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WHO: The Office of the Federal Register.

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Contents

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 1988

Agricultural Marketing Service
RULES
Potatoes grown in California and Oregon, 2995
PROPOSED RULES
Cranberries grown in Massachusetts et al., 3036
Livestock; grading, certification, and standards:
Slaughter cattle and carcass beef, 3025
Potatoes (Irish) grown in Colorado, 3037

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Food Safety and Inspection Service
NOTICES
Agency information collection activities under OMB review, 3059

Animal and Plant Health Inspection Service
PROPOSED RULES
Hawaiian and territorial quarantine notices:
Conveyance, baggage, and cargo moving interstate from Hawaii, Puerto Rico, or the Virgin Islands; inspection, 3028
Interstate transportation of animals and animal products (quarantine):
Swine identification, 3146

Army Department
See also Engineers Corps
NOTICES
Patent licenses, exclusive:
Roberts Pharmaceutical Corp., 3067

Commerce Department
See also Export Administration; International Trade Administration
NOTICES
Meetings:
Private Sector Initiatives Presidential Board of Advisors, 3059

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Nikkei Stock Average, 3063
Kansas City Board of Trade—
Value Line Average and Mini Value Line Average Stock Index, 3064

Comptroller of the Currency
RULES
National banks:
Lending limits, 2997

Consumer Product Safety Commission
RULES
Hazardous substances:
Petroleum distillates; first aid direction; labeling requirements; revocation, 3014
NOTICES
Settlement agreements:
BernzOmatic, 3064

Copyright Office, Library of Congress
RULES
Cable systems:
Compulsory license—
Gross receipts reporting; correction, 3118

Defense Department
See also Army Department; Engineers Corps
NOTICES
Agency information collection activities under OMB review, 3066
Meetings:
Science Board task forces, 3067
(2 documents)

Economic Regulatory Administration
NOTICES
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
First Energy Associates et al., 3069

Education Department
See also National Council on the Handicapped
RULES
Educational research and improvement:
Library research and demonstration program, 3020
NOTICES
Grants; availability, etc.:
Leadership in educational administration development program, 3068
Strengthening institutions program, 3067
Meetings:
Bilingual Education National Advisory and Coordinating Council, 3068

Employment and Training Administration
NOTICES
Adjustment assistance:
Armco Inc. et al., 3088
Young Radiator Co. et al., 3087

Energy Department
See Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission

Energy Research Office
NOTICES
Meetings:
Energy Research Advisory Board, 3069, 3070
(2 documents)

Engineers Corps
RULES
National Environmental Policy Act; implementation, 3120

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, 3022
Iprodione, 3021

Peas, 3022
Pendamethalin, 3023
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado et al. (stack height), 3052
NOTICES
Meetings:
Science Advisory Board, 3071, 3072 (2 documents)
Pesticide, food, and feed additive petitions:
Rhone-Poulenc Ag. Co. et al., 3074
Pesticides; emergency exemption applications:
Dinoseb, 3072
Pesticides; experimental use permits, etc.:
Rohm Haas & Co., 3074
Toxic and hazardous substances control:
Confidential business information and data transfer to contractors, 3075

Export Administration
See also International Trade Administration
NOTICES
Export privileges; actions affecting:
Hakanson, Swen Olof, 3059

Farmers Home Administration
PROPOSED RULES
Employment:
County committee members; election, 3176

Federal Aviation Administration
RULES
Airport radar service areas, 3008 (2 documents)
Airworthiness directives:
Boeing, 3001
Pratt & Whitney, 3002
Prohibited areas, 3010
Restricted areas, 3010
Standard instrument approach procedures, 3011, 3012 (2 documents)
VOR Federal airways, 3005–3008 (3 documents)
PROPOSED RULES
Aircraft products and parts, certification:
Special conditions—
Boeing Model 767 series airplanes with PW4000 series engines, 3042
British Aerospace, 3040
Airworthiness directives:
Fokker, 3047
Mitsubishi, 3044
SAAB-Fairchild, 3048
Transition areas, 3049
NOTICES
Grants; availability, etc.:
Airport improvement programs, 3104

Federal Communications Commission
RULES
Radio stations; table of assignments:
Nevada, 3024
PROPOSED RULES
Common carrier services:
Domestic fixed-satellite service—
RCA American Communications, Inc.; modification of Space Station authorization, 3056
Radio services, special:
Maritime services—
Digital selective calling equipment; correction, 3058
Television broadcasting:
Television-to-land mobile interference elimination, 3057
NOTICES
Applications, hearings, determinations, etc.:
Family Stations, Inc., et al., 3076

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 3116 (2 documents)

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Ceiling prices—
Maximum lawful prices and inflation adjustment factors, 3019
NOTICES
Electric rate and corporate regulation filings:
Central Illinois Public Service Co. et al., 3070

Federal Home Loan Bank Board
NOTICES
Receiver appointments:
Citizens Savings & Loan Association, 3076

Federal Procurement Policy Office
NOTICES
Value engineering policy guidance; (Circular A-131), 3130

Federal Reserve System
RULES
Securities credit transactions; OTC margin stocks list (Regulations G, T, U, and X), 2998
NOTICES
Agency information collection activities under OMB review, 3076
Applications, hearings, determinations, etc.:
Century Financial Corp. et al., 3077
McNeal, Larry, et al., 3077
Omdahl, Richard A., 3077
State Bancshares, Inc., et al., 3078
Workingmens Corp. et al., 3078

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Swine identification, 3146

Health and Human Services Department
See Human Development Services Office; National Institutes of Health

Human Development Services Office
NOTICES
Grants; availability, etc.:
Social services block grant program; Federal allotments to States, 3079

Interior Department
See also Land Management Bureau; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office
NOTICES
School facilities; new construction applications, 3080

Internal Revenue Service
RULES
Income taxes:
Property and casualty insurance companies; paid and unpaid losses; treatment of salvage and reinsurance
Correction, 3118
PROPOSED RULES
Income taxes:
Property and casualty insurance companies; paid and unpaid losses; treatment of salvage and reinsurance; cross reference—
Correction, 3118

International Trade Administration
See also Export Administration
RULES
Export licensing:
Foreign policy-based export controls, 3014
NOTICES
Antidumping:
Elemental sulphur from Canada, 3062
Applications, hearings, determinations, etc.:
Carnegie Mellon University et al., 3061
University of Colorado, 3062
University of Delaware et al., 3062

International Trade Commission
NOTICES
Import investigations:
Bimetallic cylinders from Japan, 3084
Ink jet printers employing solid ink, 3085
Recloseable plastic bags and tubing, 3086
Small aluminum flashlights and components, 3083
Welded carbon steel pipes and tubes from India, 3084

Interstate Commerce Commission
PROPOSED RULES
Motor carriers:
Commercial zones and terminal areas, 3058
NOTICES
Agency information collection activities under OMB review, 3086
Rail carriers:
Bangor & Aroostook Railroad Co. et al.; interchange agreements, 3086
Railroad services abandonment:
Southern Railway Co., 3086

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
PROPOSED RULES
Minerals management:
Onshore oil and gas operations; Federal and Indian oil and gas leases, order no. 4, 3158
Onshore oil and gas operations; Federal and Indian oil and gas leases, order no. 5, 3168
NOTICES
Committees; establishment, renewal, termination, etc.:
National Public Lands Advisory Council, 3081
Environmental statements; availability, etc.:
Coal preference right lease applications—
Colorado, 3080
Realty actions; sales, leases, etc.:
North Dakota, 3080
Resource management plans, etc.:
Arizona, 3080

Library of Congress
See Copyright Office, Library of Congress

Management and Budget Office
See Federal Procurement Policy Office

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
BethEnergy Mines Inc., 3089
Jim Walter Resources, Inc., 3089

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 3090
Space and Earth Science Advisory Committee 3090
Space Station Advisory Committee, 3090

National Council on the Handicapped
NOTICES
Meetings; Sunshine Act, 3116

National Credit Union Administration
RULES
Reporting and recordkeeping requirements, 3000

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 3079

National Park Service
NOTICES
Concession contract negotiations:
Adventure Bound, Inc., et al., 3083
National Register of Historic Places:
Pending nominations—
Kentucky et al., 3083

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 3116
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 3091
Illinois Power Co., 3092
Virginia Electric & Power Co., 3093

President's Commission on Privatization
NOTICES
Meetings, 3093

Privatization, President's Commission
See President's Commission on Privatization

Public Health Service
See National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
All-American Canal Project, CA, 3081, 3082
(2 documents)

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 3093, 3094
(2 documents)

Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp., 3101
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange, Inc., 3102
Applications, hearings, determinations, etc.:
CTC Mansfield Funding Corp., 3094
EBI Series Trust et al., 3097
Germany Fund, Inc., 3102
Public utility holding company filings, 3100
RCS Emerging Growth Fund, 3099

Small Business Administration
NOTICES
License surrenders:
DGC Capital Co., 3104
Applications, hearings, determinations, etc.:
Raffensperger Hughes Venture Corp., 3102

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission:
Oklahoma, 3050

Transportation Department
See Federal Aviation Administration

Treasury Department
See also Comptroller of the Currency; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 3114, 3115
(2 documents)

Separate Parts In This Issue

Part II
Department of Defense, Department of the Army, Corps of Engineers, 3120

Part III
Office of Management and Budget, Federal Procurement Policy Office, 3130

Part IV
Department of Agriculture, Animal and Plant Health Inspection Service, Food Safety and Inspection Service, 3146

Part V
Department of the Interior, Bureau of Land Management, 3158

Part VI
Department of the Interior, Bureau of Land Management, 3168

Part VII
Department of Agriculture, Farmers Home Administration, 3176

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.

7 CFR
947 ... 2995
Proposed Rules:
53 ... 3025
54 ... 3025
318 ... 3028
929 ... 3036
948 ... 3037
2054 ... 3176

9 CFR
Proposed Rules:
71 ... 3146
78 ... 3146
85 ... 3146
309 ... 3146
310 ... 3146
320 ... 3146

12 CFR
32 ... 2997
207 ... 2998
220 ... 2998
221 ... 2998
224 ... 2998
795 ... 3000

14 CFR
39 (2 documents) ... 3001, 3002
71 (5 documents) ... 3005–3008
73 (2 documents) ... 3010
97 (2 documents) ... 3011, 3012
Proposed Rules:
21 (2 documents) ... 3040, 3042
25 (2 documents) ... 3040, 3042
39 (3 documents) ... 3044–3048
71 ... 3049

15 CFR
Ch. III ... 3014

16 CFR
1500 ... 3014

18 CFR
271 ... 3019

26 CFR
1 ... 3118
Proposed Rules:
1 ... 3118

30 CFR
Proposed Rules:
936 ... 3050

33 CFR
230 ... 3120
325 ... 3120

34 CFR
777 ... 3020

37 CFR
201 ... 3118

40 CFR
180 (4 documents) ... 3021–3023
Proposed Rules:
52 ... 3052

43 CFR
Proposed Rules:
3160 (2 documents) ... 3158, 3168

47 CFR
73 ... 3024
Proposed Rules:
25 ... 3056
69 ... 3057
80 ... 3058

49 CFR
Proposed Rules:
1041 ... 3058
1048 ... 3058
1049 ... 3058

Rules and Regulations

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

Potatoes Grown in Designated Areas in California and Oregon; Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will make permanent the relaxed minimum size requirements currently in effect for high quality potatoes shipped for market expansion purposes. The current requirements were made effective on a temporary basis until March 7, 1988. The relaxed requirements are designed to develop and expand the market for potatoes. This final rule also includes all of the other handling requirements established over the years and currently in effect under the marketing order. Their inclusion in this rulemaking document and their eventual publication in the Code of Federal Regulations will make them easier for interested persons to locate and use. The inclusion of these requirements does not result in a change in regulatory effect.

EFFECTIVE DATE: March 4, 1988.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 947, as amended [7 CFR Part 947], regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 [44 U.S.C. 3507] and have been assigned OMB No. 0581–0112.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 42 handlers of Oregon-Northern California potatoes subject to regulation under the marketing order, and approximately 469 potato producers in Oregon and Northern California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual revenues are less than $3,500,000. The majority of handlers and producers of Oregon-Northern California potatoes may be classified as small entities.

The handling requirements for fresh Oregon-California potatoes are specified in § 947.340 [46 FR 47757, September 30, 1981; 48 FR 38203, August 23, 1983; 52 FR 7120, March 9, 1987]. The most recent amendment relaxed the minimum size requirements for potatoes shipped under specific conditions for market expansion purposes for the period February 25, 1987, through March 7, 1988, and permanently exempted all non-white fleshed varieties of potatoes from handling regulations.

Notice of this change was published in the October 30, 1987, issue of the **Federal Register** [52 FR 41730] affording interested persons 30 days in which to submit written comments. None were received.

Potatoes that measure less than 1½ inches in diameter may be shipped under the temporarily relaxed minimum size requirements specified in the March 9, 1987, final rule provided that they grade at least U.S. No. 1, and are packed in quantities of 50 pounds or more per container. Red-skinned varieties of potatoes allowed to be shipped under the relaxed requirements must be at least "Size B." "Size B" potatoes have a minimum diameter of 1½ inches and a maximum diameter of 2¼ inches and no minimum or maximum weight requirement.

Prior to shipping any such potatoes under the relaxed size requirements, handlers must apply for and obtain from the committee each marketing season a special purpose certificate authorizing shipment of the potatoes. In addition, handlers who ship potatoes under the relaxed minimum size provisions are required to promptly report information requested by the committee relating to such shipments, including the grade and usage of the potatoes, once the shipments are concluded. The reporting requirements are designed to provide adequate safeguards to assure that the potatoes shipped under these provisions are shipped to the intended market for the stated purpose, and to provide the committee with information necessary to monitor and evaluate the effects of such shipments on the market.

This action making the current rule permanent is designed to further the development of new markets and further expand marketing opportunities for potato growers in Oregon and Northern California. This action was recommended by the Oregon-California Potato Committee.

The committee reports that about 600 pounds of potatoes have been test marketed as samples to prospective customers e.g., restaurants, under the relaxed minimum size requirements. These shipments have been well received, and shipments of potatoes under the relaxed requirements are expected to increase considerably. The committee is of the opinion that the

procedures set up on a temporary basis for keeping track of those shipments to make sure that the potatoes do not end up in the markets for larger-sized Oregon-California potatoes will work on a permanent basis. Further, the committee believes that such shipments will not adversely impact the market for larger-sized potatoes, and hence, these requirements should be established on a permanent basis. For potatoes shipped to markets desiring larger-sized potatoes, the minimum size requirements are 2 inches in diameter or 4 ounces in weight for potatoes shipped within the continental United States, and 1½ inches in diameter for potatoes shipped to export destinations, while the minimum grade requirement is U.S. No. 1 for potatoes packed in 50-pound cartons and U.S. No. 2 for potatoes packed in other size containers.

Exemptions to the handling requirements will continue to be available. For example, the minimum grade, size, cleanness, maturity, pack and inspection requirements do not apply to certified seed potatoes, or potatoes for canning, freezing, prepeeling, and "other processing". Exemptions are available for livestock feed and charity under certain conditions, and any person may handle up to 1,900 pounds of potatoes per day without regard to the inspection requirements.

Also, under this action, the entire handling regulation [§ 947.340] will be published in the **Federal Register**, not just paragraph (b) which is being amended. The purpose for taking this action is to consolidate the handling regulation, and the various amendments to it, into one document, and have the entire regulation published in the next issue of the Code of Federal Regulations. This will make the requirements easier to locate and use. This action will not result in any regulatory changes.

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

It is hereby found that permanently relaxing the minimum size requirements currently in effect for high quality potatoes shipped for market expansion purposes will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon, California.

For reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

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

2. In § 947.340 (46 FR 47757, September 30, 1981; 48 FR 38203, August 23, 1983; 52 FR 7120, March 9, 1987) the introductory text and paragraphs (a), (c), (d), (e), (f), (g), (h), (i), and (j) are republished and paragraph (b) is revised to read as follows in consequence, the entirety of § 947.340 is set out:

§ 947.340 Handling regulation.

No person shall handle any variety of potatoes grown in the production area, except for non-white fleshed varieties of potatoes, unless such potatoes meet the requirements specified in paragraphs (a) through (f) of this section, or unless such potatoes are handled in accordance with paragraphs (g) and (h), or (i) of this section.

(a) *Grade requirements.* Such potatoes grade at least U.S. No. 2.

(b) *Size requirements.* Such potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or weigh at least 4 ounces, and such potatoes shipped to export destinations shall be at least 1½ inches in diameter: *Provided,* That any person may handle all varieties of such potatoes, except red-skinned varieties of potatoes, that measure less than 1½ inches in diameter, and all red-skinned varieties of potatoes which are Size B, if such potatoes otherwise grade at least U.S. No. 1, and they are packed in quantities of 50 pounds or more per container: *Provided further,* That any person who desires to so handle potatoes shall each season prior to shipment apply for and obtain a special purpose certificate from the committee authorizing shipment of the potatoes for market expansion purposes: *Provided further,* That any person who so handles potatoes for market expansion purposes shall promptly report the shipment, grading, and usage of the potatoes to the committee.

(c) *Cleanness requirements.* All varieties and grades—As required in the United States Standards for Grades of Potatoes, except that U.S. Commercial may be no more than "slightly dirty."

(d) *Maturity (skinning) requirements.* (1) Round and White Rose varieties: not more than "moderately skinned."

(2) Other Long Varieties (including but not limited to Russet Burbank and Norgold): not more than "slightly skinned."

(3) Not to exceed a total of 100 hundredweight of potatoes may be handled during any seven day period without meeting these maturity requirements. Prior to shipment of potatoes exempt from the above maturity requirements, the handler shall obtain from the committee a Certificate of Privilege.

(e) *Pack.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes that fail to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped provided the lot contains not more than 10 percent damage by hollow heart and/or internal discoloration, as identified by USDA Color Photographs 121 and 123 [U.S. No. 1-Maximum Allowed], USDA Visual Aid POT–L–1, January 1981, or not more than 5 percent serious damage by internal defects.

