or engine(s) is waived equal to the amount which the manufacturer has paid the State of California as a nonconformance penalty for nonconforning vehicle(s) or engine(s) introduced into commerce into the State of California, provided that the Administrator has approved a waiver of Federal preemption under section 209(b) of the Clean Air Act permitting the State of California to collect NCPs for those vehicle(s) or engine(s). Such a waiver of preemption would be applicable only if the Administrator finds that:

(A) California has adopted emission standards and test procedures for heavy-duty vehicles or engines which are identical to the corresponding Federal emission standards and test procedures for which NCPs are available,

(B) California has adopted nonconformance penalty fees, requirements and other procedures identical to corresponding Federal nonconformance penalty fees, requirements and other procedures, and

(C) All criteria for a waiver under section 209(b) have been met.

The nonconformance penalty for which payment is waived by EPA and due to the State of California shall be payable in accordance with California regulations and is calculated for each engine or vehicle subclass as follows:

$W_{q\text{-}n} = (Cal_{q\text{-}n})(NCP_n)$

where

n = Index representing the number of model years for which the NCP has been available (same as "n" in paragraph (a)(4)

q = calendar quarter for which a NCP payment is due

$W_{q\text{-}n}$ = Waivered portion of the NCP payment for calendar quarter q of year n

$Cal_{q\text{-}n}$ = number of engines or vehicles of the subclass distributed into commerce into the State of California during calendar quarter q of year n

NCP_n = the NCP for year n for the subclass (same as "NCP_n" in paragraph (a)(4)).

(iv) EPA reserves the right to collect any nonconformance penalities previously waived under paragraph (g)(1)(iii) if:

(A) The manufacturer has not adequately demonstrated that it has paid the amount due to California for any quarter; or

(B) The payment be the manufacturer to California is less than that which would be due to EPA for the number of HDVs entered into commerce in California in that quarter; or

(C) The manufacturer has not adequately demonstrated that all vehicles claimed to have been introduced into commerce into the State of California were in fact introduced into commerce into the State of California.

In the situation described in (a) of this paragraph, EPA reserves the right to collect the entire NCP amount assessed under this Subpart. In the situations

described in (B) and (C) of this paragraph, EPA reserves the right to collect the difference between the amount that is due to EPA for the vehicles in question and the lesser amount (if any) paid to the State of California.

A statement on the emissions label required under Subpart A of 40 CFR Part 86 that the engine or vehicle is designated for introduction in commerce only for the State of California will constitute adequate demonstration that the engine or vehicle was introduced in commerce for the State of California, for the purpose of this section.

* * * * *

(g)(3)(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, identification and quantity and proof of introduction in commerce for the State of California for any engines or vehicles subject to California NCPs and documentation of the NCP paid to the State of California under paragraph (g)(1)(iii) of this section, certificate identification (number and date), and NCP payment calculations, if applicable.

* * * * *

(h) A manufacturer that certifies as a replacement for the nonconforming configuration, a configuration that is in conformance with applicable standards, and that performs a production compliance audit (PCA) in accordance with § 86.1112–87(a) that results in a compliance level below the applicable standard, will be eligible to receive a refund of a portion of the engineering and development component of the penalty. The engineering and development by multiplying the base penalty amount by the engineering and development factor for the appropriate subclass and pollutant in § 86.1105–87. The amount refunded will depend on in which model year the certification and PCA take place. In cases where payment of penalties has been waived by EPA in accordance with paragraph (g)(1)(iii) of this section, EPA will refund a portion of the engineering and development component. The proportionate refund to be paid by EPA will be based on the proportion of vehicles or engines of the nonconforming configuration for which NCPs were paid to EPA. The refund is calculated as follows:

$R_{tot} = D_n \times F_{E\&D} \times NCP_1 \times Prod_{tot}$

$R_{Cal} = (Prod_{Cal}/Prod_{tot}) \times (R_{tot})$

$R_{EPA} = R_{tot} - R_{Cal}$

Where:

n = index representing the number of model years for which the NCP has been available for an engine or vehicle subclass (i.e., n = 1 for the first year that NCPs are available, . . .,

n = n for the nth year the NCPs are available; same as "n" in paragraph (a)(4)).

D_n = discount factor depending on the model year (n) certification and PCA take place for the replacement configuration, and its value is as follows:

$D_1 = 0.90$

$D_2 = 0.79$

$D_3 = 0.67$

$D_4 = 0.54$

$D_5 = 0.39$

$D_6 = 0.23$

$D_7 = 0.05$

$D_n = 0.00$ for n = 8 or larger

$F_{E \text{ and } D}$ = the engineering and development factor specified in § 86.1105–87 for the appropriate subclass and pollutant

NCP_1 = the penalty for each engine or vehicle during the first (base) year the NCP is available as calculated in paragraph (a)

$Prod_{tot}$ = total number of engines or vehicles produced in the subclass for which NCPs were paid to EPA or to the State of California

$Prod_{Cal}$ = number of engines or vehicles in the subclass demonstrated to have been introduced into commerce in the State of California and for which NCPs were paid to the State of California under paragraph (g)(1)

R_{tot} = Total refund due to the manufacturer for the engineering and development component of the NCP

R_{Cal} = Refund due to the manufacturer from the State of California for the engineering and development component of the NCP

R_{EPA} = Refund due to the manufacturer from EPA for the engineering and development component of the NCP.

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Thursday
January 21, 1988

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Ethylene Oxide; Proposed Rule and Notice of Hearing

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-200B]

Occupational Exposure to Ethylene Oxide

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule and notice of hearing.

SUMMARY: By this notice, the Occupational Safety and Health Administration (OSHA) is proposing to amend its existing standard that regulates occupational exposure to ethylene oxide (29 CFR 1910.1047) to include an excursion limit for ethylene oxide (EtO) of 5 parts of EtO per million parts of air (5 ppm) averaged over a maximum sampling period of 15 minutes.[1]

OSHA requests comment on whether an excursion limit is feasible and would reduce the significant risk faced by workers at the current 8-hour time-weighted average (TWA) permissible exposure limit for ethylene oxide.

Where the excursion limit is exceeded, employers would be obligated to reduce exposure through implementation of feasible engineering controls and work practices, supplemented by the use of respirators where necessary. In addition, employers would be required to establish and implement a written compliance program to achieve the excursion limit, establish exposure monitoring and training programs for employees subjected to EtO exposure above the excursion limit and identify as regulated areas any locations where airborne concentrations of EtO exceed the excursion limit.

[1] OSHA is adopting the term "excursion limit" to refer to the short term permissible exposure limit adopted here. The term "STEL", previously used by OSHA, is used by the American Conference of Governmental Industrial Hygienists (ACGIH) to refer to a short term limit dictated by specific toxicologic or hazard data (ACGIH Threshold Limit Values and Biological Exposure Indices for 1986–1987, 3).

Because OSHA is not basing the short term permissible limit for EtO on such data, OSHA instead is using the distinctive term, "excursion limit". OSHA notes that ACGIH also uses the term "excursion limit" to refer to a limitation on short term exposures which are called for by industrial hygiene considerations, where toxicological data are unavailable (*Id* at 4–5). This preamble, in some places, uses the terms "STEL" and "excursion limit" interchangeably, mostly in quoting from previous discussions where the distinction had not been made.

This proposal is issued in response to the decision of the U.S. Court of Appeals for the District of Columbia circuit (Ex. 202) in *Public Citizen Health Research Group* v. *Tyson*, 796 F. 2d 1479, which remanded the EtO standard to the Agency for further proceedings on the need for a short-term exposure limit.

DATES: Comments in response to this notice, hearing requests, and notices of intention to appear at the tentatively scheduled informal rulemaking hearing on the proposal must be postmarked by February 22, 1988. Documentary evidence and witness statements for the hearing must also be received by February 22, 1988. The public hearing on the proposed standard, if convened in response to request from the public, will commence on March 3, 1988.

ADDRESSES: Comments on the proposed standard should be submitted in quadruplicate to the Docket Officer, Docket No. H–200, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Notices of intention to appear at the hearing and testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3649, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523–8615. The hearing will be held in Washington, DC beginning March 3, 1988 at 10:00 a.m. in the auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:
Proposal: Mr. James F. Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N–3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523–8151.

Hearings: Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3649, 200 Constitution Avenue, NW., Washington, DC 20210; (202)523–8615.