(f) *Inspection.* (1) Except when relieved by paragraphs (g) and (h), or (i) of this section and paragraph (f)(2) of this section, no person shall handle potatoes without first obtaining inspection from an authorized representative of the Federal-State Inspection Service.

(2) Handlers making shipments from facilities located in an area where inspection costs would otherwise exceed one and one-half times the current per-hundredweight inspection fee, are exempt from on-site inspection provided such handler has made application to the committee for inspection exemption on forms supplied by the committee, and provided further that such handler signs an agreement with the committee to report each shipment on a daily basis and pay the committee a sum equal to the current inspection fee.

(3) For the purpose of operation under this part each required inspection certificate is hereby determined, pursuant to § 947.60(c) to be valid for a period of not to exceed 14 days following completion of inspection as shown on the certificate. The validity period of an inspection certificate covering inspected and certified potatoes that are stored in mechanically refrigerated storage within 14 days of the inspection shall be 14 days plus the number of days that the potatoes were held in refrigerated storage.

(4) Any lot of potatoes previously inspected pursuant to § 947.60 and certified as meeting the requirements of this part is not required to have additional inspection under § 947.60(b) after regrading, resorting, or repacking

such potatoes, if the inspection certificate is valid at the time of regrading, resorting, or repacking of the potatoes.

(g) *Special purpose shipments.* The minimum grade, size, cleanness, maturity, pack and inspection requirements set forth in paragraphs (a) through (f) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(1) Certified seed, subject to applicable safeguard requirements of paragraph (h) of this section.

(2) Livestock feed: However, potatoes may not be handled for such purposes if destined to points outside of the production area, except that shipments to the counties of Benton, Franklin and Walla Walla in the State of Washington and to Malheur County, Oregon, may be made, subject to the safeguard provisions of paragraph (h) of this section.

(3) Planting in the district where grown: Further, potatoes for this purpose grown in District No. 2 or District No. 4 may be shipped between those two districts.

(4) Grading or storing under the following provisions:

(i) Between districts within the production area for grading or storing if such shipments meet the safeguard requirements of paragraph (h) of this section.

(ii) Potatoes grown in District No. 2 or District No. 4 may be shipped for grading or storing between those two districts without regard to the safeguard requirements of paragraph (h) of this section.

(iii) Potatoes grown in District No. 5 may be shipped for grading and storing to points in the counties of Adams, Benton, Franklin and Walla Walla in the State of Washington, or to Malheur County, Oregon, without regard to the safeguard provisions of paragraph (h) of this section.

(5) Charity: Except that shipments for charity may not be resold if they do not meet the requirements of the marketing order, and that shipments in excess of 5 hundredweight per charitable organization shall be subject to the safeguard provisions of paragraph (h) of this section.

(6) Starch manufacture.

(7) Canning, freezing, prepeeling, and "other processing" (except starch manufacturing) as hereinafter defined (including storage for such purposes).

(h) *Safeguards.* (1) Each handler making shipments of certified seed outside the district where grown pursuant to paragraph (g) of this section shall obtain from the committee a Certificate of Privilege, and shall furnish a report of shipments to the committee on forms provided by it.

(2) Each handler making shipments of potatoes pursuant to paragraphs (2), (4)(i), and (5) of paragraph (g) of this section shall obtain a Certificate of Privilege from the committee, and shall report shipments at such intervals as the committee may prescribe in its administrative rules.

(3) Each handler making shipments pursuant to paragraph (7) of paragraph (g) of this section may ship such potatoes only to persons or firms designated as manufacturers of potato products by the committee, in accordance with its administrative rules.

(i) *Minimum quantity exemption.* Any person may handle not more than 19 hundredweight of potatoes on any day without regard to the inspection requirements of § 947.60 and to the assessment requirements of § 947.41 of this part except no potatoes may be handled pursuant to this exemption which do not meet the requirements of paragraphs (a), (b), (c), (d) and (e) of this section. This exemption shall not apply to any part of a shipment which exceeds 19 hundredweight.

(j) *Definitions.* (1) The terms "U.S. No. 1," "U.S. Commercial," "U.S. No. 2," "Size B," "moderately skinned" and "slightly skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566) including the tolerances set forth therein.

(2) The term "slightly dirty" means potatoes that are not damaged by dirt.

(3) The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 52.2422, United States Standards for Grades of Peeled Potatoes (7 CFR 52.2421–52.2433).

(4) The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, or starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing."

(5) The term "non-white fleshed potatoes" means all colored fleshed varieties of potatoes other than white-fleshed varieties of potatoes.

(6) Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 114, as amended, and this part.

Dated: January 27, 1988.

Robert C. Keeney,

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

[FR Doc. 88–2130 Filed 2–2–88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currrency

12 CFR Part 32

[Docket No. 88–2]

National Banks' Lending Limits; Banks With Agricultural or Oil and Gas Loans

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency is amending the portion of its regulation on national bank lending limits dealing with the substitute lending limit for banks with charged-off agricultural and oil and gas loans. The final rule extends the period for eligible "special category charge-offs" and, also, the period of the substitute lending limit so as to make those periods consistent with the recently amended policy on capital forbearance. This final rule is intended to provide further temporary relief from lending limit restrictions for national banks with charge-offs of agricultural and oil and gas loans.

EFFECTIVE DATE: February 3, 1988.

FOR FURTHER INFORMATION CONTACT: James F.E. Gillespie, Jr., Senior Attorney, Legal Advisory Services Division, (202) 447–1880; or Jon A. Nagy, National Bank Examiner, Commercial Activities Division, (202) 447–1164.

SUPPLEMENTARY INFORMATION: On October 30, 1986, the Office of the Comptroller of the Currency ("Office") adopted a final amendment to 12 CFR Part 32 creating a substitute lending limit for national banks with charged-off agricultural and oil and gas loans. (51 FR 39641). This final rule followed the Office's April 23, 1986, temporary rule with request for comment (51 FR 15303). The amendment was intended to provide temporary relief from lending limit restrictions to national banks which have suffered reductions in capital as a result of problems in the agricultural and oil and gas sectors of the economy. Further, the substitute limit was intended to complement the

Office's policy statement on capital forbearance, adopted on the same date (51 FR 15305).

Part 32 implements the lending limits in 12 U.S.C. 84. This final rule will allow, for two additional years, those national banks that have experienced capital declines due to charge-offs from agricultural or oil and gas loans to continue lending to their creditworthy customers under a higher substitute lending limit. As originally adopted, the relevant periods of the substitute limit matched those of the capital forbearance policy; both programs took into account charge-offs occurring on or before December 31, 1987, and both programs ended on January 1, 1993. However, in OCC Banking Circular 212 Supplement No. 2, dated July 7, 1987, and published in the **Federal Register** on September 14, 1987 (52 FR 34736), the effective periods of the capital forbearance policy were extended in light of the problems banks were continuing to experience due to a protracted recovery in some economic sectors. Specifically, the application deadline for capital forbearance was extended two years to December 31, 1989, and the period of supervisory forbearance was likewise extended two years to January 1, 1995.

As noted above, the substitute lending limit was intended to complement the capital forbearance policy. Further, the Office stated in BC–212 Supplement No. 2 that it anticipated the substitute lending limit would be extended. Accordingly, the Office is amending 12 CFR 32.8 to make that that limit co-extensive with the forbearance policy as amended. To that end, the Office is amending the definition of "Special category loan charge-offs" in 12 CFR 32.8(a)(3) to include loans charged-off through December 31, 1989, rather than December 31, 1987, as originally provided. Similarly, 12 CFR 32.8(b) is amended to provide that the substitute lending limit will remain in effect until January 1, 1995, rather than January 1, 1993, as originally provided.

Effective Date and Notice and Comment

This final rule is effective February 3, 1988. Adoption of this final rule February 3, 1988 is required to ensure that loans charged-off after December 31, 1987, are eligible for inclusion in calculating the substitute lending limit. Additionally, the amendment confers benefits on eligible banks. For these reasons, the Office finds that a delayed effective date due to application of the notice and comment procedure of 5 U.S.C. 553 to this final rule is unnecessary, would be contrary to the public interest and that good cause, described above, exists for making this action effective February 3, 1988.

Regulatory Impact Analysis

Pursuant to section 3(g)(1) of Executive Order 12291 of February 17, 1981, it has been determined that this final rule does not constitute a "major rule" within the meaning of the executive order. Consequently, no regulatory impact analysis is necessary.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act [Pub. L. 96–354, 5 U.S.C. 601 *et seq.*], it is certified that this final rule will not have significant impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 32

National banks, Banking, Loans, Lending Limits.

Authority and Issuance

For the reasons set out in the preamble, Part 32 of Chapter I of Title 12 of the Code of Federal Regulations is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84 and 12 U.S.C. 93a.

§ 32.8 [Amended]

2. In § 32.8, paragraph (a)(3), December 31, 1987, is revised to read December 31, 1989.

3. In § 32.8, paragraph (b), January 1, 1993, is revised to read January 1, 1995.

Date: December 22, 1987.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88–2206 Filed 2–2–88; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221, and 224

Regulations G, T, U, and X; Securities Credit Transactions; List of Marginable OTC Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective November 10, 1987 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Research Assistant, Division of Banking Supervision and Regulation, (202) 425–2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks. This List supersedes the last complete List which was effective November 10, 1987. (Additions and deletions for that List were published at 52 FR 41962, November 2, 1987). The current List includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U, and X (12 CFR Parts 207, 220, 221, and 224, respectively). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS Security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would

be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List:

Deletions From List

Stocks Removed For Failing Continued Listing Requirements

ACA Joe, Inc.
$.01 par common
Alaska National Bank of The North
$2.00 par common
Amvestors Financial Corp.
Series A, $1.00 par convertible preferred
Bio-Response, Inc.
$.004 par common
Bruce, Robert Industries Inc.
Class A, $.01 par common
Calstar, Inc.
Warrants (expire 1998)
Cogenic Energy Systems, Inc.
$.01 par common
Cousins Home Furnishings, Inc.
$.01 par common
CR/PL, Inc.
$.01 par common
Cypress Savings Association (Flordia)
Warrants (expire 01–01–91)
Encor Energy Corporation
No par common
Energy Factors, Inc.
8¼% convertible subordinated debentures
Federated Group, Inc., The
$.10 par common
First of America Bank Corp.
Series G, 9% convertible preferred
Great American Parters
Limited Partnership Units
Guardian Packaging Corporation
$.34 par common
Hanover Companies, Incorporated
$.01 par common
Incomnet, Inc.
No par common
Jepson Corporation, The
$.01 par common
Lynden Incorporated
$1.00 par common
MBI Business Centers, Inc.
$.01 par common
Micron Technology, Inc.
14% convertible subordinated debentures
Page America Group, Inc.
$.01 par common
Pharmakinetic Laboratories, Inc.
Warrants (expire 10–28–87)
Quantech Electronics Corp.
$.01 par common
Rogers Cablesystems of America, Inc.
Class A, $1.00 par common
Royale Airlines, Inc.
No par common
Scherer Health care, Inc.
$.01 par common
Semicon, Inc.
$.25 par common
Sigma Research, Inc.
No par common
Sippican, Inc.
$1.00 par common
Specialty Retail Concepts, Inc.
$.02 par common
Tele-Communications, Inc.
Warrants (expire 01–01–88)
U.S. Capital Corporation
$.10 par common
Up-Right, Inc.
No par common
Webb, Del. E., Corporation
Warrants (expire 04–15–88)
Worlco Data Systems
$.10 par common

Stocks Removed For Listing On A National Securities Exchange Or Being Involved In An Acquisition

AIFS, Inc.
$.10 par common
Alaska Mutual Bancorporation
$5.00 par common
American Bank of Connecticut
$1.00 par common
American Exploration Company
$.05 par common
Anitec Image Technology Corp.
$.10 par common
Atlantic Research Corporation
$.10 par common
Baird Corporation
$1.00 par common
Bench Craft, Inc.
$1.00 par common
Burnham American Properties, Inc.
No par common
Cash American Investments, Inc.
$.10 par common
Cavalier Homes, Inc.
$.10 par common
Commerce Union Corporation
$6.66-⅔ par common
Commercial Security Bancorporation
No par common
Danners, Inc.
No par common
Data Card Corporation
$.10 par common
Detector Electronics Corporation
$.10 par common
Digital Communication Associates, Inc.
$.10 par common
Electro-Biology, Inc.
$1.00 par common
Endata, Inc.
$.10 par common
Enviropact, Inc.
$.01 par common
Equatorial Communications Company
No par common
First Mutual Savings Association of Florida
$1.00 par common
First National Corporation (California)
No par common
Funtime, Inc.
No par common
Gallagher, Arthur J., & Co., Inc.
$1.00 par common
Godfrey Company
$1.00 par common
Grantree Corporation
$.10 par common
Greater Washington Investors, Inc.
$.10 par common
Growth Fund of Florida, Inc., The
$.001 par common
Guarantee Financial Corporation of California
No par common
Harman International Industries, Inc.
$.01 par common

Illinois Reginal Bancorp, Inc.
$10.00 par common
Inertia Dynamics Corp.
$.01 par common
International Technology Corporation
Warrants (expire 12–14–87)
Ivaco Industries, Inc.
$.10 par common
Jackpot Enterprises, Inc.
$.01 par common
K.V. Pharmaceutical Co.
Class B, $.25 par common
Laidlaw Industries, Inc.
$.25 par common
Lands' End, Inc.
$.01 par common
Louis Vuitton S.A.
American Depository Receipts for ordinary shares
Millipore Corporation
$1.00 par common
Morlan International, Inc.
$.01 par common
New Bedford Institution For Savings (Massachusetts)
$.10 par common
Par Technology Corporation
$.02 par common
Peoples Ban Corporation (Washington)
$5.00 par common
PNC Financial Corp.
$5.0. par common
Series C, $1.60 par cumulative preferred
Series D, $1.80 par cumulative preferred
Present Company, Inc.
$.10 par common
Rusty Pelican Restaurants, Inc.
No par common
Saatchi & Saatchi Company PLC
American Depository Shares
Stater Bros. Inc.
$.01 par common
Super Sky International, Inc.
$.10 par common
Thermo Instrument Systems, Inc.
$.10 par common
Thunander Corporation
$.01 par common
Timberland Industries, Inc.
$.16 par common
Triton Group Ltd.
$.10 par common
U.S. Playing Corp.
$.10 par common
United Bancorporation Alaska Inc.
$.20 par common
United States Surgical Corporation
$.10 par common
VLI Corporation
$.01 par common
Wolverine Technologies, Inc.
$1.00 par common
Zehntel Inc.
$.01 par common

Additions To The List

Alliant Computer Systems Corporation
7¼% convertible subordinated debentures
Bank of Redlands (California)
$5.00 par common
Campeau Corporation
No par common
Carolin Mines, Ltd.
Class A, no par common
Central Bancorporation (Washington)
$1.67 par common
Clean Harbors, Inc.
$.01 par common
Cohasset Savings Bank (Massachusetts)
$.10 par common
Consumer Financial Corporation
$1.00 par convertible preferred
Diversified Foods, Inc.
$.001 par common
Emcon Associates
No par common
Federal Savings Bank, The (Connecticut)
$.01 par common
First State Financial Services, Inc.
$.01 par common
Fountain Powerboat Industries, Inc.
$.01 par common Warrants (expire 12–15–91)
Great Bay Bankshares, Inc.
$.10 par common
H.M.S.S., Inc.
$.01 par common
Health Insurance of Vermont, Inc.
$2.00 par common
Hemodynamics Incorporated
$.01 par common
Henley Manufacturing Corporation
$.01 par common
Highwood Resources Ltd.
No par common
Intellicall, Inc.
$.01 par common
Interim Systems Corporation
$.01 par common
Investors Savings Corporation
$.01 par common
Invitron Corporation
$.02 par common
Keptel, Inc.
No par common
Lund Enterprises, Inc.
$.10 par common Warrants (expire 04–30–91)
Mayflower Co-operative Bank (Massachusetts)
$1.00 par common
Mid-South Corporation
$.20 par common
National Insurance Group
No par common
National Loan Bank (Texas)
$.01 par common
National Mercantile Bancorp
No par common
Northland Cranberries, Inc.
$.01 par common
Nucorp Energy, Inc.
$.05 par common
Optek Technology, Inc.
$.01 par common
Orthomet, Inc.
$.10 par common
Otisville Biopharm, Inc.
$.01 par common
Plant Genetics, Inc.
$.01 par common
Poseidon Pools of America, Inc.
$.01 par common
Properties of America, Inc.
$.01 par common
Provena Foods, Inc.
No par common
Provident Bankshares Corporation
$1.00 par common
Silicon Valley Bancshares (California)
No par common
Southland Corporation, The
15% cumulative exchangeable preferred stock
Tempest Technologies, Inc.
$.01 par common
Teva Pharmaceuticals Industries Ltd.
American Depository Receipts
Thrifty Rent-a-Car System, Inc.
$.05 par common
Universal Medical Buildings, L.P.
Units of preferred limited partnership
Valley Federal Savings Bank (Indiana)
$.01 par common
Washington Trust Bancorp, Inc.
$.0625 par common
WCRS Group, PLC, The
American Depository Receipts
Wesbanco, Inc.
$4.166 par common
Wharf Resources, Ltd.
No par common
WPP Group, PLC
American Depository Receipts

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), January 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–2150 Filed 2–2–88; 8:45 am]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 795

Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; OMB control numbers assigned to NCUA regulations pursuant to Paperwork Reduction Act.

SUMMARY: This part collects and displays the control numbers assigned

to information collection requirements of the National Credit Union Administration by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The National Credit Union Administration intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement.

EFFECTIVE DATE: February 3, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Staff Attorney, at the above address or telephone (202) 357–1030; Wilmer Theard, Director, Administrative Procedure, at the above address or telephone (202) 357–1055.

SUPPLEMENTARY INFORMATION: The purpose of this final rule, in accordance with the Paperwork Reduction Act, is to put the public on notice of the control numbers assigned by OMB to paperwork requirements in NCUA regulations. The part was first promulgated in 1984. "Expiration Dates" has been deleted from the title of the regulation since these dates are not shown in the display table. Section 795.1(a) of the final rule sets forth the purpose of the regulation and has not been amended. Section 795.1(b) provides notice of current control numbers assigned. This section has been amended to add all current control numbers and delete those that are no longer valid.

Regulatory Procedures

The NCUA Board has determined that because this action is non-substantive in nature, consideration of the Regulatory Flexibility Act is unnecessary.

List of Subjects in 12 CFR Part 795

Credit unions, Collection requirements.

By the National Credit Union Administration Board on January 28, 1988.

Becky Baker,

Secretary, National Credit Union Administration Board.

Accordingly, 12 CFR Part 795 is revised to read as follows:

PART 795—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

Authority: 12 U.S.C. 1766(a) and 5 U.S.C. 3507(f).

§ 795.1 OMB control numbers.

(a) *Purpose.* This part collects and displays the control numbers assigned to information collection requirements of the NCUA by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The NCUA intends to comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

2 CFR part or section where identified and described	Current OMB control No.
701.1	3133–0015
701.12	3133–0075
701.13	3133–0001
	3133–0016
	3133–0067
701.13(b)	3133–0053
701.21	3133–0092
	3133–0101
	3133–0110
701.24	3133–0057
701.31	3133–0068
701.36	3133–0040
702.2	3133–0072
705	3133–0109
708	3133–0024
708B	3133–0107
710	3133–0076
724.1	3133–0057
725	3133–0060
	3133–0061
	3133–0063
	3133–0064
740.2	3133–0098
741	3133–0007
	3133–0009
	3133–0011
741.10	3133–0004
741.7	3133–0099
	3133–0106
748	3133–0094
	3133–0108

[FR Doc. 88–2211 Filed 2–2–88; 8:45 am]
BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–01–AD; Amdt. 39–5842]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes, which requires repetitive functional testing of the wing and engine anti-ice control system. This amendment is prompted by reports of problems associated with the switches used in anti-ice control panels, and of the inadequacy of the anti-ice circuit logic that can result in the flight crew not being warned that the anti-ice system has not been activated. An undetected failure of the anti-ice system could result in an unacceptable ice build-up on the wings or the engine inlets.

EFFECTIVE DATE: March 4, 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 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. Henry A. Jenkins, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Recent investigation and service experience has shown that the switches and logic used in the wing and engine anti-ice control system on the Boeing Model 767 airplanes has deficiencies which may result in failure of the anti-ice system to be activated and a false system annunication being provided to the flight crew. This condition could occur as a result of incomplete latching of the switch and/or switch contamination. Failure of an anti-ice system to activate when needed may result in unacceptable build up of ice on the wing and/or engine inlets.

There have been no reported failures of the switches used in the anti-ice system; however, these same switches used in other applications on the airplane have a history of failure.

Since this condition is likely to exist or develop on other airplanes of the same type design, the FAA has determined that, to ensure proper operation of the system, repetitive functional tests of the wing and engine anti-ice control system must be conducted.

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

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 767 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure wing and engine anti-ice system integrity, accomplish the following:

A. Within the next 300 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service, perform the following functional test of the wing and engine anti-ice control system:

1. Apply electrical power in accordance with the Boeing Model 767 Maintenance Manual 24-22-00.

2. If the pneumatic system is depressurized, continue to step 3. If the pneumatic system is pressurized, depressurize the pneumatic system in accordance with 767 Maintenance Manual 36-00-00, then go to step 3.

3. Deactivate airplane systems which are adversely affected when air/ground relay system No. 2 is in flight mode by performing deactivation instructions as follows:

a. Open the following circuit breakers and attach DO-NOT-CLOSE identifiers:

Main Power Distribution Panel P6:
6J23, Probe Heat R TAT
6K20, Pitot Heat L AUX OC
6K21, Pitot Heat L AUX OB
6K22, Piot Heat F/O OB
6K23, Pitot Heat F/O OA
6K24, Pitot Heat R AOA
6K24, Probe Heat R ENG
Overhead Circuit Breaker Panel P11
11T27 ENG Mach Probe HT R
Fwd Miscellaneous Electrical Equipment Panel P33
33A2 Drain Mast HTG FLT

b. Check that EQUIP COOLING mode selector on pilot's overhead panel P5 is in AUTO.

4. Open LDG GR POS AIR/GND SYST 2 circuit breaker (11U24) on P11 overhead circuit breaker panel.

5. On the wing and engine anti-ice module located on the P5 panel, depress and release the wing anti-ice switch.

6. Verify that the switch latches and indicates ON.

7. Verify that both wing anti-ice amber VALVE lights illuminate.

8. Depress and release the wing anti-ice switch.

9. Verify that the switch unlatches and *does not* indicate ON.

10. Verify that both wing anti-ice amber VALVE lights are extinguished.

11. On the wing and engine anti-ice module, depress and release both engine andi-ice switches.

12. Verify that both switches latch and indicate ON.

13. Verify that both engine anti-ice amber VALVE lights illuminate.

14. Depress and release both engine anti-ice switches.

15. Verify that both switches unlatch and *do not* indicate ON.

16. Verify that both engine anti-ice amber VALVE lights are extinguished.

17. Close LDG GR POS AIR/GND SYST 2 circuit breaker (11U24).

18. Remove DO-NOT-CLOSE identifiers and close the circuit breakers opened in Step 3.a. The test is complete. Remove electrical power.

B. Any switch or circuit malfunction, identified by a negative verification during the functional test required by paragraph A., above, must be corrected prior to further flight, in accordance with the Boeing Model 767 Maintenance Manual.

C. 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.

D. 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 the tests required by this AD.

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

This amendment becomes effective March 4, 1988.

Issued in Seattle, Washington, on January 27, 1988.

Temple H. Johnson, Jr.,
Acting Director, Northwest Mountain Region.

[FR Doc. 88-2190 Filed 2-2-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ANE-23; Amdt. 39-5817]

Airworthiness Directives; Pratt & Whitney (PW) JT8D-209, -217, -217A, -217C, and -219 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires initial and repetitive inspections of low pressure turbine (LPT) third stage vane anti-rotation pins and modification of the LPT case assembly on JT8D-200 series engines. The AD is needed to detect and remove from service turbine modules containing fractured anti-rotation pins which could result in turbine vane rotation and subsequent uncontained engine failures.

DATE: Effective March 4, 1988.

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

Incorporation by Reference—Approved by the Director of the Federal Register as of March 4, 1988.

ADDRESSES: The applicable service bulletins (SB's) may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB's is contained in Rules Docket Number 87-ANE-23, 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: James Jones, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington,

Massachusetts 01803; telephone (617) 273–7121.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring initial and repetitive radiographic isotope inspections of LPT third stage vane anti-rotation pins and modification of the LPT case assembly on JT8D–209, –217, –217A, –217C, and –219 turbofan engines was published in the **Federal Register** on July 29, 1987 (52 FR 28278). The proposal was prompted when the FAA determined that fracture of all LPT third stage vane anti-rotation pins on JT8D–200 series engines can result in rotation of the vane clusters, severing of the rear turbine case, liberation of vane clusters and penetration of the engine cowl. Investigation and analysis have indicated that creep of the anti-rotation pin material combined with vane twist, due to thermal transients, can result in anti-rotation pin fracture. There have been four events where fracture of all of the LPT third stage vane anti-rotation pins caused engine failures. Three of the failures were uncontained, one of which caused engine cowl damage.

A new anti-rotation pin design with a higher strength material and a modification of the LPT case assembly have been developed by the manufacturer.

The compliance and reporting paragraphs of this AD have been reworded to reflect routine air carrier's recordkeeping practices regarding LPT modules. During module disassembly, the original LPT case may not remain with the same LPT module. The compliance and reporting paragraphs of the notice of proposed rulemaking (NPRM) referenced LPT modules and engines regarding cycle count calculation. Those paragraphs have been reworded to reflect LPT case cycle count calculation. The remaining provisions of this final rule are identical to those of the NPRM.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires initial and repetitive radiographic isotope inspections of LPT third stage vane anti-rotation pins, in accordance with PW Alert SB 5753, Revision 2, dated December 11, 1987. This AD also requires modification of the LPT case assembly at the next LPT module disassembly, in accordance with PW SB 5751, Revision 1, dated September 30, 1987.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Several comments were received concerning the proposed rule.

Discussion of Comments

Two commenters stated that routine carrier maintenance practice permits the interchange of LPT modules between engines and LPT cases between modules. The commenters requested that the proposed compliance time of engine cycles be clarified to account for this situation; one suggested module time (as referenced in PW Alert SB 5753, Revision 1, September 30, 1987) and the other case time. The FAA believes that LPT case time (cycles) is the most appropriate in light of routine maintenance practices and the proposal as adopted has been changed accordingly. PW Alert SB 5753 also has been clarified to refer to LPT case time (Revision 2, dated December 11, 1987) and this latest revision is referenced in the AD as adopted.

One commenter stated that if all third stage vane anti-rotation pins have been replaced at some prior refurbishment, the initial inspection interval should be calculated from that time of refurbishment. The commenter also stated that the inspection would not be required if PW SB 5711, Revision 3, dated April 1, 1987, was incorporated at that time.

The FAA agrees that the initial inspection interval will be calculated from the time the LPT case was refurbished with new tinidur material pins. As stated in the NPRM (paragraph (a) of the compliance paragraph), engines with new or refurbished LPT case assemblies that have incorporated PW SB 5711, Revision 3, dated April 1, 1987, and have been concurrently assembled with new anti-rotation pins, are not required to meet the inspection requirements of the AD.

One commenter stated that engines with LPT cases having 16 or more but less than 44 fractured, missing, or bent pins, should be allowed to operate for 25 cycles before removal. The NPRM proposed 10 cycles. The commenter further stated that the additional 15 cycles would permit operators significantly better flexibility in planning engine removals without sacrificing safety.

The FAA disagrees. The anti-rotation pin fracture progression study used in determining the risk analysis, was based on an inspection reliability assumption, a computer model simulation, and limited service data. The engineering study resulted in 25 cycles of dwell time from a 16 to 43 fractured pin event to an inflight shutdown. Recognizing the conservatism applied in the study, the FAA however, has determined that insufficient data exists to substantiate that an adequate margin of safety would exist if engines are allowed to remain in service for 25 cycles. This conclusion is based primarily on the lack of representative service history from the industry, as well as the limitations of the analysis conducted. The results of the inspection and shop findings will be monitored by the FAA under the reporting requirements of the AD to determine if relaxation of the 10 cycle removal threshold is warranted. The FAA conducted an industry survey to determine what impact a 10 cycle removal threshold would have on shop workload and maintenance costs. The results of that survey did not support a 25 cycle removal threshold based on a study of the relative impact upon the operators.

One commenter stated that the duplicate reporting requirements imposed by the NPRM and the PW SB are unduly burdensome to the airlines and unnecessary. The commenter preferred reporting to the engine manufacturer.

The FAA disagrees. The reporting requirement does not require any more information than an operator must already document in accordance with Federal Aviation Regulations (FAR) Part 43 to show compliance with the AD. Therefore, the reporting requirement will remain as proposed.

Conclusion

The FAA has determined that this regulation involves approximately 500 (domestic) PW JT8D–200 series engines at an approximate total cost of 1.5 million dollars for the first year. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using aircraft in which PW JT8D–200 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption: **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

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 follow:

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):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D-209, -217, -2178A, -218C, and -219 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent low pressure turbin (LPT) case penetration as a result of anti-rotation pin failures, accomplish the following:

(a) Radiographic isotope inspect LPT cases installed in JT8D-200 series turbofan engines that incorporate Tinidur (AMS 5637) anti-rotation pins. Engines with new or refurbished (in accordance with the Accomplishment Instructions of paragraph 2.A.(2)(a) of PW service bulletin (SB) 5751, Revision 1, dated September 30, 1987) LPT case assemblies that have incorporated PW SB 5711, Revision 3, dated April 1, 1987, and have been concurrently assembled with new LPT third stage vane anti-rotation pins (Tinidur or Inco 901), are not required to meet the intitial and repetitive inspection requirements of this paragraph. Engines requiring the inspection must be inspected in accordance with the Accomplishment Instructions contained in PW Alert SB 5753, Revision 2, dated December 11, 1987, in accordance with the following schedule:

(1) PW JT8D-209 engine LPT cases with 9,300 total cycles in service (CIS) or more on the effective date of this AD; inspect within 2,500 CIS from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(2) PW JT8D-209 engine LPT cases with less than 9,300 total CIS on the effective date of this AD; inspect before the accumulation of 9,300 total CIS, or within 2,500 CIS from the effective date of this Ad, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

(3) PW JT8D-217 engine LPT cases with 7,300 total CIS or more on the effective date of this AD; inspect within 700 CIS from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(4) PW JT8D-217 engine LPT cases with less than 7,300 total CIS on the effective date of this AD; inspect before the accumulation of 7,300 total CIS, or within 700 CIS from the effective date of this AD, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

(5) PW JT8D-217A engine LPT cases with 3,300 total CIS or more on the effective date of this AD; inspect within 900 CIS from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(6) PW JT8D-217A engine LPT cases with less than 3,300 total CIS on the effective date of this AD; inspect before the accumulation of 3,300 total CIS, or within 900 CIS from the effective date of this AD, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

(7) PW JT8D-217C/-219 engine LPT cases with 4,200 total CIS or more on the efffective date of this AD; inspect within 1,000 cycles from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(8) PW JT8D-217C/-219 engine LPT cases with less than 4,200 total CIS on the effective date of this AD; inspect before the accumulation of 4,200 total CIS, or within 1,000 CIS from the effective date of this AD, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

THIRD STAGE ANTI-ROTATION PIN REINSPECTION TABLE

Number of fractured, missing, or bent pins	Maximum CIS until reinspection	
	JT8D-209	JT8D-217/-217A/-217C/-219
0	7,000	1,700
1	6,640	1,610
2	6,280	1,525
3	5,920	1,440
4	5,560	1,350
5	5,200	1,265
6	4,840	1,180
7	4,480	1,090
8	4,120	1,005
9	3,760	920
10	3,400	830
11	3,040	745
12	2,680	660
13	2,320	570
14	1,960	485
15	1,600	400

(b) Remove from service prior to further flight, PW JT8D-209, -217, -217A, -217C, and -219 engines with 44 fractured, missing, or bent LPT third stage vane anti-rotation pins found during the accomplishment of the inspection requirements of paragraph (a) above.

(c) Remove from service within 10 CIS, PW JT8D-209, -217, -217A, -217C, and -219 engines with 16 or more, but less than 44 fractured, missing, or bent LPT third stage vane anti-rotation pins, found during the accomplishment of the inspection requirements of paragraph (a) above.

(d) Modify prior to return to service, in accordance with the Accomplishment Instructions of PW SB 5751, Revision 1, dated September 30, 1987, those engines removed from service in accordance with paragraphs (b) and (c) above.

(e) Modify prior to return to service, in accordance with the Accomplishment Instructions of PW SB 5751, Revision 1, dated September 30, 1987, PW JT8D-209, -217, -217A, -217C, and -219 engines inspected in accordance with paragraph (a) above, at an engine shop visit, and found with 15 or more fractured, missing, or bent LPT third stage vane anti-rotation pins.

(f) Modify PW JT8D-209, -217, -217A, -217C, and -219 engine LPT cases (including LPT cases from those engines referred to in paragraph (a) that were not required to meet the initial and repetitive inspection requirements) at the next LPT module disassembly after the effective date of this AD, in accordance with the Accomplishment Instructions of PW SB 5751, Revision 1, dated September 30, 1987.

(g) Report the following information in writing within 30 days from the date of the inspection to the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Telex Number 949301 FAANE BURL:

(1) Inspection date

(2) Engine serial number (S/N)

(3) LPT case S/N

(4) Engine total time and cycles (if estimate, so note)

(5) LPT case time and cycles since last shop visit (if estimate, so note)

(6) Number of third stage vane anti-rotation pins:

(i) Fractured.

(ii) Missing.

(iii) Bent.

Notes.—(1) For the purpose of this AD, LPT module disassembly occurs when the LPT rotor is separated from the LPT case and vane assembly.

(2) Shop visit is defined as the input of an engine to a repair shop where the subsequent engine maintenance entails:

(a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit."

(b) Removal of a disk, hub, or spool.

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

Upon request, an equivalent means of compliance may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

PW Alert SB 5753, Revision 2, dated December 11, 1987, PW SB 5751, Revision 1, dated September 30, 1987, and PW SB 5711, Revision 3, dated April 1, 1987, identified and described in this document, are incorporated herein and made a part thereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; Rules Docket Number 87-ANE-23, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on March 4, 1988.

Issued in Burlington, Massachusetts, on December 17, 1987.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-2264 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-20]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the Expanded East Coast Plan (EECP); portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26497). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan.

Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71–123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–475, V–476, V–483 and V–487 and adds V–615 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 42272) is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–475 [Revised]

From LaGuardia, NY; Bridgeport, CT; Madison, CT; Norwich, CT; Providence, RI.

V–476 [Revised]

From Lynchburg, VA; to Gordonsville, VA.

V–483 [Amended]

By removing the words "DeLancey, NY;" and substituting the words "INT Carmel 344° and Kingston, NY, 129° radials; Kingston; INT Kingston 304° and DeLancey, NY, 119° radials; DeLancey;"

V–487 [Amended]

By removing the words "From INT LaGuardia, NY, 034° and Carmel, NY, 188° radials; Carmel; Pawling, NY; Cambridge, NY;" and substituting the words "From LaGuardia, NY; Bridgeport, CT; INT Bridgeport 343° and Cambridge, NY, 189° radials; Cambridge;"

V–615 [New]

From Raleigh-Durham, NC; INT Raleigh-Durham 059° and Hopewell, VA, 209° radials; to Hopewell.

Issued in Washington, DC, on January 15, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–2112 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWA–19]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the Expanded East Coast Plan (EECP), portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26496). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings

were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–431, V–433, V–451 and V–457 and revokes V–467 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 42272) is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–431 [Amended]

By removing the words "From Hyannis, MA, via INT Hyannis 343° and Boston, MA, 066° radials; Boston; INT Boston 015° and Gardner, MA, 097° radials; and substituting the words "From INT Boston, MA, 015° and Gardner, MA, 097° radials;"

V–433 [Revised]

From Nottingham, MD, INT Nottingham 042° and Dupont, DE, 223° radials; Dupont; Yardley, PA; INT Yardley 047° and Kennedy, NY, 253° radials; INT Kennedy 253° and LaGuardia, NY, 209° radials; LaGuardia; Bridgeport, CT; INT Bridgeport 324° and Pawling, NY, 160° radials; Pawling; INT Pawling 304° and Rockdale, NY, 116° radials; Rockdale; INT Rockdale 325° and Syracuse, NY, 100° radials; to Syracuse.