SUPPLEMENTARY INFORMATION:

I. Events Leading to This Action

On January 26, 1982, OSHA published an Advance Notice of Proposed Rulemaking (47 FR 3566) announcing its intention to reevaluate its existing EtO standard of 50 ppm as an 8-hour TWA. In addition to a request for public comment on the adequacy of 50 ppm as a TWA, comment was also solicited on the question of the necessity of a short-term limit as follows:

> Is a short-term or ceiling limit for EtO exposures necessary and why, and what would be the technological and economic feasibility of complying with that limit? (48 FR 3566)

On April 21, 1983, OSHA published a Notice of Proposed Rulemaking for EtO that proposed to reduce the permissible 8-hour TWA from 50 ppm to 1 ppm (48 FR 17284). Although a specific short-term limit for EtO was not included in the proposed regulatory text, public comment on that issue was solicited by the following questions:

> Is a short-term or ceiling exposure limit for EtO exposure necessary for the PEL or action level in view of recent information regarding increased spontaneous abortions and chromosome changes in workers exposed to EtO? What monitoring methods and control technology are available to meet such a short-term limit and what would be the economic burdens, if any, of such a limit? (48 FR 17284)
>
> and,
>
> What are the most suitable methods for determining compliance with EtO permissible exposure limits (PEL's) of 0.5 and 1 ppm as 8-hour time-weighted averages and for ceilings ranging from 5 to 50 ppm for 30 minutes or less? What are the problems associated with such monitoring methods? Do they require special training or experience? Are there serious limitations as to the accuracy or precision of the available sampling techniques? (48 FR 17284)

Numerous comments and data were received by OSHA in response to the short-term limit questions set forth in the ANPR and NPRM (Ex. 168). However, the final EtO rule published on June 22, 1984, which lowered the permissible 8-hour TWA from 50 ppm to 1 ppm (49 FR 25734) reserved decision on the question of whether the standard should contain a short-term limit (Ex. 167A). In the June 22, 1984 final rule, OSHA stated that upon its review of comments submitted by the Office of Management and Budget (OMB) pursuant to Executive Order 12291 (Ex. 162), OSHA determined that certain issues relating to a short-term limit were important and merited further consideration. To develop the fullest possible administrative record, all exhibits in the docket relating to the short-term limit (compiled as Ex. 168), were submitted to a number of scientifically qualified peer reviewers for comment, analysis, and criticism. The peer reviewers filed statements that were placed in the public docket. Public comments on the statements filed by the peer reviewers on the issues raised by OMB on the June 14, 1984 draft standard were solicited by a **Federal Register** notice published September 19, 1984 (49 FR 36659).

After a review of the rulemaking record pertaining to the short-term limit, OSHA published a **Federal Register** notice on January 3, 1985 (50 FR 64) announcing its determination that the available health data did not necessitate the establishment of a short-term limit to supplement the 8-hour TWA of 1 ppm. OSHA's decision not to issue a short-term limit for EtO centered on three findings: First, the available health data did not demonstrate the risks from EtO exposure to be dose rate-dependent. In other words, the studies did not indicate that the risk from exposure to a given dose of EtO are greater when that dose is distributed at high concentrations over a short period of exposure during a workday rather than at a lower concentration during a longer period of time. Second, since the effects of EtO are assumed to be *dose* dependent rather than dose-*rate* dependent, OSHA concluded that reduction of the total dose was the critical factor in dealing with the significant risks of EtO exposure. Therefore, the Agency believed that the 1 ppm TWA was sufficient to minimize significant risk, within the bounds of feasibility. Third, in terms of industrial hygiene and methods of controlling EtO, it was felt that compliance with the TWA would in itself necessitate the control of short-term exposures, particularly for employees whose exposure consists primarily of short-term bursts.

Petition for review of OSHA's decision not to adopt a short-term limit for EtO subsequently was filed by the Public Citizen Health Research Group, pursuant to section 6(f) of the OSH Act (29 U.S.C. 655(f)). In its decision in *Public Citizen Health Research Group* v. *Tyson* (796 F. 2d 1479), the United States Court of Appeals for the District of Columbia determined that OSHA had not demonstrated substantial evidence to support its decision not to adopt a short-term limit, and remanded the case to OSHA for further proceedings on the short-term limit issue. The opinion of the Court leading to the remand is discussed below.

II. The Court Decision

On July 25, 1986, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on the ethylene oxide standard (*Public Citizen Health Research Group* v. *Tyson*, 796 F. 2d 1479). In that decision, the Court upheld OSHA's permissible exposure limit of 1 ppm as an 8-hour time-weighted average, finding that OSHA had "complied with the relevant legal standards in promulgating the 1 ppm PEL." 796 F. 2d at 1503. In addition, the Court upheld OSHA's determination that the evidence in the rulemaking record did not establish the existence of a dose-rate relationship for the health effects of EtO. However, the Court rejected OSHA's argument that the lack of such an established dose-rate effect rendered it unnecessary for the Agency to promulgate a short-term limit for EtO. The Court noted:

> The agency recognized that EtO exposures at 1 ppm still allowed a significant health risk * * * If in fact a STEL would further reduce a significant health risk and is feasible to implement, then the OSH Act *compels* the agency to adopt it (barring alternative avenues to the same result). 796 F. 2d at 1505.

Therefore, the Court said, in order for OSHA to avoid issuing a short-term limit for EtO, the Agency must find either that a short-term limit would have no effect on the significant risk which is still present at 1 ppm TWA, or that a short-term limit is not feasible. If the Agency cannot make either of these two findings, then a short-term limit must be issued. The Court proceeded to remand the EtO standard to the Agency for further proceedings on these issues, specifically directing OSHA to "either adopt a short-term limit or explain why empirical or expert evidence on exposure patterns makes a short-term limit irrelevant to controlling long-term exposures". 796 F. 2d at 1507.[2]

The present proceeding on the need for an excursion limit for EtO does not reopen the various other issues which were resolved by the Court in upholding the PEL of 1 ppm. In particular, the Agency's risk assessment is not at issue in this proceeding. The only matters open for consideration in this rulemaking are those which center on the efficacy and feasibility of an excursion limit, on the interrelationship of the PEL and the excursion limit in reducing the health risks of EtO, and on the appropriateness of the proposed new requirements pertaining to the excursion limit such as exposure monitoring and training.

OSHA's argument that a short-term limit was not "reasonably necessary" centered on two basic findings: first, the lack of an established "dose-rate" for EtO; second, the efficacy of the PEL alone at reducing short-term exposures. The Court upheld the former determination, but rejected the latter as not being supported by substantial evidence on the record as a whole. Neither of the two findings by OSHA involved an analysis of whether a short-term limit would be "feasible." Because OSHA determined as a threshold finding that a short-term limit was not "reasonably necessary," there was no need at that time to determine whether implementation of a short-term limit would have been "feasible." The Court recognized that OSHA made no findings on the feasibility of a short-term limit as part of its determination not to issue one. The Court did assume "that a 10 ppm short-term limit is feasible because no party has contested the issue at this point." 796 F. 2d at 1506. However, this constituted neither an explicit finding of feasibility, nor a rejection of any findings of infeasibility by the Agency, because no such feasibility findings were made for the establishment of a short-term limit.

With the Court's rejection of OSHA's stated rationale for not promulgating a short-term limit, in addition to determining whether an excursion limit will be effective in reducing significant risks below those remaining at a 1 ppm TWA, the feasibility of an excursion limit will need to be addressed at this stage of the EtO rulemaking; if an excursion limit is determined to have an effect on the significant risk that persists at a 1 ppm PEL, the Agency will then need to determine that the given limit is feasible. Further, the Court decision does not foreclose the Agency from determining that a short-term limit will not affect the risk, or that a short-term limit is not feasible, based on substantial evidence on the record.

On July 21, 1987 the Court of Appeals for the district of Columbia Circuit issued a further decision on the ethylene oxide rulemaking, in *Public Citizen Health Research Group* v. *Brock*, 823 F. 2d 626. In that decision, the Court clarified its mandate to OSHA by ordering that "OSHA's final decision on the EtO short-term exposure limit is to issue no later than March 1988." 823 F. 2d at 629.

The comment period and hearing schedule established in this proposal have been developed to enable the Agency to comply with the Court's mandate.

III. Pertinent Legal Authority

Authority for this action is found primarily in sections 6(b), 8(c), and 8(g)(2) of the Occupational Safety and

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[2] While OSHA believes that a short-term limit is relevant to controlling long-term EtO exposures, adding an excursion limit may not always be effective in reducing average long-term exposures, depending, for example, on the patterns of background. It has been suggested that mandating short-term exposures may result in the shifting of resources from controls on background exposures to controls on short-term exposures. Thus, while exposure peaks may be reduced, background exposure could increase in a way that may, depending on the pattern of exposures, adversely affect average long-term exposures. OSHA does not believe that this possibility pertains to the proposed EtO excursion limit.

Health Act of 1970 (the Act), 29 U.S.C. 655(b), 657(c), and 657(g)(2). Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents. Section 3(8) of the Act, 29 U.S.C. 652(8), defines an occupational safety and health standard as:

> (A) standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide a safe or healthful employment and places of employment.

The Supreme Court has said that section 3(8) applies to all permanent standards promulgated under the Act and requires the Secretary, before issuing any standard to determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980).

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed regulatory action, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employees will suffer material impairment of health * * *" (Section 6(b)(5) of the Act). The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility. *American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981).

Authority for this action is also found in section 8(c)(3) of the Act. In general, this section empowers the Secretary to require employers to make, keep, and preserve records regarding activities related to the Act. In particular, section 8(c)(3) gives the Secretary authority to require employers to "maintain accurate records of employees exposure to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6." Provisions of OSHA standards which require the making and maintenance of records of medical examinations, exposure monitoring, and the like are issued pursuant to section 8(c) of the Act.

The Secretary's authority to issue this proposed amendment is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act. This section empowers the Secretary "to prescribe such rules and regulations as he may deem necessary to carry out (his) responsibilities under the Act"—in this case as part of or ancillary to, a section 6(b) standard. The Secretary's responsibilities under the Act are defined largely by its enumerated purposes, which include:

> Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions (29 U.S.C. 651(b)(1));
>
> Authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to business affecting interstate commerce (29 U.S.C. 651(b)(3));
>
> Building upon advance already made through employer and employee initiative for providing safe and health working conditions (29 U.S.C. 651(b)(4));
>
> Providing for the development and promulgation of occupational safety and health standards; (29 U.S.C. 651(b)(9));
>
> Providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem (29 U.S.C. 651(b)(12));
>
> Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions * * * (29 U.S.C. 651(b)(6));
>
> Encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment (29 U.S.C. 651(b)(13)), and
>
> Developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems (29 U.S.C. 651(b)(5)).