V–451 [Revised]

From LaGuardia, NY; INT LaGuardia 063° and Hampton, NY, 289° radials; INT Hampton 289° and Calverton, RI, 044° radials; INT Calverton 044° and Groton, CT, 243° radials; Groton; INT Groton 064° and Sandy Point, RI; 031° radials; INT Sandy Point 031° and Kennebunk, ME, 180° radials; INT Kennebunk 180° and Brunswick, ME, 211° radials; to Brunswick.

V–457 [Amended]

By removing the words "Westminster

MD;" and substituting the words "INT Lancaster 214° and Westminster, MD, 048° radials; Westminster;"

V–467 [Removed]

Issued in Washington, DC, on January 15, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–2109 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–AWA–1]

Alteration of Airport Radar Service Area; March AFB, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action postpones the effective date of the alteration of the March Air Force Base (AFB) Airport Radar Service Area (ARSA). The effective date is postponed from February 11, 1988, to March 10, 1988. This action is necessary because of the delayed sectional charting date for this area.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9252.

SUPPLEMENTARY INFORMATION:

History

A final rule Airspace Docket 87–AWA–1 published in the **Federal Register** on December 11, 1987 (52 FR 47304) with an effective date of February 11, 1988, implemented modifications to the March AFB, CA, ARSA. However, due to a delay in charting, the effective date is being changed to March 10, 1988.

Issued in Washington, DC, on January 26, 1986.

EDITORIAL NOTE: This document was received by the Office of the Federal Register on January 28, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–2105 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–AWA–21]

Alteration of the Burbank-Glendale-Pasadena Airport, CA, Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to final rule; delay of effective date.

SUMMARY: This action postpones the effective date of the alteration of the Burbank-Glendale-Pasadena Airport, CA, Airport Radar Service Area (ARSA). The effective date is postponed from February 11, 1988, to March 10, 1988. This action is necessary because of the delayed sectional charting date for this area. This action also alters two altitudes which were inadvertently raised to 3,500 feet mean sea level (MSL) in the five- to ten-mile area instead of the correct 3,000 feet MSL.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9252.

SUPPLEMENTARY INFORMATION:

History

A final rule in Airspace Docket 87–AWA–21 was published in the **Federal Register** on December 11, 1987 (52 FR 47308) with an effective date of February 11, 1988. The rule implemented modifications to the Burbank-Glendale-Pasadena Airport, CA, ARSA. However, due to a delay in charting, the effective date is being changed to March 10, 1988. This action also alters two altitudes which were inadvertently raised to 3,500 feet mean sea level (MSL) in the five- to ten-mile area instead of the correct 3,000 feet MSL. This action corrects the error.

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, Airport radar service areas.

Adoption of the Amendment

PART 71—[AMENDED]

A final rule Airspace Docket 87–AWA–21 published in the **Federal Register** on December 11, 1987 (52 FR 47308) with an effective date of February 11, 1988, implemented modifications to the Burbank-Glendale-Pasadena Airport, CA, ARSA. However, due to a delay in charting, the effective date is being changed to March 10, 1988. Also, the description is corrected to read as follows:

Burbank-Glendale-Pasadena Airport, CA [Revised]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Burbank-Glendale-Pasadena Airport (lat. 34°12'02" N., long. 118°21'27" W.) excluding that airspace below 3,000 feet MSL within a 1.75-mile radius of the Whiteman Airport (lat. 34°15'35" N., long. 118°24'45" W.) and excluding that airspace below 3,500 feet MSL east of a direct line from a point 5 miles on the 004° bearing from the airport to a point 5 miles on the 090° bearing from the airport; and that airspace extending upward from 3,000 feet MSL to and including 4,800 feet MSL within a 10-mile radius of the Burbank-Glendale-Pasadena Airport from the 104° bearing clockwise to the 004° bearing from the airport excluding that airspace south of the north boundary of the Los Angeles, CA, Terminal Control Area, and excluding that airspace beyond an 8-mile radius north and east of the 294° bearing, and excluding that airspace, beyond 5 miles north and east of a line from a point 8 miles on the 343° bearing from the airport to a point 5 miles on the 004° bearing from the airport.

Issued in Washington, DC, on January 26, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–2106 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–AWA–18]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes, and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26495). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–374, V–405, V–408 and V–419 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 39622 and 42273) is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-374 [Revised]

From Martha's Vineyard, MA; Groton, CT; INT Groton 276° and Calverton, NY, 044° radials; INT Calverton 044° and Carmel, NY, 099° radials; Carmel; INT Carmel 254° and Deer Park, NY, 308° radials; INT Deer Park 308° and Binghamton, NY, 119° radials; to Binghamton.

V-405 [Revised]

From INT Pottstown, PA, 222° and Baltimore, MD, 034° radials; Pottstown; INT Pottstown 050° and Solberg, NJ, 264° radials; Solberg; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; INT Carmel 344°and Pawling, NY, 203° radials; Pawling; INT Pawling 059° and Bradley, CT, 266° radials; Bradley; Providence, RI; INT Providence 151° and Martha's Vineyard, MA, 267° radials; to Martha's Vineyard.

V-408 [Revised]

From INT Martinsburg, WV, 058° and Modena, PA, 258° radials; Modena; Pottstown, PA; East Texas, PA; Allentown, PA; Lake Henry, PA; to INT Lake Henry 056° and Barnes, MA, 265 radials.

V-419 [Revised]

From Boston, MA, INT Boston 252° and Bradley, CT, 072° radials; Bradley; Carmel, NY; INT Carmel 243° and Sparta, NJ, 082° radials; Sparta; Stillwater, NJ; INT Stillwater 194° and Solberg, NJ, 227° radials; Modena, PA; to Westminister, MD.

Issued in Washington, DC, on January 15, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-2111 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 87-AWA-47]

Revocation of Prohibited Area P-77, Plains, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Prohibited Area P-77 Plains, GA. The United States Secret Service has determined that this is no longer required. This action restores previously prohibited airspace to public use.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations revokes Prohibited Area P-77 at Plains, GA. The Secret Service has notified the FAA that restrictions are no longer required at this location for national welfare or security purposes. Because this action restores previously prohibited airspace to public use, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.88 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 73

Aviation safety, Prohibited areas.

Adoption of the Amendment

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

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.88 [Amended]

2. Section 73.88 is amended as follows:

P-77 Plains, GA [Removed]

Issued in Washington, DC, on January 26, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-2115 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 87-ANM-27]

Alteration of Restricted Areas R-6402A and B Dugway, UT

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas R-6402A and B located near Dugway, UT. This action is necessary since the Commander, Dugway Proving Grounds has transferred its functions to the Commander, 6501st Range Squadron, Air Force Systems Command, Hill AFB, UT.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations is to designate the Commander, 6501st Range

Squadron, Air Force Systems Command, Hill AFB, UT, as the using agency for Restricted Areas R-6402A and B. The change in using agency does not alter the type activities conducted in the restricted areas. Since this amendment is procedural in nature and has no affect on airspace users, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.64 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

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

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.64 [Amended]

2. Section 73.64 is amended as follows:

R-6402A Dugway Proving Ground, Dugway, UT [Amended]

By removing the present using agency and substituting the following:

Using agency. U.S. Air Force, Commander, 6501st Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6402B Dugway Proving Ground, Dugway, UT [Amended]

By removing the present using agency and substituting the following:

Using agency. U.S. Air Force, Commander, 6501st Range Squadron, Air Force Systems Command, Hill AFB, UT.

Issued in Washington, DC, on January 26, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-2113 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25515; Amdt. No. 1365]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of

immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment 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 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on January 8, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective May 5, 1988

Minocqua/Woodruff, WI—Noble F. Lee Memorial Field, NDB RWY 18, Amdt. 10
Minocqua/Woodruff, WI—Noble F. Lee Memorial Field, NDB RWY 28, Amdt. 9
Minocqua/Woodruff, WI—Noble F. Lee Memorial Field, NDB RWY 36, Amdt. 6

Effective March 10, 1988

Windsor Locks, CT—Bradley Intl, NDB RWY 6, Amdt. 25
Windsor Locks, CT—Bradley Intl, ILS RWY 6, Amdt. 29
Windsor Locks, CT—Bradley Intl, ILS RWY 24, Amdt. 4
Cresco, IA—Ellen Church Field, NDB RWY 33, Amdt. 1
Kimball, NE—Kimball Muni, NDB RWY 28, Orig.
Kimball, NE—Kimball Muni, NDB RWY 29, Orig., CANCELLED
Columbia, MS—Columbia-Marion County, VOR/DME RWY 23, Amdt. 4
Mohall, ND—Mohall Muni, VOR/DME RWY 31, Amdt. 2
Mohall, ND—Mohall Muni, NDB RWY 31, Amdt. 1, CANCELLED

Effective February 11, 1988

Aguadilla, PR—Borinquen, NDB RWY 08, Orig.
Rockport, TX—Aransas Co, VOR/DME or TACAN-A, Admt. 6

[FR Doc. 88-2110 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25520; Amdt. No. 1366]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by

reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment 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 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on January 22, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authoriy citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective May 5, 1988

Sebring, Fl—Sebring Airport & Indus. Park, NDB RWY 36, Amdt. 3
Gary, IN—R.G. Hatcher Gary Regional, VOR/DME RWY 2, Amdt. 4
Gary, IN—R.G. Hatcher Gary Regional, NDB RWY 30, Amdt. 5
Gary, IN—R.G. Hatcher Gary Regional, ILS RWY 30, Amdt. 2
Independence, IA—Independence Muni, NDB RWY 17, Admt. 2
Chanute, KS—Chanute Martin Johnson, RNAV RWY 36, Orig.
Black River Falls, WI—Black River Falls Area, NDB RWY 8, Amdt. 3
Cable, WI—Cable Union, VOR/DME-A, Amdt. 5
Cable, WI—Cable Union, NDB-B, Amdt. 9
Shell Lake, WI—Shell Lake Muni, NDB RWY 31, Amdt. 2

. . . Effective April 7, 1988

Goshen, IN—Goshen Muni, VOR RWY 9, Amdt. 11
Tell City, IN—Perry County Muni, VOR RWY 31, Amdt. 2
Escanaba, MI—Delta County, VOR RWY 9, Amdt. 12
Escanaba, MI—Delta County, VOR RWY 18, Amdt. 6
Escanaba, MI—Delta County, VOR RWY 27, Amdt. 10
Lansing, MI—Capital City, VOR RWY 6, Amdt. 22
Lansing, MI—Capital City, RADAR-1, Amdt. 12
Mora, MN—Mora Muni, NDB RWY 35, Amdt. 1
Bowman, ND—Bowman Muni, NDB RWY 29, Amdt. 1
Cincinnati, OH—Cincinnati-Blue Ash, VOR RWY 6, Amdt. 3

. . . Effective March 10, 1988

Walnut Ridge, AR—Walnut Ridge Regional, LOC RWY 17, Orig.
Walnut Ridge, AR—Walnut Ridge Regional, NDB RWY 17, Amdt. 1
Ukiah, CA—Ukiah Muni, VOR-A Amdt. 2
Ukiah, CA—Ukiah Muni, LOC/DME RWY 15 Amdt. 3
Ukiah, CA—Ukiah Muni, RNAV-B Amdt. 3
Bridgeport, CT—Igor I. Sikorsky Memorial, VOR RWY 6, Amdt. 19
Bridgeport, CT—Igor I. Sikorsky Memorial, VOR RWY 24, Amdt. 12
Danbury, CT—Danbury Muni, RNAV RWY 26, Amdt. 2
Atlanta, GA—The William B. Hartsfield Atlanta Intl, ILS RWY 8L, Amdt. 1
Burley, ID—Burley Muni, RNAV RWY 20, Amdt. 2
Clarksdale, MS—Fletcher Field, NDB RWY 18, Amdt. 6
Clarksdale, MS—Fletcher Field, NDB RWY 36, Amdt. 6
Meridian, MS—Key Field, VOR-A, Amdt. 13
Meridian, MS—Key Field, NDB RWY 1, Amdt. 18
Meridian, MS—Key Field, RNAV RWY 19, Amdt. 3
Natchez, MS—Hardy-Anders Field Natchez-Adams County, VOR/DME RWY 13, Amdt. 1
Natchez, MS—Hardy-Anders Field Natchez-Adams County, VOR RWY 17, Amdt. 9
Natchez, MS—Hardy-Anders Field Natchez-Adams County, LOC RWY 17, Amdt. 3
Natchez, MS—Hardy-Anders Field Natchez-Adams County, NDB RWY 17, Amdt. 3
Chattanooga, TN—Lovell Field, VOR RWY 33, Amdt. 16
Chattanooga, TN—Lovell Field, NDB RWY 20, Amdt. 30
Chattanooga, TN—Lovell Field, ILS RWY 2, Amdt. 6
Chattanooga, TN—Lovell Field, ILS RWY 20, Amdt. 35
Chattanooga, TN—Lovell Field, RADAR-1, Amdt. 8
Gallatin, TN—Sumner County Regional, RADAR-1, Amdt. 1
Houston, TX—Houston Intercontinental, ILS RWY 8, Amdt. 15

. . . Effective January 19, 1988

Houston, TX—Houston Intercontinental, ILS RWY 26, Amdt. 12

. . . Effective January 14, 1988

Waycross, GA—Waycross-Ware County, RNAV RWY 18, Amdt. 4
Boston, MA—General Edward Lawrence Logan Intl, VOR/DME RWY 27, Amdt. 1
Madison, WI—Dane County Regional-Truax Field, VOR or TACAN RWY 13, Amdt. 20
Madison, WI—Dane County Regional-Truax Field, VOR or TACAN RWY 31, Amdt. 21

. . . Effective January 12, 1988

Traverse City, MI—Cherry Capital, VOR or TACAN-A, Amdt. 18
Traverse City, MI—Cherry Capital, NDB RWY 28, Amdt. 8
Traverse City, MI—Cherry Capital, ILS RWY 28, Amdt. 10.

[FR Doc. 88-2114 Filed 2-2-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Ch. III

[Docket No. 80107-8007]

Extension of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of extension of foreign policy controls.

SUMMARY: On January 20, 1988, the Department of Commerce, with the concurrence of the Secretary of State and in consultation with other Departments and Agencies, extended all existing foreign policy export controls. Commerce also submitted a report to the Congress as required by section 6(f) of the Export Administration Act of 1979, as amended (the Act). Under the Act, foreign policy controls expire annually unless extended. All foreign policy controls in effect as of January 20, 1988, were extended through January 20 1989.

On November 6, 1987, the Department of Commerce published in the **Federal Register** (52 FR 42663) a request for public comments on the effects of foreign policy-based export controls. The public record of these comments is maintained at the address listed below.

EFFECTIVE DATE: This extension is effective January 21, 1988.

ADDRESS: The public record of comments on the November 6, 1987, notice is maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Information about the inspection and copying of the public comments may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2953.

FOR FURTHER INFORMATION CONTACT: Glen Schroeder, Country Policy Branch, Bureau of Export Administration, Department of Commerce, Washington, DC (Telephone: (202) 377-3160). Copies of the report to Congress are available upon request.

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 240 *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, 1988); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); and E.O. 12543 of January 7, 1986, (51 FR 875, January 9, 1986).

Dated: January 27, 1988.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-2052 Filed 2-2-88; 8:45 am]
BILLING CODE 3510-DT-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Petroleum Distillates; Revocation of Required First Aid Direction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; revocation.

SUMMARY: The Commission revokes its regulations that required the specific label statement "If swallowed, do not induce vomiting" for hazardous substances containing 10 percent or more by weight of benzene, toluene, xylene, or petroleum distillates such as kerosene, mineral seal oil, naphtha, gasoline, mineral spirits, stoddard solvent, and related petroleum distillates. These requirements originally were intended to protect against the risk of chemical pneumonia that can be caused by aspiration of substances containing the ingredients listed above when vomiting is induced as a treatment to reduce potential toxic effects of ingestion of such hazardous substances. The Commission revoked the requirements because some of the substances containing the ingredients listed above may present even greater risks from the toxicity of other ingredients in the substances than are presented by the possibility of chemical pneumonia from aspiration of the listed substances while vomiting.

EFFECTIVE DATE: This revocation is effective March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

Background

Section 2(p)(1) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261(p)(1), provides that certain informative and precautionary labeling is required for hazardous substances that are intended, or packaged in a form suitable, for use in the household or by children. Among the labeling required for such hazardous substances is a statement of the principal hazard or hazards presented by the substance and an instruction, when necessary or appropriate, for first aid treatment.

Many substances intended for use in the household have significant percentages of petroleum distillates as ingredients. [14,15] [1] Where products containing petroleum distillates have a low viscosity, there is a risk that, if the product is accidentally ingested, some of the product could be aspirated into the lungs. [14] This could happen, for example, as the result of a gagging reflex during the ingestion. When petroleum distillates are aspirated, they may cause a condition known as chemical pneumonia, which can be serious, and even fatal. [14]

The presence of petroleum distillates in a product does not generally cause the product to have a high degree of systemic toxicity; however, such products may present a risk of poisoning from the systemic toxicity of other ingredients in the substance. [14] A traditional method of treatment for the ingestion of toxic substances is to induce vomiting to remove the substance from the stomach and thus reduce the risk of systemic poisoning. However, when a substance that is low in viscosity has been ingested, there is a risk that the substance could be aspirated during the act of vomiting. If the substance contains petroleum distillates, aspiration may cause the

[1] Bracketed numbers indicate the numbers of relevant documents in the record, as listed in the Appendix to this notice.

serious condition of chemical pneumonia. [14]

In order to protect against the risk of chemical pneumonia that could be caused by aspirating petroleum distillates during vomiting that is induced as a first aid treatment, the Food and Drug Administration, which administered the FHSA before the Commission was established, issued regulations that required products containing ten percent or more by weight of certain petroleum distillates to bear the following label statement: "If swallowed, do not induce vomiting." The regulations currently are codified at 16 CFR 1500.14(b)(3)(i)–(ii). The products subject to this regulation are those containing ten percent or more by weight of benzene, toluene, xylene, or petroleum distillates such as kerosene, mineral seal oil, naphtha, gasoline, mineral spirits, stoddard solvent, and related petroleum distillates. These substances are commonly found in products such as lighter fuels, torch and charcoal lighter fuels, paint solvents, and automobile-care products, including fuel additives. Certain viscous products containing these substances were exempted from these labeling requirements if the viscosity of the substance, or of any liquid that may separate or be present in the container, is not less than 100 Saybolt universal seconds (S.U.S.) at 100 °F. 16 CFR 1500.83(a)(13).

The labeling statement previously required by 16 CFR 1500.14(b)(3)(i)–(ii) remains appropriate for most of the substances to which it applies, for example, where the product consists only of a low-viscosity petroleum distillate. [14, 15] However, there has been a growing recognition in recent years that some products that fall with the scope of the Commission's regulation contain significant amounts of other substances, such as methanol, that are sufficiently toxic that failure to induce vomiting when medical treatment is not immediately available, thus leaving the substance in the stomach, presents a risk from toxicity that can exceed the risk of chemical pneumonia from aspiration that may occur while vomiting. [14] Examples of some products that fall within the scope of the Commission's regulation, but that may be sufficiently toxic that vomiting nevertheless should be induced, include certain paint solvents and certain automotive care products.

Because of these concerns, the Food and Drug Administration proposed to amend its regulation to require instead that for products containing acutely toxic substances other than the toluene, xylene, etc., in such concentrations that the greater likelihood of injury results from the presence of the substance in the digestive tract than from the risk of chemical pneumonia if vomited, the products' labeling shall recommend that vomiting shall be induced to reduce the hazard of an acute poisoning. 36 FR 11040; June 8, 1971. [1]

The responsibility for administering the FHSA was transferred to the Consumer Product Safety Commission on May 14, 1973, by section 34 of the Consumer Product Safety Act, 15 U.S.C. 2051n. The FDA proposal to amend the labeling rule for low-viscosity petroleum distillates was withdrawn by the Commission on September 25, 1979 [3], largely because of the period of time that had passed since the proposal and because the Commission had appointed a nine-member Toxicological Advisory Board ("TAB") to advise the Commission on appropriate hazard labeling under the FHSA and to consider the issue of appropriate first aid instructions for hazardous substances. The TAB's final report noted that the labeling statement required for substances containing ten percent or more of petroleum distillates was not appropriate in some cases. [4]

The TAB final report recommended that products having viscosities of 35 S.U.S. or less should have a statement to the effect that a severe aspiration hazard exists. The TAB recommended that this statement appear in a "Physician Alert" section of the labeling to allow a physician to determine if the aspiration hazard associated with the substance outweighted the systemic toxicity hazard from the other ingredients in the formulation. By a recommendation that was not unanimous, the TAB also recommended that the label could indicate if a moderate or slight aspiration hazard existed. (A moderate aspiration hazard would exist, according to the TAB recommendation, for products having viscosities between 35 and 100 S.U.S.)

The Commission agreed with the conclusion of the TAB that the current regulation does not adequately address the situation where products containing petroleum distillates have a high degree of systemic toxicity. However, the Commission concluded that "physician alert" type of information should not be required on the labels of most household products. General medical knowledge, and sources of information that are readily available to physicians, should enable physicians to determine an appropriate means of treatment for a particular ingestion. The labeling required by the FHSA is intended primarily for the user of the product. In the case of first aid instructions, the information is intended to be useful when medical treatment or advice is not immediately available. A requirement for additional labeling for the supposed benefit of physicians could make it more difficult for consumers reading the label to comprehend what actions should be taken, particularly under the stress of an accidential ingestion situation. Accordingly, the Commission decided not to propose the "physician alert" features of the plan recommended by the TAB for labeling according to the degree of aspiration hazard presented by the product.

On December 15, 1985, the Commission proposed to address the problem of whether the first aid instructions for a particular substance should deal primarily with the hazard of chemical pneumonia or primarily with the hazard of acute toxicity by deleting the requirement for a particular first aid instruction from 16 CFR 15.14(b)(3)(i)–(ii). 50 FR 50919. Of course, the adoption of this proposal does not relieve manufacturers of products subject to that section from the requirement of section 2(p)(1) of the FHSA, 15 U.S.C. 1261(p)(1), that the product be labeled with a first aid instruction when necessary or appropriate.

Comments on the Proposal

The Commission received seven comments on the proposal to revoke the requirement that low-viscosity petroleum distillate products be labeled with the statement "If swallowed, do not induce vomiting." These comments, and the Commission's views on the issues raised, are discussed below.

A. Comments Supporting the Proposed Revocation

The American Petroleum Institute supported the revocation as proposed, nothing that it is their policy to develop appropriate first aid information based upon an analysis of the toxicity of individual products. The New York State Consumer Protection Board also supported the revocation, noting that the statement "if swallowed, do not induce vomiting" is not completely accurate for all petroleum distillate products.

The Director of a major poison control center, and a former member of the Commission's Toxicological Advisory Board, supported the proposed revocation, provided that the requirement that the product be labeled with a first aid statement when necessary or appropriate is contained in section 2(p)(1) of the FHSA and is not

affected by the revocation of the specific labeling requirement.

B. Comments Supporting the Proposed Revocation, but Suggesting Alternative Requirements

1. Viscosity Labeling

The Director of a major poison control center, mentioned above, commented that a requirement that labels state the viscosity of the product would help the persons responsible for medical treatment to make better decisions.

While information on the viscosity and toxicity of products could aid medical personnel in certain circumstances, the Commission does not believe that such information should be required to be on labels. As explained earlier in this notice, labeling under the FHSA is intended primarily for the user of the product. A requirement for additional labeling for the benefit of physicians could make it more difficult for consumers reading the label to comprehend what actions should be taken, particularly under the stress of an accidental ingestion situation. Furthermore, general medical knowledge and sources of information that are readily available to physicians should enable them to determine the appropriate medical treatment for a particular situation.

2. Labeling With Information About Poison Control Centers

The poison control center Director, as well as an official of the Environmental Protection Agency, commented that it would be advantageous to change the statement required by 16 CFR 1500.14(b)(i) and (ii) from "Call physician immediately" to "Call physician or poison control center immediately", or the equivalent.

The Commission's regulations, at 16 CFR 1500.14(b)(3) (i) and (ii), require that certain products containing petroleum distillates bear the statements "Harmful or fatal if swallowed" and "Call physician immediately." Although not legally required, some product manufacturers also state that a poison control center could be called, as suggested by these commenters, and this is allowed by the regulation. The suggestion to supplement the "Call a physician immediately" statement with "or a poison control center" has merit and should be encouraged. However, the Commission does not believe a mandatory requirement is appropriate. Such a requirement could cause disruption to manufacturers who would have to relabel containers or alter other labels which are often produced and stockpiled in advance of use. The Commission believes that encouragement of industry to voluntarily adopt this additional language (where it is not already in use) could bring about the suggested change in labeling as manufacturers go through their normal cycles of reprinting product labels.

3. Retain a Requirement for First Aid Directions

The Environmental Protection Agency ("EPA"), Office of Pesticide Programs ("OPP"), offered several comments on the proposal. The main thrust of their comments was in opposition to the proposed revocation, and those comments are discussed below in Section C of this notice. However, OPP commented that, in the event the Commission permitted the "Do not induce vomiting" statement to be deleted, the Commission should require the manufacturer to replace it with an affirmative alternative first aid or practical treatment recommendation. OPP reserved that, if it was the Commission's intention that the label provide first aid recommendations to which the user should look, the regulation should require it.

This suggestion, that the Commission in withdrawing the current labeling requirement require manufacturers to replace it with an affirmative alternative first aid statement, appears to reflect a misunderstanding of the operation of the FHSA. As previously discussed, section 2(p)(1) of the FHSA requires manufacturers to include an instruction for first aid, where necessary or appropriate. As discussed in the proposal, the Commission believes that a specific requirement with respect to "do" or "do not" induce vomiting would serve to preclude the use of other appropriate statements such as: "Call a poison center, emergency department, or physician. Vomiting may need to be induced, but only on the advice of medical personnel."

4. Require a Specific Recommendation On Vomiting

The Mobil Oil Corporation supported the proposed revocation, but noted that the individual administering first aid needs to have immediately available information regarding initial care and is not in a position to evaluate viscosity information or other data before determining whether or not to induce vomiting. This commenter suggested that the appropriate toxicity information is best interpreted by the manufacturer prior to formulating an appropriate first aid statement. Mobil noted that poison control centers would not be any more qualified to interpret such information than is the manufacturer and suggested that these products be required to give a specific recommendation regarding the induction of vomiting and the basis for such recommendation.

The Commission agrees that individuals called upon to administer emergency first aid are not likely to be in a position to interpret viscosity and other technical information. For that reason, and others, the Commission decided not to adopt any labeling recommendations which would require labels to contain information intended specifically for physicians. The Commission also agrees that the manufacturer is generally the best qualified party to interpret toxicity information on a product and to design an appropriate first aid statement. Revocation of the presently required specific labeling statement allows manufacturers to do just this and to use their best judgments in determining how to comply with the requirements of the law. Thus, while the law requires an appropriate first aid statement, this revocation allows the manufacturer the flexibility of determining the particular first aid direction appropriate to the chemical composition of his product.

While a manufacturer is generally in the best position to deal with appropriate first aid recommendations, allowing manufacturers to adopt an additional statement to call a poison control center is not inappropriate. Very often, poison control centers have access to current information on product formulations and treatment regimens for accidental exposures. Because clinical considerations may determine which specific first aid treatment is the most desirable for a particular ingestion, the Commission does not believe that it is possible or appropriate always to state categorically on a label a specific recommendation regarding the induction of emesis.

C. Comments Opposing the Proposed Revocation

1. Handle Toxicity by Exemption

The Exxon Corporation opposed the revocation, noting that the data available on the petroleum products listed in the proposal (as examples of petroleum distillates containing systemically toxic ingredients) strongly suggest that the immediate risk from chemical pneumonia through induced vomiting is far greater than the toxic effects that might occur prior to undertaking recommended medical treatment such as gastric lavage. This commenter recommended that the Commission adopt the alternative discussed in the proposal which would

retain the present labeling requirement for the product class but which would allow exemptions for those limited substances where the toxic hazard would be greater than the risk of chemical pneumonia.

The Commission notes that the petroleum products mentioned in the proposal are only examples of types of products where the systemic toxicity of a mixture was likely to outweigh the risk of aspiration and chemical pneumonia. Thousands of household products subject to this regulation have unique formulations known only to the manufacturer. The proposed revocation allows manufacturers to determine first aid instructions appropriate to the product.

The commenter's suggestion that toxic effects would be unlikely to occur before medical treatment could be undertaken is beside the point, since first aid labeling is designed to provide appropriate advice to be followed pending medical treatment or when expert medical treatment or advice is not available. The time between when the toxic substance is ingested and when medical treatment can begin may vary widely with the circumstances; therefore, appropriate first aid often is critical to complete recovery.

Under the FHSA, the responsibility for proper labeling of chemical household products generally lies with the manufacturer. Revocation of this labeling rule allows manufacturers the flexibility of labeling their product appropriately, after making a determination of the relative hazards presented by its components. While the Commission's staff is prepared to advise manufacturers on the appropriateness of their labels and to seek correction of inappropriate labels, an exemption process would severely tax the Commission's limited resources.

2. Justify Economic Burden

The Carroll Company, which manufactures and privately labels chemical specialty products, objected to the proposal, noting that they sell petroleum based furniture polish products to hundreds of different customers, using an individual label for each customer. The commenter noted that the company had recently remade hundreds of label plates to comply with regulations of other agencies, and any additional changes would be an economic burden to the company and others in the industry. The commenter suggested that definitive data showing that victims' lives are in greater danger because the petroleum substance remains in the stomach should be obtained prior to revoking the present labeling requirement.

As noted in the proposal, the Commission is aware of petroleum distillate products subject to its jurisdiction which contain toxic ingredients in sufficient amount to represent a risk from toxicity that can exceed the risk of chemical pneumonia from aspiration that may occur while vomiting. Examples given were methanol and certain paint solvents and automotive care products. The systemic toxicity of these substances is well documented in the scientific and medical literature. The Commission's Toxicological Advisory Board supported the revocation as being necessary to ensure appropriate labeling.

The proposal indicates that the currently-required statement will remain appropriate for the majority of petroleum distillate products where it is now used. Typical generic formulations for petroleum-based furniture polishes were reviewed by the staff. According to information available in Clinical Toxicology of Commercial Products (Cosselin, R.E. *et al.*, 5th Edition, Williams and Wilkins, Baltimore, 1984), these formulations typically contain either petroleum distillates or mineral spirits as the major toxic ingredient; these components generally do not present a high degree of systemic toxicity. Other ingredients used in these formulations (dyes, perfumes, waxes, *etc.*) are not systemically toxic in the amounts generally present. For these reasons, the staff believes that the statement "If swallowed, do not induce vomiting" will continue to be appropriate for petroleum-based furniture polishes. Thus, the proposed revocation should not require any changes in the labeling of furniture polishes manufactured by this company.

As noted in the proposal, the Commission does not believe the revocation will have a significant effect on manufacturers, distributors, or retailers of products subject to the rule since it does not prohibit use of the "do not induce vomiting" instruction on the majority of products where it is now used. Rather, the revocation permits changes in these instances where a direction that vomiting should not be induced is inappropriate.

In any event, the Commission does not consider it appropriate to continue in effect a requirement that could lead to inaccurate first aid directions on products.

3. Key a Product's Labeling To Specified Toxicity Levels

The Environmental Protection Agency's (EPA) Office of Pesticide Programs (OPP) offered several comments on the proposal. They recommended establishing toxicity levels (based upon LD_{50} values) which would define products of sufficient toxicity that the "Do not induce vomiting" statement would be inappropriate. Using this approach, they recommended that the labeling requirement be maintained and exemptions granted for products with significant systemic toxicity. OPP stated its belief that where clear-cut distinctions in practical treatment can be made based upon toxicity, it would be advantageous to specify the treatment on the label. These distinctions are, according to OPP, most easily made for products whose systemic toxicity is very high or very low. According to the scheme by which EPA evaluates pesticide labels, in those cases where it is not obvious which treatment recommendation is appropriate, the responsibility for selection should rest with the manufacturer.

OPP commented that without a clear statement not to induce vomiting, the user is apt to assume that vomiting is the appropriate course of action. OPP expressed concern that for products where the aspiration hazard is greater than the systemic hazard, the lack of a clear statement not to induce vomiting might increase the possibility of injury.

The Commission does not believe it is appropriate or practical to establish toxicity levels to decide the question of whether a label should state "Do" or "Do not" induce vomiting. Since LD_{50} values do not necessarily precisely reflect human toxicity, judgment would need to be exercised in applying such criteria to specific product formulations. As the OPP noted, this is especially true in dealing with products falling between the extremes of "highly toxic" and relatively low toxicity. Whereas EPA scientific staff are in a position to exercise such judgments during the preclearance process for pesticides, no such preclearance is required by the FHSA. Such judgment therefore initially becomes the responsibility of the manufacturer, although Commission staff will provide advice on request and review labels for adequacy. The purpose of the proposed revocation is to allow manufacturers to exercise sound scientific and medical judgment in developing first aid labeling recommendations rather than be bound by a rule which requires a specific label.

With respect to OPP's concern that withdrawal of this labeling requirement will lead the consumer to assume that vomiting is the appropriate course of

action for products in which the aspiration hazard is greater than the systemic hazard, it appears that OPP has not taken into consideration the legal requirements of the FHSA. The FHSA requires that, where necessary or appropriate, the label bear an appropriate first aid statement. For petroleum distillate products of low viscosity and low systemic toxicity, a statement cautioning against the induction of vomiting may be regarded as a necessary and appropriate statement of first aid. In this respect, a statement of what not to do is as appropriate to first aid as are statements advising positive action. Since the Commission's staff interprets the FHSA as requiring that a labeling statement such as "Do not induce vomiting" be present where appropriate, users would not be left to assume vomiting was the appropriate course of action in such cases. On the other hand, where the systemic toxicity of a product is high, the determination of whether to induce vomiting may depend on the amount of the product ingested. In such a case, the revocation of the previous rule allows the manufacturer to choose to stress the need for medical treatment rather than to recommend specifically whether vomiting should be induced.

Economic and Environmental Effects

The Commission believes that revocation of this regulation will have no significant effect on the manufacturers, distributors, or retailers of products subject to the rule. The revocation does not prohibit the use of the "do not induce vomiting" instruction on the majority of petroleum distillate products where it is now used; instead, it permits changes in those instances where a direction that vomiting should not be induced is inappropriate. [14,15] The Commission's staff is not aware of any product labeling that will have to be changed because of the revocation of this requirement.

If the Commission becomes aware of products whose labeling should be changed as a result of this revocation, in most cases the change could be made when the existing stock of labels is depleted and new labels would have to be printed in any event.

Accordingly, the Commission does not believe that a substantial number of manufacturers, distributors, or retailers will be affected by the amendment or that its economic impact on affected parties will be significant. Therefore, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that the revocation issued in this notice will not have a significant economic impact on a substantial number of small entities.

This action falls within the category of labeling rules that originally are expected to have little or no potential for affecting the human environment. See the Commission's regulations at 16 CFR 1021.5(c)(2). After considering this issue, the Commission concludes that the revocation will not have a significant effect on the human environment and that neither an environmental assessment nor an environmental impact statement is required.

List of Subjects In 16 CFR Part 1500

Consumer protection, Hazardous materials, Imports, Infants and children, Labeling, Law enforcement, Toys.