Because this amendment to the ethylene oxide standard is reasonably related to these statutory goals, the Secretary finds that this proposed action is necessary to carry out his responsibilities under the Act.

In addition, section 4(b)(2) of the Act provides that standards issued under OSHA apply to construction and maritime employment where the secretary determines these standards to be more effective than existing standards which otherwise apply to that employment. (As set forth in 29 CFR 1910.19(h), the current EtO standard applies to construction and maritime employment, in addition to its coverage of general industry).

IV. Justification for the Proposed Adoption of an Excursion Limit

Section 6(b)(5) of the OSH Act requires the Agency to set health standards which most adequately assure protection against significant risk of material health impairment, to the extent feasible. OSHA established its 8-hour TWA of 1 ppm for EtO (49 FR 25734) based upon considerations of feasibility, and determined that significant cancer risk would persist even below that level. As discussed above, the U.S. Court of Appeals has directed that OSHA reconsider further means of reducing that risk and "either adopt a STEL or explain why empirical or expert evidence on exposure patterns makes a STEL irrelevant to controlling long-term average exposures." 796 F. 2d at 1507. The Agency believes that additional protection against continuing significant risk could be provided by a limitation on short-term exposures of 5 ppm over a maximum 15 minute period. This additional protection is believed to be feasible in the affected industries (see discussion under "Regulatory Flexibility and Impact Analysis"). For industry sectors whose exposure patterns involve periods of intermittent, burst-type exposures to EtO, the excursion limit may result in TWA exposures well below 1 ppm. For example, a single daily exposure at the proposed excursion limit of 5 ppm, with no other exposures during the day, would result in an 8-hour TWA of 0.16 ppm. Since an employee would likely have other background and residual exposures as well, the actual exposure would likely be higher than 0.16 ppm as an 8-hour TWA. In this regard, the use of an excursion limit will supplement the 1 ppm TWA in controlling significant risks, as mandated by Section 6(b)(5).

OSHA previously concluded that a short-term limit was not needed since "the compliance program designed to maintain exposure at or below the 1 ppm * * * limit * * * will also substantially reduce the magnitude of short-term exposures" (50 FR 64). The Agency also argued to the Court in *Public Citizen*, that "the record clearly indicates that for a number of reasons the benefits that would be achieved by a short-term limit will be almost entirely achieved by the PEL". Respondents brief at 55. The Court disagreed with these assertions. In the opinion of the Court, the Agency's conclusions were not supportable since it had not been demonstrated that "in attempting to meet the 1 ppm PEL, employers will *in every case* reduce short-term exposures * * *" 796 F. 2d at 1505.

The Court concluded that:

> The evidence in this record * * * does not demonstrate that employers will necessarily reduce short-term exposures below 10 ppm in order to meet the PEL. For example, an employer might measure a very low background level of EtO exposure, a level significantly below the 1 ppm PEL. Conceivably, such an employer could allow short-term exposures to exceed 10 ppm over

a fifteen-minute period but still have cumulative exposure fall below the 1 ppm PEL, which is an eight-hour average. 796 F. 2d at 1505.

The 8-hour TWA for EtO of 1 ppm was established because OSHA believed that this new exposure limit would substantially reduce the significant risk associated with EtO exposures at the previous TWA of 50 ppm, and that the 1 ppm level would be feasible for most operations in most workplaces that use EtO. However, as OSHA's quantitative risk assessment shows, an excess EtO-related cancer mortality risk of 12 to 23 deaths per 10,000 workers persists even at the 1 ppm 8-hour TWA level. Congress has mandated that reducing significant occupational health risks to the lowest feasible level clearly lies within OSHA's authority under the Act. The Court of Appeals remand on this issue in the EtO context further supports this position. If an excursion limit would, in fact, supplement the current 8-hour TWA to further reduce average long-term employee exposures to below the existing significant risk. OSHA believes that promulgation of a 5 ppm excursion limit for EtO would be consonant with the intent of the Act.

The available data on current exposure patterns and control measures indicate that compliance with a 5 ppm, 15-minute excursion limit may indeed augment the employee protection provided by the 8-hour TWA in many cases. For example, in the unlikely but theoretically simple situation where an employee is exposed to 24 ppm of EtO for a single 15-minute interval and to absolutely no other EtO for the remainder of the working day, that employee's 8-hour TWA exposure would be 0.75 ppm. As noted above, a 15-minute excursion limit of 5 ppm would reduce this 8-hour TWA to 0.16 ppm. The Agency's risk assessment indicates that the excess cancer risk associated with this EtO dosage would be 2 to 4 cases per 10,000 workers, substantially below the significant risk posed by a 1 ppm PEL. Since the likehihood of encountering a zero background level of EtO in any EtO-using, handling, or storing workplace is essentially nil, and since many workers are exposed to more than one episode of EtO exposure during the working day, it is possible that an employee's daily dose of EtO, and, therefore, that employee's cancer risk, will be generally higher than calculated using the short-term total dose alone.

In more typical workplaces, where short-term peak exposures are the major sources of exposures, two or more exposure episodes per day are common. Examples of operations associated with exposures of this type are cylinder changing, unloading of small sterilizers, and moving sterilized products to aeration rooms.

The written and oral comments of several expert witnesses that were made during OSHA's previous rulemaking on EtO suggest that the 8-hour TWA and 15-minute excursion limit may well work hand-in-hand to achieve effective control over exposures of this nature. [Exs. 11–68, 11–83, 11–113, 11–142, 78, Tr. 216]. Based on the current record, OSHA believes that the excursion limit/TWA combination will act to minimize both the number and the magnitude of excursions occurring during the working day in many EtO workplaces, resulting in a reduction in risk that persists with the TWA alone.

It is important to draw a distinction between reducing short term exposures to reach the mandatory 1 ppm TWA (the issue addressed by OSHA in its decision with regard to the need for an EtO STEL), and reducing short term exposures to reduce average exposures below the TWA (the issue raised by the Court in its decision).

There is no question that many employers have sought to reduce total dose by reducing short-term exposures, as discussed earlier. This strategy is clearly an easy and cost-effective way to reduce average exposures. The report by Meridian Research Inc., as well as other evidence in the record (Exs. 11–68, 11–83, 11–142, 78, 112, TR. 216) support this strategy. There is as yet no evidence in the record to the contrary. OSHA, therefore, is inviting comments and specific data on which an excursion limit would fail to further reduce total dose and therefore the risk that would persist at the 1 ppm TWA. OSHA would also like to know if there are specific situations in which the incorporation of an excursion limit would result in work practices which would be counterproductive in reducing residual risk.

A second issue is the reduction in risk which would be achieved by controlling short-term exposures where employees are exposed to short bursts, i.e. when and excursion limit would be most likely to reduce total dose. The Court cited a hypothetical case in which a very low background exposure would allow short-term exposures to exceed 10 ppm over a 15-minute period "but still have a cummulative exposure fall below the 1 ppm TWA, which is an eight-hour average." A once-per-day exposure at the proposed excursion limit of 5 ppm would result in an 8-hour TWA of 0.16 ppm. The Court's example illustrates what may be generally true: an excursion limit will reduce average exposures further in situations where employees are exposed to burst exposures and where average exposures are already below the TWA. In its final rule on EtO, OSHA concluded that a significant risk remained at the 1 ppm TWA. The extent to which this significant risk would be reduced by an excursion limit is an issue on which OSHA request comment.

V. Regulatory Flexibility and Impact Analysis

Introduction

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) similarly requires OSHA to consider the impact of the proposed regulation on small entities.

The Secretary has determined that this action would not be "major" as defined by section 1(b) of Executive Order 12291. The Secretary also certifies that this action would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. This determination is based upon cost and feasibility data provided to OSHA in a report prepared by Meridian Research, Inc. (Ex. 204, *Assessment of Short-Term Exposures to Ethylene Oxide*).

On March 31, 1983, the Office of Management and Budget (OMB) published a new 5 CFR Part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (48 FR 13666). Part 1320, which became effective on April 30, 1983, sets forth procedures for agencies to follow in obtaining OMB clearance for collection of information requirements in proposed and final rules. In particular, § 1320.13 requires agencies to submit information requirements contained in proposed rules to OMB not later than the date of publication of the proposal in the **Federal Register.** It also requires agencies to include a statement in the notice of proposed rulemaking, indicating that such information requirements have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act.

In accordance with the above mentioned provisions of both the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the

information collection requirements contained in its proposed rule on occupational exposure to ethylene oxide to OMB for review under section 3504(h) of that Act. Comments on these information collection requirements may be submitted by interested persons to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for OSHA; 726 Jackson Place, NW., Washington, DC 20503. OSHA requests that copies of such comments also be submitted to the OSHA Docket Office, as part of the record of this rulemaking.

Summary of Exposure, Technological Feasibility, and Cost Data

In response to the Court's remand discussed above, OSHA has evaluated short-term employee exposures to EtO in the sectors which would principally be affected by promulgation of an excursion limit, assessed the technological feasibility of achieving compliance with the excursion limit alternatives under consideration, and developed cost-of-compliance data for firms in the affected sectors. In particular, OSHA has made a preliminary determination as to the portion of an employee's full-shift exposure that is accounted for by short-term peaks.

For this effort, OSHA contracted with Meridian Research, Inc., to gather the information specified above and to conduct a total of nine site visits to selected facilities in four industry sectors: EtO producers, EtO ethoxylators (i.e., facilities using EtO as a chemical feedstock), hospitals, and firms that use EtO to sterilize medical and other products and devices. Meridian was unable to arrange a site visit to a facility in the fifth potentially affected sector, spice manufacturing, because no spice manufacturing firm was willing to permit a site visit. Meridian's final report appears in the docket as Exhibit 204. For the purposes of this analysis, OSHA considered two regulatory alternatives: A 10 ppm excurison limit (15 minutes) and a 5 ppm excursion limit (15 minutes). OSHA's principal findings are discussed below.

The five sectors listed above were identified for further study by OSHA based on the information available in the rulemaking record (see the Regulatory Impact Assessment for the final rule for ethylene oxide, Ex. 164, and the report entitled *Economic and Environmental Impact Study of Ethylene Oxide*, written by JRB Associates, 1984, Ex. 6–22). In two of these sectors—chemical production and ethoxylation—a total of approximately 50 U.S. firms produce or use EtO as a chemical feedstock in closed systems in an outdoor environment. In the three other sectors—hospitals, spice manufacturing, and medical products sterilizing—EtO is used as a sterilant gas to sterilize medical equipment and devices, paper and other products, and spices. OSHA estimated (49 FR 25767, June 22, 1984) that there were as many as 6,300 hospitals, 125 medical products sterilizers, and fewer than 30 spice manufacturers in the United States. Medical and other product sterilization firms can be divided into two groups of companies: Those that have a sterlization department within a larger facility that produces the medical devices or other products to be sterilized, and small firms that provide sterilization services exclusively, generally on a contract basis. At the time of the 1984 rulemaking, OSHA estimated that a total of 71,196 directly exposed employees and 69,175 incidentally exposed employees were exposed to EtO in these five sectors (49 FR 25767, June 22, 1984).

Short-term Exposure Data

On the site visits conducted in connection with this analysis, Meridian took 8-hour TWA personal samples on all potentially exposed employees at eight of the sites visited. Using passive dosimeters, these long-term breathing zone samples were taken over the full shift of the employees sampled. In addition, whenever these employees initiated an activity having the potential for a short-term peak exposure, Meridian's Certified Industrial Hygienist took short-term (15-minute) breathing zone samples using hydrogen-bromine-treated charcoal tubes, as specified by OSHA's Method 50. Short-term samples were taken during all activities during the working day that were associated with episodic exposures. The specific activities characterized by such short-term peaks varied according to sector. For example, in production and ethoxylation facilities, peaks were associated with activities such as quality control sampling and railcar unloading, while high, short-duration exposures occurred in the sectors that use EtO as a sterilant during such activities as sterilizer loading and unloading and removal of biological indicators from freshly sterilized goods. Meridian believes that the sites visited represent the "better" firms in their respective sectors (i.e., firms that have active safety and health programs and/or have expended considerable time and effort to attempt to achieve the 1 ppm PEL).

OSHA's employee sampling results showed that implementation of engineering and work practice controls have reduced employee exposure to below that anticipated by OSHA when promulgating the final standard in June, 1984. In addition, almost without exception, where employers had achieved compliance with the final rule's 1 ppm 8-hour permissible exposure limit (PEL), controlling short-term employee exposures to either 10 ppm or 5 ppm would neither be difficult nor expensive. OSHA therefore believes that a 5 ppm excursion limit is feasible.

The results of OSHA's data gathering on short-term exposures were as follows: in the EtO-producing sector, 8-hour employee exposures ranged from 0.21 to 0.78 (TWA), while 15-minute short-term exposures did not exceed 2.2 ppm. (In this sector, no samples were taken by OSHA because of inclement weather during the site visit; these results were given to OSHA by the EtO-producing company itself). In the ethoxylator sector, 8-hour TWAs were nondetectable, while 15-minute short-term exposures ranged from nondetectable to 1.07 ppm.

In the sterilant-using sectors, short-term exposures tend to be higher because of the episodic exposure pattern characteristic of these sectors. Samples taken by Meridian at three hospitals showed that the 8-hour TWA exposures of sterilizer operators in these facilities ranged from 0.14 to 0.34 ppm, while their 15-minute short-term exposures never exceeded 0.95 ppm. The hospitals selected for this analysis included a large, private-sector facility, a small rural hospital, and a large public-sector institution.

EtO exposures in the medical products sterilization sector appear to be strikingly dependent on the size of the facility in question. In large sterilization facilities owned by firms that manufacture medical products and sterilize them before shipping them off site, employee exposures in the facilities studied by Meridian have been reduced to levels well below the 1 ppm TWA, and short-term exposures are correspondingly low. The full-shirt samples taken at two large facilities in this sector ranged from 0.08 to 0.36 ppm, and the 15-minute short-term exposures at these plants ranged from 0.24 to 4.1 ppm. At two small sterilization facilities in this sector, however, full-shift exposure levels were measured that were considerably above the 1 ppm PEL promulgated in the final rule. At one of these small facilities, the sterilizer operator had an 8-hour TWA of 3.97 ppm, and at the other small contract-sterilization plant, the sterilizer's full-shift exposure was 2.84 ppm, while that of the laboratory technician was 2.27

ppm. The short-term exposures of these employees were correspondingly high. At the first small facility, the short-term exposures (approximately 15 minutes) of the sterilizer operator ranged from 2.15 to 7.89 ppm, while the sterilizer operator's short-term exposures at the second facility ranged as high as 32.2 ppm (15 minutes) and those of the laboratory technician were as high as 7.21 ppm.

As stated earlier, no spice manufacturing firm was willing to permit Meridian to visit a spice facility; consequently, OSHA was unable to obtain any current data on short-term exposures of employees in this sector. However, information obtained during the rulemaking for the final EtO standard shows that the sterilization technology used in the spice manufacturing industry is similar to the technologies used in the sterilization of medical products (JRB Associates, Ex. 6–22). Short-term exposures in the spice sterilization operation may occur during the unloading of sterilized spices from the sterilizer, the handling of newly sterilized product, and the changing of EtO cylinders. OSHA has no data to suggest that short-term exposures in the spice manufacturing industry are substantially different from those in other EtO sterilant-using industry sectors. Therefore, by analogy to the exposure data obtained from medical product sterilizer facilities, OSHA believes that it will be possible to control the short-term exposures of employees in the spice manufacturing sector at or below 5 ppm.

The pattern that emerged at all the sites visited was thus consistent across sectors: where employers have achieved compliance with the 1 ppm PEL, their facilities would already be in compliance with either a 5- or a 10-ppm short-term limit or could feasibly achieve these levels with minor changes in work practices. There was only a single exception to this finding among all sites visited by Meridian: at one facility, the evening-shift sterilizer operator's short-term (approximately 15 minutes) exposures were 3.56, 10.97, 8.49, and 0.39 ppm; no full-shift measurement was taken on this operator, and thus it is possible that his 8-hour TWA exceeded 1 ppm. However, because 87 percent of the 8-hour TWA exposure level of the day-shift operator at the same facility was accounted for by his four short-term exposures, OSHA considers it unlikely that the evening shift operator's 8-hour TWA actually exceeded 1 ppm. (As described below, OSHA believes that this employee's short-term exposure could be reduced to 5 ppm by a modification in work practices). OSHA therefore believes that firms that have achieved compliance with the 1 ppm TWA promulgated in the final rule in 1984 should be able to lower employee exposures to a 10- or 5-ppm short-term level, at minimal cost.

Technological Feasibility

Site visit observations, exposure data, and reports from the trade literature have shown that, in the producer, ethoxylator, hospital, and medical product sterilizer sectors (and, by analogy, the spice manufacturing sector), achieving compliance with a 5 or 10 ppm STEL is feasible with the use of the same engineering and work practice controls determined by OSHA at the time of the final rule to be feasible to achieve the 1 ppm PEL. The engineering controls implemented by those employers who had achieved compliance with the 1 ppm PEL were standard and widely available controls: local exhaust and general dilution ventilation, the use of closed-loop sampling devices, vapor recovery systems at railcar loading racks, and enclosure/ventilation of aeration and Guarantine areas. In addition, at least one spice manufacturing firm is planning to adopt a substitute for EtO, thus eliminating employee exposures (Meridian Research personal communication, spice company representative, November 21, 1986). OSHA believes it likely that other spice manufacturers will also be able to use a substitute sterilant.

Work practice controls used by employers at the sites visited to reduce exposures include: Opening ("cracking") sterilizer doors for 15 minutes before unloading the sterilizer, pulling rather than pushing carts containing offgassing goods, and performing manual leak detection.

The use of respiratory protection was observed during a few short-term activities: During railcar loading at the EtO producer facility and when entering walk-in sterilizers at medical product sterilization facilities.

In addition to exposure data obtained from site visits, a number of submissions to the EtO docket (Exs. 4–13, 11–132, 139, 179, 198A) indicate that a 5 ppm excursion limit can be achieved during operation of EtO sterilizers in hospitals. Several articles submitted by T. Joel Loving of the University of Virginia's Environmental Health and Safety Office show that the use of vacuum purge systems and exhaust hoods can reduce the 8-hour TWA to or below 1 ppm and the short-term limit to or below 5 ppm for 15 minutes.