Conclusion

For the reasons discussed above, and under the authority of sections 2 and 10 of the FHSA (15 U.S.C. 1261, 1269), the Commission amends Part 1500 of Subchapter A, Chapter II, of Title 16 of the Code of Federal Regulations as follows:

PART 1500—[AMENDED]

1. The authority citation for Part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

2. Sections 1500.14(b)(3) (i) and (ii) are revised to read as follows:

§ 1500.14 [Amended]

* * * * *

(b) * * *

(3) *Benzene, toluene, xylene, petroleum distillates.*

(i) Because inhalation of the vapors of products containing 5 percent or more by weight of benzene may cause blood dyscrasias, such products shall be labeled with the signal word "danger," the statement of hazard "Vapor harmful," the word "poison," and the skull and crossbones symbol. If the product contains 10 percent or more by weight of benzene, it shall bear the additional statement of hazard "Harmful or fatal if swallowed" and the additional statement "Call physician immediately."

(ii) Because products containing 10 percent or more by weight of toluene, xylene, or any of the other substances listed in paragraph (a)(3) of this section may be aspirated into the lungs, with resulting chemical pneumonitis, pneumonia, and pulmonary edema, such products shall be labeled with the signal word "danger," the statement or hazard "Harmful or fatal if swallowed," and the statement "Call physician immediately."

Dated: January 27, 1988

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Editorial Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix—List of Relevant Documents in the Record

1. Federal Register notice, 36 FR 11040, June 8, 1971.

2. Comments received in response to 36 FR 11040 (1971) [1].

3. Federal Register notice, 44 FR 55304, September 25, 1979.

4. Final Report of the Toxicological Advisory Board, September 13, 1982.

5. Memorandum from the Directorates for Health Sciences and Compliance and Administrative Litigation, "Staff Analysis of Toxicological Advisory Board Final Report," dated June 24, 1983.

6. Federal Register notice of availability of Toxicological Advisory Board Final Report, 48 FR 57585; December 30, 1983.

7. Public comments on the Toxicological Advisory Board Final Report:

CA6–84–1 Union Carbide Corporation
CA6–84–2 Chemical Specialties Manufacturers Association
CA6–84–3 U.S. Borax Research Corporation
CA6–84–4 Dale Miller, Consultant
CA6–84–5 National Paint and Coatings Association

8. Testimony of New York State Consumer Protection Board, July 10, 1984.

9. Memorandum from the Office of General Counsel, "Analysis of Comment on Toxicological Advisory Board Final Report," dated July 10, 1984.

10. Memorandum from the Directorates for Health Sciences and Compliance and Administrative Litigation, "Staff Analysis of Public Comments on Toxicological Advisory Board Final Report," dated October 25, 1984.

11. Briefing Package on Staff Analysis of Comments on the Final Report of the Toxicological Advisory Board, Directorate for Health Sciences, dated December 13, 1984.

12. Record of Commission action on ballot vote decision on staff recommendations concerning the final Report of the Toxicological Advisory Board, dated February 6, 1985.

13. Comments of Commissioner Saundra B. Armstrong concerning her vote on the staff recommendations on the TAB Final Report.

14. Memorandum from the Directorate for Health Sciences, "Petroleum Distillate Required Labeling," dated April 2, 1985.

15. Memorandum from the Directorate for Compliance and Administrative Litigation, "FHSA Labeling for Petroleum Distillates," dated _____, 1985.

16. Memorandum from the Directorate for Economic Analysis, "FHSA Labeling for Petroleum Distillates," dated July 9, 1985.

17. "Briefing Package on Draft Proposed Rule to Revise Special Labeling Rule for Products Containing Petroleum Distillates," August 1985.

18. "Briefing Package on Draft Final Rule to Revoke the First Aid Labeling Requirement for Petroleum Distillates," October 1987.

[FR Doc. 88-2242 Filed 2-2-88; 8:45 am]
BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Natural Gas Policy Act; Maximum Lawful Prices

AGENCY: Federal Energy Regulatory Commission, DOE.
ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 357.307(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of February, March, and April, 1988. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR, (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Policy Act of 1978; Order of the Director

Issued January 27, 1988.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of February, March, and April, 1988, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1)(2), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to February 1988 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR, Part 271

Natural gas.

Richard P. O'Neill,
Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

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

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for February, March, and April, 1988 in Tables I and II as follows:

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA sections 104 and 106(a)]

Subpart of Part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in— Feb. 1988	Mar. 1988	Apr. 1988
B	102	New natural gas, certain OCS gas [4]	$4.792	$4.819	$4.846
C	103(b)(1)	New onshore production wells [5]	3.260	3.268	3.276
E	105(b)(3)	Intrastate existing contracts	4.657	4.679	4.701
F	106(b)(1)(B)	Alternative maximum lawful price for certain intrastate rollover gas [1]	1.865	1.869	1.873
G	107(c)(5)	Gas produced from tight formations [3]	6.520	6.536	6.552
H	108	Stripper gas	5.131	5.160	5.189
I	109	Not otherwise covered	2.701	2.707	2.713

[1] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative maximum lawful price specified in this table. This alternative maximum lawful price for each month appears in this row of Table I. Commencing Jan. 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's regulations.)

* * * * *

[3] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

[4] Commencing Jan. 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's regulations.)

[5] Commencing Jan. 1, 1985, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a)

[Subpart D, Part 271]

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries made in— Feb. 1988	Mar. 1988	Apr. 1988
Post-1974 gas: All producers	$2.701	$2.707	$2.713
1973-1974 biennium gas:			
Small producer	2.281	2.286	2.291
Large producer	1.745	1.749	1.753
Interstate rollover gas: All producers	1.002	1.004	1.006
Replacement contract gas or recompletion gas:			
Small producer	1.280	1.283	1.286
Large producer	.983	.985	.987
Flowing gas:			
Small producer	.649	.651	.653
Large producer	.548	.549	.550
Certain Permian Basin gas:			
Small producer	.762	.764	.766
Large producer	.675	.677	.679
Certain Rocky Mountain gas:			
Small producer	.762	.764	.766
Large producer	.649	.651	.653
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	.617	.618	.619
Other contracts	.572	.573	.574
Minimum rate gas: [1] All producers	.338	.339	.340

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of February, March, and April, 1988.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery—1988	Factor by which price in preceding month is multiplied
February	1.00239
March	1.00239
April	1.00239

[FR Doc. 88-2087 Filed 2-2-88; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 777

Library Research and Demonstration Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Library Research and Demonstration Program. This action is taken to implement section 205 of the Higher Education Amendments of 1986. The amendments delete information technology as a specific focus of this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank A. Stevens or Louise Sutherland, Library Programs, Office of Educational Research and Improvement (OERI), U.S. Department of Education, Room 402M, 555 New Jersey Avenue NW., Washington, DC 20208-1430. Telephone (202) 357-6315.

SUPPLEMENTARY INFORMATION: The 1986 Amendments amended the existing Title II, creating a new College Library Technology and Cooperation Grants Program. This new program deals specifically with the improvement of library services through technology. Congress eliminated information technology as an allowable activity under the Research and Demonstration Program of Title II-B.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations incorporate a statutory change, public comment could have no effect on the content of these regulations. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Department has determined that the regulations in this document do not require transmission of information that

is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 777

Education, Educational research, Government contracts, Grant programs—education, Libraries, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.039, Library Research and Demonstration Program)

Dated: November 16, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 777 of Title 34 of the Code of Federal Regulations as follows:

PART 777—LIBRARY RESEARCH AND DEMONSTRATION PROGRAM

1. The authority citation for Part 777 is revised to read as follows:

Authority: 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

§ 777.1 [Amended]

2. In § 777.1, paragraph (b) is removed and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively.

§ 777.10 [Amended]

3. In § 777.10, paragraph (a)(3) is removed, the word "and" is added following paragraph (a)(2), and paragraph (a)(4) is redesignated as paragraph (a)(3).

[FR Doc. 88-2220 Filed 2-2-88; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3481/R926; FRL-3322-6]

Pesticide Tolerance for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide iprodione in or on leaf lettuce. This regulation to establish the maximum permissible level for residues of iprodione in or on this raw agricultural commodity was requested by Rhone-Poulenc, Inc.

EFFECTIVE DATE: Effective on February 3, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 13, 1987 (52 FR 18020), which announced that Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852, had submitted a pesticide petition (7F3481) to EPA proposing that 40 CFR Part 180 be amended by establishing a tolerance for the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] expressed in or on leaf lettuce at 25 parts per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 500 ppm (25 mg/kg bwt/day), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg bwt/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg bwt/day);

2. A rabbit teratology study in which the following doses were administered by gavage: 0, 20, 60, and 200 milligrams/kilogram body weight (mg/kg bwt), resulting in a teratogenic NOEL equal to or greater than 60 mg/kg bwt;

3. A rat teratology study in which the following doses were administered by gavage: 0, 40, 90, and 200 mg/kg bwt, resulting in a teratogenic NOEL equal to 90 mg/kg bwt (considered supplementary under current guidelines and may be upgraded to minimum with additional information);

4. A 24-month feeding/oncogenicity study in rats using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study;

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, and 178.6 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study.

6. A 1-year dog feeding study using dosage levels of 168, 600, and 3,600 ppm (4.2, 15, and 90 mg/kg bwt/day) with a NOEL of 168 ppm (4.2 mg/kg bwt/day) and an LEL of 600 ppm (15 mg/kg bwt/day); and

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg bwt/day) with a NOEL of 2,400 ppm (60 mg/kg bwt/day) and an LEL of 7,200 ppm (180 mg/kg bwt/day).

Data currently lacking include an acute dermal study, a skin sensitization study, and an appropriate laboratory animal metabolism study. The registrant plans to submit these studies by January 1988.

The acceptable daily intake (ADI) based on the NOEL of 4.2 mg/kg bwt/day and using a hundredfold safety factor, is calculated to be 0.04 mg/kg bwt/day. The maximun permitted intake for a 60-kg human is calculated to be 2.4 mg/day. The theoretical maximum residue contribution from the proposed tolerance is 0.002464 mg/kg/day and utilizes 6.16 percent of the ADI. This tolerance and the previously established tolerances utilize a total of 91.68 percent of the ADI.

There are no regulatory actions pending against the registration of iprodione. The metabolism of iprodione in plants and animals is adequately understood for purposes of the tolerance. An analytical method, gas liquid chromatography using an electron capture detector, is available in Volume II of the Pesticide Analytical Manual for enforcement purposes.

Based on the information cited above, the Agency has determined that establishing the tolerance for residues of the pesticide in or on the listed commodity will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1987 (46 FR 24950).

(Section 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 15, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

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

2. Section 180.399(a) table is amended by adding and alphabetically inserting a listing for the raw agricultural commodity lettuce, leaf, to read as follows:

§ 180.399 Iprodione; tolerance for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Lettuce (leaf)	25.0
* * * * *	

[FR Doc. 88–2072 Filed 2–2–88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3532/R932; FRL–3323–7]

Pesticide Tolerance for 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity pumpkins. This regulation was requested in a petition by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: February 3, 1988.

ADDRESSES: Written objections, identified by the document control number, [PP 7E3532/R931], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 16, 1987 (52 FR 47733), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3532 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of Illinois and Oklahoma.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposed the establishment of a tolerance for the residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity pumpkins at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of the document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** on May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: January 21, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.425 is amended by adding and alphabetically inserting the listing for the raw agricultural commodity pumpkins, to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.

* * * * *

Commodities	Parts per million
Pumpkins	0.1
* * * * *	

[FR Doc. 88–2182 Filed 2–2–88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP–300173A; FRL–3323–8]

Peas; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR 180.1(h) to include lentils in the commodity definition of peas. This regulation, which will expand and redefine the definition of peas, was submitted by the Interregional Research Product No. 4 (IR–4).

EFFECTIVE DATE: Effective on February 3, 1988.

ADDRESSES: Written objections, identified by the document control number [OPP–300173A], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail:
Donald R. Stubbs, Emergency Response and Minor Use Section, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Rm. 716H, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 25, 1987 (52 FR 45204), which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NY 08903, had submitted this request to amend 40 CFR 180.1(h) on behalf of Dr. Robert H. Kupelian, National Director, and the IR–4 Technical Committee.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant material have been evaluated and discussed in the proposed rulemaking. The Agency concurs with IR–4 on the revision of § 180.1(h) to expand the general category "peas" in column A to include lentils in the corresponding listing of specific raw agricultural commodities on column B. This revision will expand the tolerances and exemptions established for residues of pesticide chemicals in or on the general category "peas" to include the specific raw agricultural commodity lentils. Based on the information considered by the Agency, it is concluded that the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. (Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 21, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1(h) is amended by revising the definition of "peas," to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Peas	*Cajanus cajan* (includes pigeon peas); *Cicer spp.* (includes chick peas and garbanzo beans); *Lens culinaris* (lentils); *Pisum spp.* (includes dwarf peas, garden peas, green peas, English peas, field peas, and edible pod peas). [Note: A variety of pesticide tolerances have been previously established for peas and/or beans. Chick peas/garbanzo beans are now classified in both the bean and the pea categories. For garbanzo beans/chick peas ONLY, the highest established pea or bean tolerance will apply to pesticide residues found in this commodity.]
* * * * *	

[FR Doc. 88–2183 Filed 2–2–88; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 180

[PP 7E3537/R933; FRL–3323–4]

Pesticide Tolerance for Pendamethalin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide pendimethalin and its metabolite in or on the raw agricultural commodity garlic. The Interregional Research Project No. 4 (IR–4) petitioned for this tolerance.

EFFECTIVE DATE: February 3, 1988.

ADDRESSES: Written objections, identified by the document control number, [PP 7E3537/R932], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail:
Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 16, 1987 (52 FR 47734), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3537 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of California and Oregon.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the herbicide pendimethalin [N–(1–ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite 4-[1-ethylpropyl] amino]-2-methyl-3,5-dinitrobenzyl alcohol in or on the raw agricultural commodity garlic at 0.1 part per million (ppm). The petitioner proposed that this use of pendimethalin and its metabolite on garlic be limited to California, Nevada, and Oregon based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: January 21, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.361 is amended by adding new paragraph (c), to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

* * * * *

(c) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the herbicide pendimethalin [*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite 4-[1-ethylpropyl)aminol]-2-methyl-3,5-dinitrobenzyl alcohol in or on the following raw agricultural commodities as follows:

Commodities	Parts per million
Garlic	0.1

[FR Doc. 88–2184 Filed 2–2–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–257; RM–5853]

Radio Broadcasting Services; Wendover, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Rita Taylor, allocates Class C Channel 272 to Wendover, Nevada, as the community's first local FM service. Channel 272C can be allocated to Wendover in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective March 14, 1988. The window period for filing applications will open on March 15, 1988, and close on April 14, 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. 87–257, adopted December 24, 1987, and released January 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours of 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 for Nevada is amended by adding Wendover, Channel 272C.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88–2200 Filed 2–2–88; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 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

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Slaughter Cattle and Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the official U.S. standards for grades of carcass beef and the related standards for grades of slaughter cattle. The proposed changes would provide for separate application of the quality grade and yield grade for steer, heifer, cow, and bullock carcasses and for slaughter cattle without changing either the quality grade or yield grade requirements. These changes would provide more flexibility in using the grading service by permitting the voluntary use of either the beef quality grades and/or the yield grades. Packers would be able to adopt certain avanced production and marketing procedures, and the industry as a whole would be able to choose the procedures which most efficiently meet consumer demands for trimmer beef. The separation of the quality and yield grades would allow the industry to trim carcasses before grading and maintain the option of quality grading. It would also allow the industry to pursue an alternative procurement system that could benefit producers of cattle with higher lean meat yields by discouraging overproduction of fat in order to maximize selling weights of both cattle and beef.

DATES: Comments must be received by April 4, 1988. See Supplementary Information for date of public hearing session.

ADDRESSES: Written comments to: Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2649 South Building, P.O. Box 96456, Washington, DC 20090–6456. See Supplementary Information for location of public hearing session.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456, 202–447–4486.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The proposed revision of the beef carcass (7 CFR Part 54) and slaughter cattle (7 CFR Part 53) standards was reviewed under Department procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and is hereby classified as a non-major rule because (1) it would not have an annual effect on the economy of $100 million or more, (2) it would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) it would 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.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the RFA because the changes would not change the grade requirements for slaughter cattle or beef carcasses but would provide all users with greater flexibility in usng the grade standards to identify quality and/or yield characteristics. Users of the grades would be able to specify the combinations of quality and/or yield grades that best meet their needs. Further, the use of the beef grades is voluntary, and they are applied equally to all size entities covered by these regulations.

Comments and Hearing

In order that all those affected have ample opportunity to comment, oral as well as written views, data, or arguments will be received on the proposal. In this regard, a public hearing will be held on the proposed changes contained in this notice. The hearing session will be held at the location listed below on the date shown:

March 8, 1988, Kansas City, Missouri 64195, Hilton Airport Plaza Inn, I–29 and 112th Street, (816) 891–8900.

The public hearings session will commence at 9:30 a.m., local time. Persons who wish to be heard are requested to notify Dr. Michael L. May (see For Further Information Contact) on or before March 1, 1988, stating that they wish to present a statement and approximately how much time they will need to make their presentation. However, any person who wishes to make an oral presentation will be permitted to do so, whether or not that person has given advance notice. A written copy of the speaker's statement is requested and should be presented to the presiding official at the hearing.

In addition, all persons who desire to submit written data, views, or comments on this proposal are invited to submit such material, in duplicate, to the Standardization and Review Branch Livestock and Seed Division, AMS, U.S. Department of Agriculture, 2649 South Building, P.O. Box 96456, Washington, DC 20090–6456 on or before April 4, 1988. Comments must be signed and include the address of the sender and should bear a reference to the date and page number of this issue of the **Federal Register.** The comments should include information which explains and supports the sender's views. All written submissions and transcripts of the coments at the public hearing will be made available for public inspection at the office of the Standardization and Review Branch, Livestock and Seed Division, AMS, USDA, 2649 South Building, 14th and Independence Avenues SW., Washington, DC 20250, during regular office hours.

Background

Federal grading of beef is a voluntary service, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), which is designed to facilitate the marketing of cattle and

beef. Beef grades are intended to segregate the beef supply into groups with similar attributes of palatability and yields of cuts. These criteria are generally of ultimate concern to consumers and the beef industry because they affect the acceptability, price, and consumption of beef. Grades provide a uniform basis for marketing cattle and beef and allow consumer desires to be communicated to the industry so that necessary changes in feeding and production may be made.