OSHA's findings thus demonstrate that it is likely to be feasible to comply with either a 5 ppm or 10 ppm excursion limit. The major engineering controls in use at the sites visited to achieve the excursion limits, are the same controls that OSHA determined in the Regulatory Impact Assessment (Ex. 163) and JRB Associates' report (Ex. 6–22) to be necessary to achieve compliance with the current 1 ppm PEL. OSHA's analysis shows that, in some instances, employers may need to implement additional work practice controls, such as extending the period of offgassing in the sterilizer, to achieve compliance with a 5 ppm excursion limit. OSHA requests comment on this analysis and on the feasibility of meeting a 10 ppm or 5 ppm excursion limit.

Summary of Costs

To assess the magnitude of the costs that might be incurred by employers to comply with a short-term limit, OSHA estimated the costs potentially associated with achieving a 10 ppm or 5 ppm short-term limit at each of the nine facilities visited by Meridian Research. OSHA's analysis shows that both the 10 ppm and 5 ppm short-term limit, were already being achieved at the EtO producer site, the ethoxylator site, one large medical product sterilizer facility, and three hospital sites. Therefore, no additional costs would be incurred at any of these sites to comply with a 10 ppm or 5 ppm excursion limit.

At the remaining large medical product sterilizer site visited by Meridian, exposure data collected on the day-shift sterilizer operator show that both the 10 ppm and 5 ppm short-term limits, were achieved. However, samples taken on the night-shift operator at this site showed that his 15 minute short-term exposures exceeded 5 and 10 ppm. OSHA believes that this operator's short-term exposure could be reduced by allowing the sterilizer load to offgas inside the sterilizer for four hours before sterilized product is removed by the operator. This practice would not interfere with the work schedule currently being used at this site and would thus be unlikely to result in an increase in costs. If allowing the load to offgas for 4 hours did not reduce this operator's short-term exposures to below 5 ppm, OSHA believes that the sterilization unit's work schedule could be adjusted so that the load could offgas for 8 hours before the operator unloaded the sterilizer.

Neither of the two small medical product sterilizer facilities was currently achieving the 5 ppm excursion limit, and one short-term sample taken at one site

(Company F, Ex. 204) exceeded 10 ppm for a sterilizer operator. However, at both of these sites, sterilizer operators and a laboratory technician also had 8-hour TWA exposures that exceeded the current 1 ppm PEL. Area samples taken at these sites indicate that high ambient levels of EtO were present as a result of the offgassing of sterilized product. OSHA believes that installing ventilated, enclosed quarantine areas and modifying existing ventilation systems are necessary in order to comply with the existing 1 ppm PEL and that these changes would substantially aid in achieving compliance with a 5 ppm excursion limit. Therefore, OSHA believes that employers at these sites will incur no (or at most nominal) additional costs over those of the current standard to comply with either a 10 ppm or 5 ppm excursion limit.

OSHA's findings thus demonstrate that employers are not likely to incur significant costs to comply with an excursion limit. These findings reflect site visit observations and evidence in the record (Ex. 11–132) that the engineering controls that are necessary to achieve the 1 ppm 8-hour TWA also can be implemented to reduce short-term exposures to 5 ppm, although some minor work practice changes may be necessary in some activities.

The proposed excursion limit will be associated with an increased cost burden primarily in connection with the provision dealing with exposure monitoring. The requirement for the monitoring of excursion levels will increase the burden of affected employers because the type of sampling required to evaluate short-term exposures is different from the type of monitoring required to monitor the final standard's 8-hour TWA PEL or the action level. Because methods for monitoring short-term exposures to EtO have only recently been developed and become commercially available, OSHA assumes that employers in the affected sectors will not have been able to perform short-term employee monitoring and thus, that all affected firms will need to perform initial STEL monitoring. This assumption is a worst-case analysis, in that some firms in the principally affected sectors are likely to be performing some short-term sampling. Because the method for evaluating short-term exposures requires some specialized training and equipment, OSHA has based the cost estimate for initial monitoring on the assumption that each firm will retain the services of an industrial hygiene consultant for 8 hours, at a cost of $35.00 per hour, to collect the necessary short-term samples. The effect of using this assumption is also to overstate costs somewhat, because many facilities have in-house industrial hygiene personnel and laboratory facilities to collect and analyze their monitoring samples. The sectors principally affected by OSHA's EtO standard are: EtO producers: EtO ethoxylators (i.e., who use EtO as a feedstock chemical); sterilizers of heat- and moisture-sensitive medical products and devices; hospitals; and spice manufacturers. The number of short-term samples to be collected will depend on the number of activities occurring during the day that may cause elevated short-term exposures to EtO. The pattern of exposure varies from sector to sector; for example, sterilizer operators using EtO to sterilize medical devices are generally exposed to elevated short-term exposures four or five times per shift, while the unit operator in an ethoxylation facility performs activities having the potential for short-term exposures two or three times in a working day.

To estimate the average number of short-term samples that employers in each of these sectors would collect to comply with an initial excursion limit monitoring requirement, OSHA relied on the feasibility study conducted by Meridian Research, Inc. [Ex. 204]. While conducting sites visits to facilities in the affected sectors, Meridian collected from 30 to 10 short-term (15 minute) samples at each facility. For the purpose of monitoring cost estimation, OSHA therefore assumes that employers at each facility will need to collect an average of six short-term samples to fulfill his or her initial excursion limit monitoring obligation.

OSHA estimates that, under a worst-case scenario, employers in the five principally affected EtO sectors will incur a total cost of $3,161,480 to comply with the proposed initial excursion limit monitoring. Individual sector cost are: $6,370 for EtO producers; $24,500 for ethoxylators, $61,250 for medical products sterilizers; $3,056,130 for hospitals; and $13,230 for spice manufacturers.

Economic Impact and Regulatory Flexibility Analyses

Based on the preceding cost analysis, OSHA has determined that the additional costs of complying with the proposed 5 ppm excursion limit are likely to be negligible for employers that are in compliance with the existing 1 ppm PEL. Thus the promulgation of a 5 ppm excursion limit is not likely to have a significant economic impact on typical firms in each sector or cause adverse differential impacts on small entities in each sector. Comment is requested on this issue.

Relationship Between Short-Term and 8-Hour TWA Exposures to EtO

To address the Court's request that OSHA examine the impact of controlling short-term employee exposures on the residual health risks that remain at the 1 ppm TWA PEL, OSHA assessed the contribution of employees' short-term exposures to their 8-hour TWA exposures. To accomplish this analysis, Meridian obtained concurrent personal 8-hour TWA and short-term air samples during visits to sites in several sectors. Meridian then calculated each employee's total EtO exposure from short-term activities (in ppm-minutes) and each employee's total full-shift exposure in ppm-minutes (determined from the 8-hour TWA). This analysis permitted OSHA to determine the extent to which an employee's 8-hour TWA would be reduced by controlling that employee's short-term exposures. While some employers have chosen to control short-term exposures to meet the 1 ppm TWA, OSHA seeks comment on the extent to which average long-term exposures would be reduced below the TWA by an excursion limit.

For example, exposure data were obtained at one ethoxylator facility. The top operator had a non-detectable 8-hour TWA exposure and a single 15-minute exposure of 1.07 ppm that occurred while the operator was collecting a quality control sample from a railcar. Even assuming that this employee's 8-hour TWA was 0.05 ppm (i.e., the limit of detection), the exposure to EtO that occurred during railcar sampling contributed 67 percent of the operator's total exposure for the day. These results show that controlling the operator's 15-minute exposure during this activity (i.e. close loop sampling system) had a significant impact on reducing the employee's 8-hour TWA to well below 1 ppm (see Site Visit Report for Company A, Ex. 204). In addition, short-term and 8-hour TWA exposure data collected at three medical product sterilizer facilities show that reducing the short-term exposures of sterilizer operators and forklift drivers contributed significantly to reducing their 8-hour TWA exposures to below 1 ppm (see Site Visit Reports for Companies C, D, and F, Ex. 204).

This analysis of the contribution of exposures experienced during short-duration, high-exposure activities has shown that controlling short-term exposures has had a substantial impact on reducing employees' 8-hour exposures to EtO. Although most of the

sites visited by Meridian will not need to implement additional controls to achieve compliance with an excursion limit of 5 ppm, one site may need to change its work schedule to extend the amount of offgassing time before removal of the load from the sterilizer or of biological indicators from sterilized product. OSHA believes other firms in the affected sectors may also need to implement additional work practices or alter their work schedules to accommodate longer offgassing times.

Summary of Benefits

To the extent an excursion limit reduces average long-term exposures, then the cancer deaths prevented by adoption of an excursion limit represent the primary benefit derived from this action. As discussed previously in this preamble, it is not possible to quantify the number of deaths prevented by compliance with the excursion limit since data do not reveal the precise incremental EtO dose reduction that will result from limiting 15-minute short-term exposures to 5 ppm. However, OSHA has estimated the risk from a lifetime exposure, assuming exposure only once a day to a 5 ppm short-term limit, with no other exposure or background levels of EtO, to be approximately 2 to 4 excess deaths per 10,000 workers. The calculated risks, 2 per 10,000 to 4 per 10,000 are probably low estimates, because it has been established that short-term exposures often occur more than once per day and that background EtO concentration during the day is above zero, additionally contributing to worker exposure. Thus, OSHA believes that the risk at 5 ppm will not be insignificant (*See Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980)).

OSHA believes that implementation of this proposed amendment will act to reduce the number of EtO-related cancer cases, although the number of additional lives saved cannot be quantified.

Environmental Assessment-Finding of No Significant Impact

During OSHA's previous rulemaking on EtO, information was solicited from the public on a variety of issues including possible environmental impacts of a revised standard which might contain both a TWA and short-term limit. The information and comments submitted have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq), the regulations of the Council on Environmental Quality (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary has determined that this proposed action will not have a significant impact on the external environment.

EtO is used primarily as an intermediate in the production of several industrial products, such as antifreeze, polyester fibers, films, and bottles. EtO is also used as a pesticide, fumigant, and antimicrobial sterilant for medical products and spices, and in limited applications for items such as cosmetics, books, railcars, etc.

Adoption of an excursion limit is not anticipated to affect the external environment because: (1) The process equipment containing EtO generally consists of tightly closed and highly automated system: (2) any emissions that occur to the external atmosphere would dissipate and disperse rapidly; and (3) no solid waste is directly associated what EtO fumigation and sterilization.

Although the removal of increased amounts of EtO from the workplace air might seem to contribute to the pollution of ambient air surrounding EtO operations and applications, this is not anticipated because direct exhaust to the external environment is regulated under EPA air quality standards. In cases where worker exposure is reduced by the use of improved control methods such as chamber ventilation and purge systems, atmospheric emissions of EtO would remain constant, having an insignificant impact on the external environment.

Only minimal amounts of EtO are released from manufacturing processes as wastewater effluents. Treatment of EtO containing wastes usually involves degradation in water (producing ethylene glycol). Wastewater treatment must comply with the requirements of the Clean Water Act of 1977, and under this standard, conventional biological wastewater treatment would effectively remove EtO from water effluents.

In cases where liquid EtO is transported or stored, there may be some potential for spills or leaks. Because of the nature of EtO, however, such occurrences are not anticipated to impact on the environment, since EtO quickly volatilizes and dissipates. Although instances of waste disposal have not been presented to the record, such disposal would be covered by EPA regulations and transportation would be regulated by the Department of Transportation. The requirements of the proposed standard will not alter present methods for waste disposal or transportation of EtO.

Based on this discussion, OSHA concludes that there will be no significant impact on the general quality of the human environment outside the workplace, particularly in terms of ambient air quality, water quality, or solid waste disposal. OSHA, of course, reserves the right to perform additional environmental analyses based on the information and comments received in response to this Notice.

VI. Summary and Explanation of the Proposed Requirements

The proposed requirements set forth in this notice are those which, based on currently available data, OSHA believes are necessary and appropriate to provide additional protection to employees who are now exposed to airborne concentrations of EtO at levels that pose a significant risk of material impairment to their health. OSHA has considered all data and recommendations on the short-term limit issue contained in the EtO docket (H–200), as well as reference works, journal articles and other data accumulated by OSHA since initiation of this rulemaking.

OSHA believes that compliance obligations with respect to the excursion limit may need to be set forth in several paragraphs of the present EtO standard in order for the maximum benefit to be derived from adoption of this limit. Proposed requirements pertaining to adoption of the excursion limit are set forth in the following paragraphs of section 1910.1047: Scope and application (a)(2); Permissible exposure limit, (c) (2); Exposure monitoring, (d)(1)(i), (d)(1)(ii), (d)(2)(iii), (d)(3), (d)(4), and (d)(7)(ii); Regulated areas, (e)(1); Methods of compliance, (f)(1)(i), (f)(1)(ii), (f)(2)(i), and (f)(2)(iv); Respiratory protection and personal protective equipment, (g)(1)(iii); Communication of EtO hazards to employees, (j)(1)(ii), (j)(3)(i); and Dates, (m)(1)(i) and (m)(2)(iii). The following discussion describes how the proposed requirements in each of these paragraphs would modify employers current obligations under the EtO standard.

Scope and Application, Paragraph (a)(2)

This paragraph specifies that the EtO standard does not apply to products containing EtO where data demonstrate that the product is not capable of releasing EtO in airborne concentrations at or above the 8-hour TWA action level of 0.5 ppm. OSHA believes that it would be appropriate to require the employer to demonstrate that the product is also not capable of releasing EtO concentrations above the excursion limit

in order for that product to be exempt. The Agency proposes this modification based on its conclusion that risk can be reduced by additionally specifying that product exemption is acceptable only if exposures also will not exceed the excursion limit. To illustrate this proposition, it can be calculated that under the present standard a product is exempt if emitted dose remains below 240 ppm/minutes (0.5 ppm×480 minutes). Thus, for products which may by nature initially emit relatively high EtO concentrations over a short time span, the current standard would exempt such products only if they are not capable of releasing 16 ppm EtO over a 15 minute period (16 ppm×15 min=240 ppm-minutes). Imposition of the excursion limit would not allow exemption in this example (e.g. for product exemption emitted dose could not exceed 75 ppm-minutes [5 ppm×15 minutes], rather than 240 ppm-minutes). Thus, imposition of the STEL, under worst case exposure conditions, would theoretically reduce the allowable release of EtO for products to be exempted from the standard.

Permissible Exposure Limit Paragraph (c)(2)

Proposed paragraph (c)(2) would establish the excursion limit as follows: "The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of 5 parts of EtO per million parts of air (5 ppm) as determined over a maximum sampling period of fifteen (15) minutes."

OSHA has determined that exposure to EtO under the present standard still presents a significant risk of material impairment to employees. Based on the current record, OSHA believes that compliance with the excursion limit as set-forth in this paragraph will further reduce such significant risk.

As noted earlier, OSHA must also give consideration to the economic and technological feasibility of the proposed excursion limit in this phase of the EtO rulemaking. In order to obtain the information necessary to allow the Agency to perform such a feasibility analysis, OSHA contracted for the services of Meridian Research, Inc. of Silver Spring, Maryland, to perform site visits and exposure monitoring in representative EtO-using facilities (Ex. 204). Based on these data, and data previously provided to the EtO record, OSHA believes that compliance with the excursion limit is likely to be both technologically and economically feasible (see "Regulatory Flexibility and Impact Analysis" section).

Exposure Monitoring, Paragraphs (d)(1)(i), (d)(i)(ii), (d)(2)(ii), (d)(3)(iv), (d)(4)(iii), (d)(4)(iv), and (d)(7)(ii)

The proposed amendment to paragraph (d)(1)(i) would require that the employer perform breathing zone sampling that is representative of the 15-minute short-term exposure of each employee. Paragraph (d)(1)(ii), as amended, would require that representative 15-minute short-term employee exposures be determined on the basis of one or more samples representing 15-minute exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

While these exposure monitoring provisions would require that the employer determine the short-term exposure for each employee exposed to EtO, it does not necessarily require separate measurements for each employee. If a number of employees perform essentially the same job under the same conditions, it may be sufficient to monitor a fraction of such employees. Representative personal sampling for employees engaged in similar work and exposed to similar short-term EtO levels can be achieved by measuring the exposure of that member of the exposed group who can reasonably be expected to have the highest exposure. This result would then be attributed to the remaining employees of the group.

In many specific work situations, the representative monitoring approach can be more cost-effective in identifying the exposures of affected employees. However, employers may use any monitoring strategy that correctly identifies the extent to which their employees are exposed.

Existing paragraph (d)(2)(i) would apply to the excursion limit, and would require employers to perform initial monitoring to determine accurately the short-term airborne concentrations of EtO to which employees are exposed. However, proposed paragraph (d)(2)(iii) contains a provision designed to eliminate unnecessary and redundant exposure monitoring. It would permit employers who have monitored short-term employee exposures to EtO within a one-year period immediately preceding publication of a final rule in the **Federal Register** to forego the initial monitoring required by paragraph (d)(2)(i) if the results of monitoring within this period have shown that their employees are not exposed to EtO levels above the excursion limit.

This provision makes clear that OSHA does not intend to require employers who have voluntarily performed employee monitoring to repeat such monitoring if they have reliable and objective data showing that their employees are not exposed to EtO above the excursion limit. Thus, OSHA believes that proposed paragraph (d)(2)(iii) will enhance the cost effectiveness of the standard's monitoring requirements without compromising employee protection. The frequency of monitoring and termination of monitoring requirements regarding the excursion limit are found in proposed paragraphs (d)(3)(iv), (d)(4)(iii) and (d)(4)(iv). The excursion limit itself would not change the current frequency and termination of monitoring provisions as they apply to the TWA.

With the adoption of an excursion limit the final rule would contain a TWA, a excursion limit, and an action level. The interrelationship among these three exposure levels would determine the frequency at which employers are obligated to monitor employee exposures. There would be six possible exposure scenarios, or combinations of TWA and short-term exposures, that would determine the frequency of required monitoring if an excursion limit were promulgated. The table below lists these six exposure scenarios, along with the monitoring frequency for each. As indicated previously, the frequency provisions dictated by the action level and TWA would not be changed by adoption of the excursion limit. However, these levels are included in the Table below to clarify what the overall monitoring obligations would be if all three triggering levels existed. (Note: "EL" means "excursion limit" in the table below).

Exposure scenario	Required monitoring activity
—Below the action level and at or below the EL.	No monitoring required.
—Below the action level and above the EL.	No TWA monitoring required; monitor short-term exposures 2 times per year.
—At or above the action level, at or below the TWA, and at or below the EL.	Monitor TWA exposures 2 times per year.
—At or above the action level, at or below the TWA, and above the EL.	Monitor TWA exposures 2 times per year and monitor short-term exposures 2 times per year
—Above the TWA and at or below the EL.	Monitoring TWA exposures 4 times per year
—Above the TWA and above the EL.	Monitor TWA exposures 4 times per year; monitor excursion limit exposures 2 times per year.