Beef grading is provided by the Department for a fee to users who request the service. Because beef grading is voluntary, not all marketed beef is graded. In 1986 approximately 56 percent of commercial beef production was graded. However, approximately two-thirds of the federally inspected steer and heifer slaughter was graded. The steer and heifer slaughter is the portion of the beef supply generally available to consumers as retail cuts.

The official beef grade currently consists of both a quality grade and a yield grade. The quality grades identify differences in the palatability of cooked beef principally through the characteristics of marbling and maturity. The yield grades identify differences in the percentage of product that may be obtained from a carcass through the characteristics of external fat cover; percent kidney, pelvic, and heart fat; hot carcass weight; and ribeye area. Yield grades are also useful as predictors of the yield of further subdivisions of carcasses, but their usefulness diminishes as the size of the cuts lessens, fat is trimmed, and bone is removed.

Yield grades are primarily used as wholesale marketing indicators and are seldom used at retail because of standardized retail fat trims. However, AMS believes that consumers are generally able to differentiate differences in the amount of lean meat and fat and to make value comparisons. Quality grades are also used in wholesale marketing, but unlike yield grades, are used at retail to identify quality differences which are difficult for consumers to differentiate.

The last major revision of the beef grade standards was issued in 1975. A portion of that revision "coupled" the beef quality grades and the beef yield grades; i.e., when officially graded, the grade of cattle or carcasses consists of both the quality grade and the yield grade. Before this change, the user of the grading service had the option of identifying beef for the quality grade, yield grade, or both. The 1975 change was made for the purpose of providing the most complete indication of the two major factors for determining the value of a carcass—quality and yield of cuts. By identifying both of these major determinants of carcass value, consumer preferences could be communicated to producers, and production could be adjusted to most efficiently meet consumer demand. Further, the combination of quality and yield grades was intended to encourage their use in wholesale marketing so that producers of cattle with a higher lean meat yield would be compensated accordingly. The Department believes that these objectives have generally been achieved.

Another related reason for the 1975 change was to provide a trimmer product to consumers by reducing the amount of waste fat produced. Although excess fat is still produced, producers have responded by changing production practices and doubling the production of the more desirable Yield Grade 1 and 2 carcasses and decreasing the production of Yield Grade 4 and 5 carcasses while maintaining approximately the same percentage production of Choice beef. The industry now recognizes the value of identifying differences in percentage yields of cuts by the yield grades. Premiums for Yield Grades 1 and 2 and discounts for Yield Grade 4 and 5 exist. However, they seldom reflect the value differences indicated by yield grades.

Changes in the marketing of beef have occurred since 1975. These changes have caused the industry to re-evaluate the need for coupled quality and yield grades. The first change is in the way that wholesale beef is marketed. In 1975, a large percentage of wholesale beef was marketed either as carcasses or as bone-in primals. However, it is estimated that in 1986 less than 5 percent of the retail receipts of beef were in carcass form and the percentage of boneless receipts had risen to over 60 percent of the total retail receipts of beef.

The second major change in the marketing of beef involves the trim levels of beef sold at retail. Until recently most beef sold at retail was trimmed to no more than one-half inch. However, in the past two or three years, most retailers, which includes 8 of the 10 largest supermarket companies, have changed to one-fourth-inch or closer trim programs. Retailers are also offering consumers a continually greater percentage of boneless cuts.

Although significant progress has been made in production of leaner cattle without sacrificing quality, excess fat and bone must still be removed in order to satisfy consumer demands. The industry recognizes the inefficiency of not trimming excess fat and removing bone at the packer level. Therefore, in order to provide retailers and consumers with the types of beef preferred and to increase efficiency, most packers have either initiated or intend to initiate programs to provide purchasers with more closely trimmed primal and subprimal cuts.

To most efficiently produce these most desirable types of cuts, packers have also examined alternative production and marketing procedures. One procedure is to remove external fat from carcasses at the time of slaughter, a process called hot-fat trimming. Although this procedure offers potential economic benefits, two provisions in the current standards prevent packers from using this technology if they desire to have beef officially graded. The first provision is the coupling of the quality and yield grades. The second is the standard that prevents the grading of carcasses that have had substantial amounts of external fat removed. This provision prevents the yield grading of carcasses that have been trimmed because accurate yield grade determinations cannot be made on trimmed carcasses. For these reasons, the American Meat Institute and the National Cattlement's Association petitioned the Department in June 1987 to amend the beef carcass grade standards to permit the voluntary use of either the beef quality grades and/or the beef yield grades.

The petitioners pointed out that under the current standards, plants wishing to produce closely trimmed primals and subprimals have essentially two options: (1) Add personnel and equipment to maintain present processing or production rates or (2) reduce processing rates to match existing personnel and facility restraints. Both options are considered costly and inefficient. The petitioners further stated that hot-fat trimming on the slaughter floor could more efficiently remove most of the excess fat before processing. The industry would benefit if packers were afforded the opportunity to implement cost-effective production systems in a constantly changing, competitive economic environment.

The petitioners also stated that market demands would dictate use of the grading service. If beef purchasers, whether large or small volume, accept hot-fat trimmed primals and subprimals, they would have no need for yield grade identification. If they do not accept hot-fat trimmed product, they could still choose to use the yield grading system on quality graded or non-quality graded product.

The Department believes that if the quality and yield grades are separated, retailers will continue to specify yield grading as a purchasing requirement unless the benefits of hot-fat trimmed product had been successfully demonstrated. Packers would still have to meet specified trim requirements on their products. This same condition is presently met by packers in order to satisfy the needs of their customers. However, if the efficiencies of hot-trimmed product dictate, closer trim specifications could be met more efficiently and economically than with normally trimmed product.

One of the primary functions of yield grades is to account for differences in external and seam (intermuscular) fat. The hot trimming of external fat could account for the largest portion of variability in yield of cuts between carcasses. However, hot-fat trimming does not affect the amount of seam fat in a carcass. For this reason, the variability in yield due to differences in fat between carcasses which have been hot-trimmed is largely the result of differences in the amount of seam fat. Carcasses which have had external fat removed may not be eligible for yield grading in some instances because accurate grade determinations cannot be made. Therefore, purchasers may not have yield grades available to determine the amount of seam fat in a carcass.

Two differences in the way beef is currently marketed make yield grades less significant for determining the amount of seam fat in a product. Unpublished data from research conducted by the Texas Agricultural Experiment Station has shown a 0.12 percentage difference in seam fat between each tenth of a yield grade on a 700 pound carcass. However, packers do not currently distinguish between boxed beef produced from Yield Grade 3 or better carcasses. Secondly, the industry is marketing a higher percentage of boneless subprimal cuts. During processing to boneless subprimal cuts, significant amounts of seam fat may be removed. A benefit of hot-fat trimming perceived by the petitioners is the opportunity it gives producers to be paid on lean meat yield. As the difference in amount of external fat on carcasses is narrowed, the differences in composition among carcasses of different yield grades narrows. Carcasses from cattle with less fat would have higher trimmed carcass weights. If producers are paid on a trimmed carcass weight basis, if two cattle weighed the same live, the trimmer animal would have the heavier pay weight. Such a system would encourage beef producers to adopt breeding and feeding technology directed toward the production of leaner cattle.

While there would be some shifting in the value per pound of live animals, carcasses, and more closely trimmed subprimal cuts, such shifts should only account for changes in value associated with removal of fat and/or bone, and no significant change in the cost of beef would be expected. In fact, if the efficiencies of hot-fat trimming are realized, these efficiencies should be reflected in the cost of product trimmed in this manner when compared to conventionally trimmed product.

Proposed Standards

Consideration of all the available data and information indicates that the revision of the beef carcass and slaughter cattle standards to allow either quality grading and/or yield grading would appear to offer potential for improving the effectiveness of the beef grades in meeting the needs of the marketplace. Considerable changes which have occurred in the marketing of beef have necessitated the need to remove excess fat and bone more efficiently. Although the industry retains its goal of eliminating excess waste through improved breeding and feeding technology, the current information suggests that the hot-fat trimming technology offers considerable promise to the industry as a potential method to more efficiently remove waste fat when it is produced. There are potential economic benefits that could benefit not only producers and packers, but also beef purchasers and consumers who desire the attributes of trimmer beef. The current provisions that require both a quality and yield grade are effectively preventing the possible adoption of such technologies. Therefore, it is proposed that the beef carcass standards be revised to allow the application of the quality grade only, the yield grade only, or the application of both the quality and yield grades. As a result of the uncoupling of these grades, carcasses that have had external fat removed for any non-fraudulent or non-deceptive cause may receive a yield grade if it is determined that an accurate grade evaluation can be made. No changes in the actual grade requirements for either quality or yield grades are proposed.

The standards for grades of slaughter cattle, which are based on the beef carcass grade standards, would be revised to reflect the changes proposed for the beef carcass grade standards. Grades of slaughter cattle are intended to be directly related to the grades of the carcasses they produce.

For the reasons outlined, it is proposed that certain sections of the standards appearing at 7 CFR Part 53 as they relate to livestock and certain sections of the standards appearing at 7 CFR Part 54 as they relate to meats, prepared meats, and meat products be revised as set forth below.

List of Subjects

7 CFR Part 53

Livestock, Cattle, Grading and certification, Standards.

7 CFR Part 54

Beef carcasses, Meat and meat products, Grading and certification, Standards.

PARTS 53 and 54—[AMENDED]

1. The authority citation for Parts 53 and 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

§ 53.203 [Amended]

2. In 7 CFR 53.203(a), the last sentence is revised to read as follows: "The grades of slaughter cattle may consist of the quality grade only, the yield grade only, or a combination of the quality grade and the yield grade except that slaughter bulls are yield graded only."

3. In 7 CFR Part 54, § 54.104 paragraphs (a) and (g) are revised to read as follows:

§ 54.104 Application of standards for grades of carcass beef.

(a) The carcass beef grades identify two separate general considerations: The indicated yield of closely trimmed (½ inch fat or less), boneless retail cuts expected to be derived from the major wholesale cuts (round, sirloin, short loin, rib, and square-cut chuck) of a carcass, herein referred to as the "yield grade," and characteristics of the meat which predict the palatability of the lean, herein referred to as the "quality grade." When officially graded, the grade of a steer, heifer, cow, or bullock carcass may consist of the quality grade only, the yield grade only, or a combination of the quality grade and the yield grade. The grade of a bull carcass consists of the yield grade only.

* * * * *

(g) Beveling of the fat over the ribeye, application of pressure, or any other influences which may alter the characteristics of the ribeye or thickness of fat over the ribeye prevent an accurate grade determination. Therefore, carcasses subjected to such influences shall not be eligible for grade

determinations, and the presentation of such carcasses for official grade determinations shall be considered a fraudulent or deceptive practice in connection with the services requested for such carcasses. Carcasses that have had external fat removed may be yield graded only if the official grader determines that an accurate yield grade determination can be made. Although entire carcasses with more than minor amounts of lean removed from the major wholesale cuts (round, sirloin, short loin, rib, or square-cut chuck) shall not be eligible for grade determinations, the remaining portions of these carcasses which are unaffected by the removal of lean shall remain eligible for grade determinations, provided that a cross section at the 12th-13th rib is available and accurate grade determinations may be made.

* * * * *

Done at Washington, DC, on: January 29, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-2177 Filed 2-2-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 84-356]

Inspection of Means of Conveyance, Baggage, and Cargo Moving Interstate From Hawaii, Puerto Rico, or the Virgin Islands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend two subparts in our Hawaiian and territorial quarantine notices with respect to inspection requirements and the location of inspection for ships, other surface craft, aircraft, and cargo, baggage, and personal effects moving from Hawaii, Puerto Rico, or the Virgin Islands of the United States to other parts of the United States. These proposed amendments are intended to improve the efficiency of inspections, and to consolidate and clarify the Department's regulations and procedures with respect to these inspections. We are also proposing editorial changes to make the organization of the two subparts similar.

DATES: Comments must be postmarked or received on or before April 4, 1988.

ADDRESS: Send your written comments concerning this proposed rule to Mr. Steven B. Farbman, Assistant Director, Regulatory Coordination, Animal and Plant Health Inspection Service, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 84-356. Comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Havens, Port Operations Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

We are proposing to amend two subparts in the "Hawaiian and Territorial Quarantine Notices" (7 CFR Part 318). The "Hawaiian and Territorial Quarantine Notices," among other things, quarantine Hawaii, Puerto Rico, and the Virgin Islands of the United States (referred to below as the Virgin Islands) to prevent the spread of dangerous plant diseases and insect infestations that are new to or not widely prevalent or distributed within and throughout the United States. The two subparts we are proposing to amend are "Hawaiian Fruits and Vegetables" (7 CFR 318.13 *et seq.*), and "Fruits and Vegetables From Puerto Rico or Virgin Islands" (7 CFR 318.58 *et seq.*). We refer to these regulations, respectively, as the Hawaii regulations and the Puerto Rico-Virgin Islands regulations. We are proposing to amend the requirements for inspection of ships, vessels, other surface craft, and aircraft, and inspection of certain cargo, baggage, and personal effects moving from Hawaii, Puerto Rico, and the Virgin Islands to other parts of the United States.

The Hawaii regulations govern the movement of raw and unprocessed fruits and vegetables, cut flowers, rice straw, mango seeds, and cactus plants and cactus parts, from Hawaii into or through the continental United States, Guam Puerto Rico, or the Virgin Islands. The Puerto Rico-Virgin Islands regulations govern the movement of raw and unprocessed fruits and vegetables from Puerto Rico and the Virgin Islands into or through Guam, Hawaii or the continental United States. The Puerto Rico-Virgin Islands regulations also govern movement of cactus plants and parts of cactus plants from the Virgin Islands into or through Guam, Puerto Rico, or the continental United States. Similar language appears in the two sets of regulations. (See 7 CFR 318.13-8, 318.13-10, 318.58-8, 318.58-10, 318.58-11).

APHIS's mandate is to protect United States agriculture from harmful plant pests and diseases. To do this, APHIS regulations are designed to prevent plant pests and diseases that are not present in the United States from entering the country, and to prevent plant pests and diseases that are already in the United States from spreading. To achieve this objective more effectively, we are proposing this rule to clarify the requirements for inspection of baggage from Hawaii, to clarify similar requirements for inspection of baggage from Puerto Rico and the Virgin Islands, and to clarify requirements for inspection of means of conveyance and cargo from Hawaii, Puerto Rico and the Virgin Islands.

We are proposing to rewrite and consolidate various requirements of the Hawaii and Puerto Rico-Virgin Islands regulations to improve organization and clarity and to aid enforcement. These proposed revisions result in four proposed new subsections, in both the Hawaii and the Puerto Rico-Virgin Islands regulations, entitled "Articles and persons subject to inspection," "Inspection of means of conveyance," "Inspection of baggage, other personal effects, and cargo," and "Disinfection of means of conveyance." We are also proposing to add a definition of "certificate" to the Puerto Rico-Virgin Islands regulations to conform with that definition in the Hawaii regulations. This rule proposes the substantive and organizational changes described below.

Articles and Persons Subject to Inspection

This proposed new subsection in both the Hawaii and the Puerto Rico-Virgin Islands regulations reiterates the statutory authority of inspectors to inspect persons, means of conveyance, and articles that are destined for movement, are moving, or have been moved, from Hawaii, Puerto Rico, or the Virgin Islands to other parts of the United States. While other portions of the proposed regulations require inspections at particular points during movement, this proposed subsection also allows additional inspections to be performed at the discretion of an inspector at the port of departure and the port of arrival.

Inspection of Aircraft and Aircraft Cargo

Currently, the Hawaii regulations provide that aircraft moving from Hawaii to the continental United States, Puerto Rico, the Virgin Islands, or Guam

shall be subject to inspection upon arrival (except when an inspector exercises discretionary authority to order inspection prior to departure).

This rule proposes to change these regulations to provide that aircraft moving from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands must instead be offered for inspection prior to departure. Aircraft moving from Hawaii to Guam would have to be offered for inspection upon arrival in Guam, unless arrangements for a pre-departure inspection in Hawaii have been made between the operator of the aircraft, APHIS, and the government of Guam.

Currently, the Puerto Rico-Virgin Islands regulations provide that aircraft moving from Puerto Rico or the Virgin Islands to any other State, Territory, or District of the United States shall be subject to inspection upon arrival (except when an inspector exercises discretionary authority to order inspection prior to departure).

This rule proposes to change these regulations to provide that aircraft moving from Puerto Rico or the Virgin Islands to any other State, Territory or District of the United States (except Guam) would instead be offered for inspection prior to departure. Aircraft moving from Puerto Rico or the Virgin Islands to Guam would be offered for inspection upon arrival in Guam, unless arrangements for a pre-departure inspection in Puerto Rico or the Virgin Islands were made between the operator of the aircraft, APHIS, and the government of Guam.

These proposed changes to the Hawaii and Puerto Rico-Virgin Islands regulations would allow the Department to use its inspectors in a more efficient manner and to reduce the number of sites at which these inspections must be conducted. The Department currently has sufficient staff in Hawaii, Puerto Rico, and the Virgin Islands to inspect departing flights subject to the regulations, but does not have sufficient staff to conduct these inspections at all arrival points in other parts of the United States. In addition, the Department believes it can more efficiently manage these inspections when they are limited to a small number of departure sites, rather than a large number of arrival sites.

Inspection of Baggage and Personal Effects of Aircraft Passengers and Crew

Currently, the Hawaii regulations provide that baggage and personal effects of passengers and crew of aircraft moving from Hawaii to the continental United States, Puerto Rico, the Virgin Islands, or Guam shall be subject to inspection, at the discretion of APHIS, either upon departure from Hawaii or upon arrival.

This rule proposes to change the Hawaii regulations to provide that persons destined for movement by aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands would have to offer their baggage and other personal effects to an inspector for inspection at designated inspection stations. Persons boarding aircraft destined for movement from Hawaii to Guam would not be subject to this restriction for reasons discussed below under "Guam".