As is shown by the table above, the action level trigger largely determines whether employers must monitor employee exposure to EtO; the only exception would be the scenario in which 8-hour TWA exposures are below the action level and short-term

exposures are above the excursion limit. In this particular case, the existence of an excursion limit would obligate employers to monitor short-term exposures two times per year at those job locations where the excursion limit is exceeded, but employers would not be obligated to monitor 8-hour TWA exposures at those job locations. Although OSHA has proposed that excursion limit monitoring be performed semiannually where overexposure is found, comment is solicited on the adequacy of this monitoring frequency. The Agency considered requiring quarterly or even more frequent periodic monitoring where the excursion limit is exceeded due to the potential variability in burst type exposure levels from day to day, week to week, or month to month. Comment is sought on whether semiannual monitoring of employees who are likely to receive short-term exposures above the excursion limit is sufficiently representative of expected exposures throughout the year.

Paragraph (d)(4)(iii), would permit termination of excursion limit monitoring where initial monitoring required under paragraph (d)(2)(i) reveals employee exposure to be at or below the excursion limit. Likewise, paragraph (d)(4)(iv) would permit termination of the proposed periodic excursion limit monitoring under paragraph (d)(3), if at least two consecutive excursion limit measurements taken at least 7 days apart, are at or below the excursion limit. These are the same termination of monitoring requirements applicable to the existing action level (i.e. TWA monitoring not required where exposures are below the action level). OSHA believes that incorporating some monitoring termination mechanisms with respect to the excursion limit, is reasonable and may be appropriate as proposed. Comment is requested on these proposed amendments. Based on the nature of the occurrence of short-term EtO exposures, however, comment is particularly requested on the degree of confidence that can be placed in assuming that short-term exposures will remain below the excursion limit, if initial monitoring or two specific periodic measurements indicate such. The Agency is seeking data on whether short-term EtO exposures in industry today can be expected to consistently remain below a given limit, or whether the magnitude of short-term exposures fluctuates so frequently and widely that more stringent demonstration of short-term exposure stabilization is necessary, prior to permitting the termination of excursion limit monitoring.

Existing paragraph (d)(5) or OSHA's EtO standard requires additional monitoring for TWA exposures whenever there has been a change in production, process, control equipment, personnel or work practices that may result in new or additional EtO exposures. If an excursion limit is adopted, the current requirement would also require additional excursion limit monitoring where the employer suspects that workplace changes also may increase short-term exposures. The Agency requests comments both on the appropriateness of requiring such additional excursion limit monitoring as described above and on specific workplace changes and situations that might result in an increase in short-term exposures.

Paragraphs (d)(6) of the current EtO standard requires that monitoring methods be accurate to within plus or minus 25% for EtO concentrations at the 1 ppm TWA, and plus or minus 35% at the action level of 0.5 ppm. These accuracy specifications were based on data in the record that showed that several EtO measurement methods and devices were available to employers on a widespread basis that could meet the specified accuracy requirements for compliance determinations. OSHA believes that a number of measurement methods and devices are also available to employers that can accurately determine compliance with the EtO excursion limit. These include the Qazi-Ketcham method (Ex. 11–133), direct reading instruments such as infrared detection units, photoionization detection units and gas chromatographs, and the recently developed OSHA method 50 (Ex. 203). Other devices, such as passive dosimeters, may also prove to be suitable in determining short-term exposures. Presently available data indicate, however, that dosimeters may not yet be capable of accurately measuring short-term EtO levels. The Agency is aware that dosimeter manufacturers are attempting to develop their products for this purpose. Because of the wide range of methods and the developmental work currently being conducted, OSHA is not proposing specific accuracy limitations with respect to STEL monitoring. The Agency may incorporate accuracy requirements in the final standard but believes that additional data will result in a more appropriate determination on this issue.

OSHA requests the submission of data identifying available STEL monitoring methods, levels that can be measured, accuracy, availability for use by the EtO industry, degree of expertise needed to perform excursion limit monitoring, and costs.

Paragraph (d)(7), as amended, would require that employers notify employees of the results of excursion limit, monitoring performed pursuant to the standard, and inform employees of corrective action being taken by the employer to reduce exposure to or below the excursion limit where the excursion limit has been exceeded. These notification requirements have been determined to be appropriate where TWA monitoring is performed, and are also believed to be appropriate where excursion limit monitoring is performed.

Regulated areas, paragraph (e)(1)

This paragraph, as amended, would require employers to identify as regulated areas any locations in their workplaces where there may be occupational exposures to airborne concentrations of EtO above either the excursion limit or as is specified currently, above the TWA.

OSHA believes that additionally designating areas where the excursion limit is exceeded as regulated areas will further reduce EtO exposure to employees currently permitted in these areas. For example, regulated areas need not be established for EtO dosages below 480 ppm-minutes (1 ppm x 480 minutes). This permits an exposure of up to 32 ppm over 15-minutes prior to the need for regulated area designation. Adoption of the excursion limit will also require regulated area designation for areas in which EtO levels exceed 5 ppm for 15-minutes, or a dose of 75 ppm-minutes.

Methods of Compliance, Paragraphs (f)(1)(i), (f)(1)(ii), (f)(2)(i) and (f)(2)(ii)

As discussed previously (see section on Summary of Regulatory Flexibility and Impact Analysis) OSHA believes that compliance with the proposed excursion limit can be accomplished by the majority of the EtO industry through implementation of feasible engineering and work practice controls. OSHA, therefore, proposes to require in paragraph (f)(1)(i) of the existing EtO standard, that the employer institute engineering and work practice controls to reduce and maintain employee exposure to or below the excursion limit except to the extent that such controls are not feasible. OSHA further proposes, in paragraph (f)(1)(ii), to require that wherever feasible engineering controls and work practices that can be instituted are not sufficient to reduce employer exposure to or below the excursion limit the employer shall use

them to reduce exposure to the lower levels achievable by those controls, and shall supplement them by the use of respirators. Based on available evidence, OSHA believes that the use of engineering and work practices controls will reduce employer exposure to or below the excursion limit for practically all situations. OSHA recognizes in paragraph (f)(1)(iii) of the existing standard, however, that there are some situations where engineering controls are not generally feasible, especially as they pertain to control of short-term exposures. These EtO activities include: collection of quality assurance samples from sterlized materials; removal of biological indicators from sterilized materials; loading and unloading of tank cars; changing of EtO tanks on sterilizers; and vessel cleaning. These operations generally result in short-term high exposures. Thus, considering that the existing standard permits the use of respirators during these difficult to control activities, OSHA has greater confidence that it is feasible to control virtually all other short-term exposure activities through implementation of engineering and work practice controls. Nevertheless, OSHA seeks comments on whether employers should be permitted to use respirators to achieve compliance with the excursion limit in any situation where the TWA is being complied with.

Amended paragraph (f)(2)(i) would require, where the excursion limit, is exceeded, that the employer establish and implement a written program to reduce employer exposure to or below the excursion limit, by means of engineering and work practice controls, and by the use of respirators when permitted.

OSHA believes that the written plan for achieving the excusion limit, is as essential as the written plan requirement adopted for achieving the TWA, in ensuring that the employer implement the necessary controls to reduce exposure. The plan also provides the information that would allow OSHA, the employer, and employees to examine the excursion limit control methods chosen and to evaluate the extent to which these planned controls are being implemented. As with the TWA written plan, the excursion limit compliance plan will be accessible to individuals designated in paragraph (f)(2)(ii) for inspection and copying.

Paragraph (f)(2)(iv), as amended, would prohibit employee rotation as a means of compliance with the excursion limit for the same reasons that employee rotation is not permitted for compliance with the TWA. This prohibition is consistent with OSHA's view that this control strategy is not appropriate in occupational environments involving exposure to potential carcinogens. It results in exposure of a larger number of employees to levels of EtO which still present a significant risk.

Respiratory Protection and Personal Protective Equipment, Paragraph (g)(1)(iii)

The final standard, with adoption of an excursion limit would provide that respirators be used to limit short-term employee exposure to EtO in the following circumstances:

(i) During the interval necessary to install or implement feasible engineering and work practice controls to achieve the excursion limit;

(ii) In-work operations such as maintenance and repair activities or vessel cleaning or other activities for which the employer establishes that engineering and work practice controls are not feasible to achieve the excursion limit; and

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the excursion limit.

These same requirements apply under the current standard with respect to respirator use in complying with the TWA, and are based on OSHA's established policy on compliance methodology (see preample discussion in the current EtO standard, 49 FR 25734).

Other requirements under this paragraph (g) dealing with "Respirator selection" and "Respirator program", would remain unchanged and would apply where respirators are used to achieve the excursion limit.

Communication of EtO Hazards to Employees, Paragraphs (j)(1)(ii), (j)(3)(i)

The existing EtO standard requires, in paragraph (j)(1)(ii), that employers ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level. OSHA also proposes to include in this paragraph a requirement for labeling of containers of EtO whose contents are capable of causing employee exposure above the excursion limit.

Existing paragraph (j)(3)(i) requires that information and training on EtO be provided to employees exposed above the action level. OSHA also proposes to include in this paragraph a requirement that information and training on EtO be provided to employees exposed above the excursion limit.

The basis for these proposed actions is that regulation of short-term exposures will act to reduce further the significant risk of excess death to EtO employees that persists under the current rule. Additionally, informing employees through labeling and training that high levels of hazardous materials can be released into the workplace may better enable affected employees to take precautionary measures to protect themselves.

Effective Date, Paragraph (m)

As proposed, the final amendments to the EtO standard would become effective thirty (30) days following publication in the **Federal Register.** In order to establish appropriate start-up dates from the effective date, OSHA requests comment on the length of time employers believe will be required in order to achieve compliance with the proposed excursion limit, and the time necessary to establish additional exposure monitoring, respirator, and training programs that would be required by adoption of an excursion limit for EtO.

VII. References

The studies and other data referred to in this document represent the primary sources upon which this proposed action is based. A complete set of the references is available for examination and copying at the OSHA Docket Office, Room N–3670, U.S Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, between 8:30 am and 4:30 pm, Monday through Friday, legal holidays excepted.

VIII. Public Participation

Interested persons are invited to submit written data, views, and arguments on this proposed amendment. These comments must be postmarked on or before February 22, 1988 and submitted in quadruplicate to the Docket Officer, Docket No. H–200, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N–3670, Washington, DC 20210, (202)523–7894. Written submissions must clearly identify the provisions of the proposal which are addressed, and the position taken on each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions will be part of the record of the proceeding.

Public Hearing

OSHA has tentatively scheduled an informal public hearing to begin at 10:00 a.m. on Thursday, March 3, 1988, depending on whether any hearing

requests are received by the Agency. The hearing will be held in the Auditorium, Francis Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC. Interested persons who wish to request a hearing must file such request by February 22, 1988.

Requests for Hearings

Under section 6(b)(3) of the OSH Act and 29 CFR 1911.11 interested persons who desire that OSHA hold an oral hearing on the proposal may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
3. Each objection must be separately stated and numbered; and
4. The objections must be accompanied by a detailed summary of the evidence proposed to be introduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course, make those objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" if the interested persons desire to request an oral hearing.

Requests for a hearing should be submitted in quadruplicate, postmarked on or before February 22, 1988 and addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–200B, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8615.

Notice of Intention to Appear

Persons desiring to participate at the hearing, including the right to question witnesses, must file a notice of intention to appear postmarked by February 22, 1988. The notice of intention to appear must contain the following:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed;
6. A statement as to whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

This notice of intention to appear is to be sent to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N–3649, 200 Constitution Avenue, NW., Washington, DC 20210.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for presentation at the hearing or who will present documentary evidence, must provide in quadruplicate, the complete text of its testimony, including all documentary evidence to be presented at the hearing. These materials must be postmarked no later than February 22, 1988 and sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, at the address just specified.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact. Any party who has not substantially complied with the above requirements, may be limited to a 10 minute presentation and may be requested to return for questioning at a later time.

Notices of intention to appear, testimony and evidence, will be available for inspection and copying at the Docket Office, Docket H–200, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3670, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–7894.

The hearing is scheduled to commence at 10:00 a.m. on March 3, 1988 in Washington, DC. The hearing will be presided over by an Administrative Law Judge who will have the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. To limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard.

If no hearing requests are submitted by interested persons by the deadlines set forth above, no hearing will be held. OSHA will then publish a notice in the **Federal Register**, indicating that there will be no hearing. The Agency will also contact all persons who submitted comments in response to this proposal, to inform them of this fact.

The proposal will be reviewed in light of the comments received, additional comments and testimony received and all other relevant material in the record. Decisions on the provisions of a final standard will be made by the Assistant Secretary based on the entire record of the proceeding.

IX. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Pursuant to sections 4, 6(b), 8(c) and 8(g)(2) of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), it is hereby proposed to amend 29 CFR 1910.1047 as set forth below.

List of Subjects in 29 CFR Part 1910

Ethylene oxide, Occupational Safety and Health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, DC, this 19th day of January.

John A. Pendergrass,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of 29 CFR Part 1910 would continue to, in pertinent part, read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657, Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

* * * * *

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

2. Paragraphs (a)(2), (c), (d)(1)(i), (d)(1)(ii), (d)(2)(ii), (d)(4), (d)(7)(ii), (e)(1), (f)(1)(i), (f)(1)(ii), (f)(2)(i), (f)(2)(iv), (g)(1)(iii), (j)(1)(ii) introductory text, and (j)(3)(i) of § 1910.1047 would be revised, (m)(1) is redesignated as (m)(1)(i), and new paragraphs (d)(3)(iv), (m)(1)(ii), and (m)(2)(iii) would be added to § 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide

(a) * * *

(2) This section does not apply to the processing, use, or handling of products containing EtO where objective data are reasonably relied upon that demonstrate that the product is not capable of releasing EtO in airborne concentrations at or above the action level, or in excess of the excursion limit, under the expected conditions of processing, use, or handling that will cause the greatest possible release.

* * * * *

(c) *Permissible exposure limits*—(1) *8-hour time weighted average (TWA).* The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of one (1) part EtO per million parts of air (1ppm) as an 8-hour time-weighted average (8-hour TWA).

(2) *Excursion limit.* The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of 5 parts of EtO per million parts of air (5 ppm) as determined over a maximum sampling period of fifteen (15) minutes.

(d) * * *

(1) * * *

(i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA and maximum 15-minute short-term exposures of each employee.

(ii) Representative 8-hour TWA employee exposure shall be determined on the basis of one or more samples representing full-shift exposure for each shift for each job classification in each work area. Representative 15-minute short-term employee exposures shall be determined on the basis of one or more samples representing 15-minutes exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

* * * * *

(2) * * *

(ii) Where the employer has monitored for the excursion limit after (insert date one-year prior to final FR notice) and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(3) * * *

(iv) If the monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure above the 15-minute excursion limit, the employer shall repeat such monitoring for each such employee at least every 6 months.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure to be below the action level, the employer may dscontinue TWA monitoring for those employees whose exposures are represented by the initial monitoring.

(ii) If the periodic monitoring required by paragraph (d)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level the employer may discontinue TWA monitoring for those employee whose exposures are represented by such monitoring.

(iii) If the initial monitoring required by paragraph (d)(2)(1) of this action reveals employee exposure to be at or below the excursion limit, the employer may discontinue excursion limit monitoring for those employees whose exposures are represented by the initial monitoring.

(iv) If the periodic monitoring required by paragraph (d)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are at or below the excursion limit, the employer may discontinue excursion limit monitoring for those employees whose exposures are represented by such monitoring.

* * * * *

(7) * * *

(i) * * *

(ii) The written notification required by paragraph (d)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce employee exposure to or below the TWA and/or excursion limit, wherever monitoring results indicated that the TWA and/or excursion limit has been exceeded.

(e) *Regulated areas.* (1) The employer shall establish a regulated area wherever occupational exposure to airborne concentrations of EtO may exceed the TWA or excursion limit.

* * * * *

(f) * * *

(1) * * *

(i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to or below the TWA and to or below the excursion limit, except to the extent that such controls are not feasible.

(ii) Wherever the feasible engineering controls and work practices that can be instituted are not sufficient to reduce employee exposure to or below the TWA and to or below the excursion limit, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (g) of this section.

* * * * *

(2) *Compliance program.* (i) Where the TWA or excursion limit is exceeded, the employer shall establish and implement a written program to reduce exposure to or below the TWA and to or below the excursion limit by means of engineering and work practice controls, as required by paragraph (f)(1) of this section, and by the use of respiratory protection where required or permitted under this section.

* * * * *

(iv) The employer shall not implement a schedule of employee rotation as a means of compliance with the TWA or excursion limit.

(g) * * *

(1) * * *

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA or excursion limit; and

* * * * *

(j) * * *

(1) * * *

(ii) The employer shall ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level or above the excursion limit, and that the labels remain affixed when the containers of EtO leave the workplace. For the purpose of this paragraph, reaction vessels, storage tanks, and pipes or piping systems are not considered to be containers. The labels shall comply with the requirements of 29 CFR 1910.1200(f) of OSHA's Hazard Communication standard, and shall include the following legend:

* * * * *

(3) * * *

(i) The employer shall provide employees who are potentially exposed to EtO at or above the action level or above the excursion limit with information and training on EtO at the

time of initial assignment and at least annually thereafter.

* * * * *

(m) * * *

(1) * * *

(ii) The requirements in the amended paragraphs in this section which pertain only to or are triggered by the excursion limit shall become effective thirty (30) days from the date of publication in the **Federal Register.**

(2) * * *

(iii) The start-up dates for compliance with the excursion limit requirements in this section shall be (period to be determined).

* * * * *

[FR Doc. 88-1238 Filed 1-19-88; 12:15 pm]

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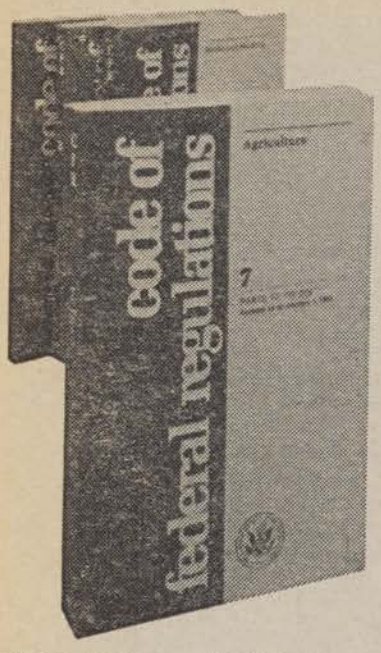

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