Currently, the Puerto Rico-Virgin Islands regulations provide that baggage and personal effects of passengers and crew of aircraft moving from Puerto Rico or the Virgin Islands to any other State, Territory, or District of the United States shall be subject to inspection, at the discretion of APHIS, either upon departure from Puerto rico or the Virgin Islands or upon arrival.

This rule proposes to change the Puerto Rico-Virgin Islands regulations to provide that persons destined for movement by aircraft from Puerto Rico or the Virgin Islands to any other State, Territory, or District of the United States, except Guam, would have to offer their baggage and other personal effects to an inspector for inspection at designated inspection stations.

The baggage and personal effects inspections for aircraft flights is proposed to be performed prior to departure because we believe that this method minimizes the burden on travellers and carriers, while maximizing efficiency of the inspections. In addition, while we believe we have sufficient staff to perform the inspections at the relatively few points of departure, we do not have sufficient staff available to perform these inspections at the larger number of aircraft arrival sites.

Currently, the Hawaii and Puerto Rico-Virgin Islands regulations do not describe in detail what is involved in an inspection; instead they state that baggage and personal effects "shall be subject to examination by an inspector to ascertain if they contain any of the articles or plant pests prohibited movement."

This proposed rule would expand and clarify the description in both the Hawaii and the Puerto Rico-Virgin Islands regulations of what is involved in an inspection, in order to aid enforcement and reduce the number of attempts by passengers and crew to carry prohibited articles in their baggage. The present requirement that baggage "shall be subject to examination" is passive. The proposed language would require passengers and crew to present all their baggage and personal effects for inspection, to disclose any articles of the types th inspector asks about, and to present identification where prohibited or regulated articles are discovered. This proposal would also allow the imposition of civil and criminal penalties on persons who fail to meet these requirements. We except that these proposed changes, by clearly stating the responsibilities of passengers and crew, would reduce the number of attempted violations of the quarantines and would also provide a clearer basis for imposing civil and criminal penalties on those who try to evade inspection or violate the quarantine.

Inspection of Ships and Ships' Cargo

Currently, the Hawaii regulations require that ships and other surface vessels and their cargo moving from Hawaii be inspected upon their arrival in the continental United States, Puerto Rico, the Virgin Islands, or Guam.

For ships, other surface vessels, and their cargo destined for movement from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands, we propose to change the Hawaii regulations to require pre-departure inspection for cargo, and post-arrival inspection for the ships and vessels themselves. For ships, other surface vessels, and their cargo destined for movement from Hawaii to Guam, we would continue to require inspection upon arrival in Guam.

Currently, the Puerto Rico–Virgin Islands regulations require that ships and other surface vessels and their cargo moving from Puerto Rico or the Virgin Islands to any other State, Territory, or District of the United States be inspected upon their arrival.

For ships, other surface vessels, and their cargo destined for movement from Puerto Rico or the Virgin Islands to any other State, Territory, or District of the United States, except Guam, we propose to change the Puerto Rico–Virgin Islands regulations to require pre-departure inspection for ships' cargo, and post-arrival inspection for the ships themselves. For ships and ships' cargo destined for movement from Puerto Rico or the Virgin Islands to Guam, we would continue to require inspection upon arrival in Guam.

The proposed change to pre-departure inspection of cargo in the Hawaii and Puerto Rico–Virgin Islands regulations would be made to allow the Department to use its inspectors in a more efficient manner and to reduce the number of

locations at which these inspections must be conducted. The Department currently has sufficient staff in Hawaii, Puerto Rico, and the Virgin Islands, to inspect the cargo of departing ships and other ocean-going vessels subject to the regulations, but does not have sufficient staff to readily conduct these inspections at all arrival points in other parts of the United States. In addition, the Department believes that it can more efficiently manage these inspections when they are limited to a small number of departure sites, rather than a large number of arrival sites. However, we propose that inspections in Guam would continue to be performed upon arrival, because Guam requires inspections upon arrival and the Department has sufficient staff in place on Guam to perform inspections.

Further, shippers and carriers appear to benefit by having cargo inspected prior to loading and departure. If cargo is found to be infested after it has been loaded onto a ship and after the ship has moved to its destination, all the cargo would have to be removed from the ship's hold and treated or disposed of, and the ship would have to be disinfected. If the cargo is inspected prior to loading, any infested cargo could be treated or disposed of without requiring the unloading of holds or the disinfection of the ship. Also, cargo that has been pre-inspected and passed may be shipped interstate to any destination in the United States. Cargo that is inspected upon arrival may be shipped only to ports where there are treatment and disinfection facilities.

Containerized Ship Cargo and Air Cargo

The Hawaii regulations require certain shipments of fruits or other regulated articles to be inspected and certified prior to movement from Hawaii, but allow them to be moved without being accompanied by copies of the inspection certificates under certain circumstances. Shipments may move without accompanying certificates if the articles are shipped as air cargo or as containerized cargo on ships; the articles have been inspected or treated and precleared in Hawaii; the carrier has on file evidence that a certificate or limited permit was issued for the articles' movement; and the existence of these documents is noted by the carrier on the waybill accompanying the articles.

This proposed rule adds to the Puerto Rico-Virgin Islands regulations a similar provision allowing movement of certain inspected, containerized shipments without accompanying certificates. The Department believes this practice is effective in meeting the goals of the quarantines while imposing the minimum burden on shippers and carriers.

Inspection of Baggage and Personal Effects of Ships' Passengers and Crew

Currently, the Hawaii regulations allow the baggage and personal effects of ships' passengers and crew to be inspected either upon departure from Hawaii, or upon arrival in the continental United States, Puerto Rico, the Virgin Islands, or Guam. The regulations leave the choice of the inspection site up to the discretion of the inspector. The regulations do not describe in detail what is involved in an inspection, but state that baggage and personal effects "shall be subject to examination by an inspector to ascertain if they contain any of the articles or plant pests prohibited movement."

We propose to change the Hawaii regulations to require that baggage and personal effects must be offered for inspection upon arrival of the ship in the continental United States, Puerto Rico, the Virgin Islands, or Guam. The description of what is involved in an inspection would also be changed to require that those persons arriving on ships with baggage required to be inspected shall not "remove or attempt to remove any baggage or other personal effects from a designated inspection area on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has had passed by the inspector, the baggage or other personal effects" and shall "disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector."

Currently, the Puerto Rico-Virgin Islands regulations allow the baggage and pesonal effects of ships' passengers and crew to be inspected either upon departure from Puerto Rico or the Virgin Islands, or upon arrival in any other State, Territory or District of the United States. The regulations leave the choice of the inspection site up to the discretion of the inspector. The regulations do not describe in detail what is involved in an inspection, but state that baggage and personal effects "shall be subject to examination by an inspector to ascertain if they contain any of the articles or plant pests prohibited movement."

We propose to change the Puerto Rico-Virgin Islands regulations to require that baggage and personal effects be offered for inspection upon arrival of the ship in any other State, District, or Territory of the United States. The description of what is involved in an inspection would also be changed, to require that those persons with baggage required to be inspected shall not "remove or attempt to remove any baggage or other personal effects from a designated inspection area on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has had passed by the inspector, the baggage and other personal effects" and shall "disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector."

This rule proposes that the baggage and personal effects inspections for ships' passengers and crew be performed upon arrival because the Department believes that this method minimizes the burden on travellers and carriers, while maximizing efficiency of the inspections. One reason for inspecting upon arrival, rather than upon departure, is that fruits, vegetables, flowers and other articles subject to the regulations may be consumed or disposed of during the ship's transit, obviating the need to inspect them. Another reason for inspection upon arrival is the small number of seaports and the relatively large number of inspectors available to them.

We propose that the description of what is involved in an inspection be expanded and made more specific in order to aid enforcement and reduce the number of attempts by passengers and crew to carry prohibited articles in their baggage. The present requirement that baggage "shall be subject to examination" is passive. The proposed language would require passengers and crew to present their baggage and other personal effects for inspection, to disclose any articles that the inspector requires to be disclosed, and allows the imposition of civil and criminal penalties on persons who fail to meet these requirements. We expect that these changes, by clearly stating the responsibilities of passengers and crew, would reduce the number of attempted violations of the quarantines and would also provide a clearer basis for imposing civil and criminal penalties on those who try to evade inspection or violate the quarantine.

Guam

As we have explained, we are proposing to amend both the Hawaii and Puerto Rico-Virgin Islands regulations to require that inspections of baggage and other personal effects moved by aircraft, and certain cargo moved by ship, vessel, other surface

craft, and aircraft, be conducted prior to departure. However, the Territory of Guam requires all baggage, other personal effects, and cargo arriving in Guam from other areas in the United States to be inspected upon arrival.

Since Guam requires inspection upon arrival, and because APHIS sees no need to require inspections in Hawaii, Puerto Rico, or the Virgin Islands prior to departure, and then reinspection upon arrival in Guam, this proposed rule provides for APHIS to inspect upon arrival in Guam all baggage and other personal effects moving interstate by aircraft, and certain cargo moving by ship, vessel, and other surface craft.

Disinfection of Means of Conveyance

Both the Hawaii and Puerto Rico-Virgin Islands regulations currently require inspection of ships, vessels, other surface craft, and aircraft to ascertain whether these conveyances are infested with plant pests or contain any articles that are infested with plant pests. The regulations also require, under the direction of and in a manner prescribed by an inspector, the disinfection of ships, vessels, other surface craft, or aircraft in which infestations or infections are found.

We are proposing to amend the Hawaii and Puerto Rico-Virgin Islands regulations by specifying that disinfection of ships, other ocean-going craft, and aircraft, and the cargo carried by them, may be ordered by an inspector at the site of inspection, and that the disinfection must be performed under the supervision of an inspector and in a manner prescribed by the inspector, in accordance with the Plant Protection and Quarantine Treatment Manual, prior to any movement of the ship, other ocean-going craft, aircraft, or cargo. We believe that requiring disinfection prior to movement would help prevent the spread of plant pests or diseases by infested or infected means of conveyance that are moved prior to disinfection.

Movement of Articles by the Department of Agriculture

Both the Hawaii regulations and the Puerto Rico-Virgin Islands regulations currently allow articles subject to the regulations to be moved by the Department of Agriculture for scientific or experimental purposes, under certain conditions, without being subject to the full requirements of the regulations. This proposed rule would clarify the conditions under which these articles may be moved, and would make the conditions consistent with similar regulations in other parts of this Chapter.

Specifically, this proposed rule would allow articles to move without further restriction under the regulations when they are moved by the Department for scientific or experimental purposes: (1) If the articles are moved under a Departmental permit specifying conditions of movement that will prevent plant pest or disease spread; and (2) if the articles bear a tag or label giving the Departmental permit number.

Miscellaneous

In addition to the foregoing amendments, we are proposing certain nonsubstantive, editorial changes to the Hawaii regulations and the Puerto Rico-Virgin Islands regulations.

Executive Order 12291 and Regulatory Flexibility Act

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

Most of the effects of this proposed rule would apply to airlines and ship lines that are not small entities. Any effects on small entities by the proposed rule's inspection and shipping requirements (e.g., small packers and shippers) should be minimal; the proposed rule does not prohibit the movement of any products formerly allowed movement, and would not increase shipping costs to small entities. Persons are not charged for the inspection of their baggage and other personal effects by an inspector, and there is no inspection cost to shippers and importers of cargo with the exception of reimbursements to the Department for overtime hours requested by shippers or importers.

Under these circumstances, and in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 7 CFR Part 318

Agricultural commodities, Guam, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Hawaii, Puerto Rico, Transportation, Virgin Islands, Baggage, Cargo, Incorporation by reference.

Accordingly, we propose to amend "Subpart—Hawaiian Fruits and Vegetables" (7 CFR 318.13 *et seq.*) and "Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands" (7 CFR 318.58 *et seq.*) as follows:

PART 318—HAWAIIAN AND TERITORIAL QUARANTINE NOTICES

1. The authority citation for Part 318 would be revised to read as follows:

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

§ 318.13a [Amended]

2. Section 318.13a would be amended by removing paragraph (b).

3. Section 318.13–3 would be amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 318.13–3 Conditions of movement.

(a) *To any destination.* Any regulated articles may be moved interstate from Hawaii in accordance with this subpart to any destination if

(1) The movement is authorized by a valid certificate issued in accordance with § 318.13–4(a) or

(b), and the movement complies with the conditions of any applicable compliance agreement made under § 318.13–4(d), or

(2) Movement is exempted from certificates or limited permit requirements by administrative instructions in this subpart.

* * * * *

(d) *Attachment of certificates and limited permits.* Except as otherwise provided for certain air cargo and

containerized cargo on ships moved in accordance with § 318.13–10, each box, bale, crate, or other container of regulated articles moved under a certificate or limited permit shall have the certificate or limited permit attached to the outside of the container: *Provided,* that if a certificate or limited permit is issued for a shipment of more than one container or for bulk products, the certificate or limited permit shall be attached to or stamped on the accompanying waybill, manifest, or bill of lading.

4. Section 318.13–6 would be revised to read as follows:

§ 318.13–6 Container marking and identity.

For shipments of regulated articles moved in accordance with this subpart, the following information shall be clearly marked on each container, or for shipments of multiple containers or bulk products, on the waybill, manifest, or bill or lading accompanying the articles: nature and quantity of contents; name and address of shipper, owner, or person shipping or forwarding the articles; name and address of consignee; shipper's identifying mark and number; and, the number of the certificate or limited permit authorizing movement, if one was issued.

§ 318.13–7 [Amended]

5. Section 318.13–7 would be amended as follows:

a. The heading would be changed to read "Products as ships' stores or in the possession of passengers or crew."

b. In paragraph (a) "ship, vessel, other surface craft, or aircraft" would be removed and "aircraft moving to Guam, ship, vessel, or other surface craft" would be inserted.

c. In paragraph (a) "Virgin Islands of the United States:" would be removed and "Virgin Islands of the United States." would be inserted, and the remainder of that sentence would be removed.

d. In paragraph (b) "a ship, vessel, or other surface craft, or aircraft in Hawaii" would be removed and "an aircraft moving from Hawaii to Guam, or a ship, vessel, or other surface craft in Hawaii" would be inserted.

e. In paragraph (b) "the ship, vessel, other surface craft, or aircraft before arrival" would be removed and "the aircraft moving from Hawaii to Guam, or the ship, vessel, or other surface craft before arrival" would be inserted.

6. Section 318.13–8 would be revised to read as follows:

§ 318.13–8 Articles and persons subject to inspection.

Persons, means of conveyance (including ships, other ocean-going craft, and aircraft), baggage, cargo, and any other articles, that are destined for movement, are moving, or have been moved from Hawaii to the continental United States, Guam, Puerto Rico, or the Virgin Islands of the United States are subject to agricultural inspection at the port of departure and or the port of arrival. If an inspector finds any article prohibited movement by the quarantine and regulations of this subpart, he or she, taking the least drastic action, shall order the return of the article to the place of origin, or the exportation of the article, under safeguards satisfactory to him or her, or otherwise dispose of it, in whole or part, to comply with the quarantine and regulations of this subpart.

7. Section 318.13–9 would be revised to read as follows:

§ 318.13–9 Inspection of means of conveyance.

(a) *Inspection of aircraft prior to departure.* No person shall move any aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless the person moving the aircraft has contacted an inspector and offered the inspector the opportunity to inspect the aircraft prior to departure and the inspector has informed the person proposing to move the aircraft that the aircraft may depart.

(b) *Inspection of aircraft moving to Guam.* Any person who has moved an aircraft from Hawaii to Guam shall contact an inspector and offer the inspector the opportunity to inspect the aircraft upon the aircraft's arrival in Guam, unless the aircraft has been inspected and cleared in Hawaii prior to departure in accordance with arrangements made between the operator of the aircraft, the Animal and Plant Health Inspection Service, and the government of Guam.

(c) *Inspection of ships upon arrival.* Any person who has moved a ship or other ocean-going craft from Hawaii to the continental United States, Guam, Puerto Rico, or the Virgin Islands of the United States shall contact an inspector and offer the inspector the opportunity to inspect the ship or other ocean-going craft upon its arrival.

§§ 318.1–10 and 318.13–11 [Removed]

8. Sections 318.13–10 and 318.13–11 would be removed.

§ 18.13–12 [Redesignated as § 318.13–10]

9. Section 318.13–12 would be redesignated as § 318.13–10, and would be revised to read as follows:

§ 318.13–10 Inspection of baggage, other personal effects, and cargo.

(a) *Offer for inspection by aircraft passengers.* Passengers destined for movement by aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States shall offer their carry-on baggage and other personal effects for inspection at the place marked for agricultural inspections, which will be located at the airport security checkpoint or the aircraft boarding gate, at the time they pass through the checkpoint or the gate Passengers shall offer their check-in baggage for inspection at agricultural inspection stations prior to submitting their baggage to the check-in baggage facility. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to such baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Passengers shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. Where an inspection of a passenger's baggage or personal effects discloses an article in violation of the regulations in this part, such passenger shall state his or her name and address, and provide corroborative identification to the inspector.

(b) *Offer for inspection by aircraft crew.* Aircraft crew members destined for movement by aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, shall offer their baggage and personal effects for inspection at the inspection station designated for the employing airline not less than 20 minutes prior to the scheduled departure time of the aircraft or the rescheduled departure time as posted in the public areas of the airport. When an inspector has inspected and passsed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Aircraft crew members shall disclose any fruits, vegetable, plants, plant products, or other articles that are requested to be disclosed by the inspector. Where an inspection of a crew member's baggage or personal

effects discloses an article in violation of the regulations in this part, such crew member shall state his or her name and address, and provide coroborative identification to the inspector.

(c) *Baggage inspection for persons traveling to Guam on aircraft.* No person who has moved from Hawaii to Guam on an aircraft shall remove or attempt to remove any baggage or other personal effects from the area secured for customs inspections before the person has offered to an inspector, and has had passed by the inspector, his or her baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, such person shall state his or her name and address, and provide corroborative identification to the inspector.

(d) *Baggage acceptance and loading on aircraft.* No person shall accept check-in aircraft baggage for movement, and no person shall load any check-in aircraft baggage destined for movement from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless a certificate is attached to the baggage, or the baggage bears a USDA stamp, inspection sticker, or other indication applied by an inspector representing that the baggage has been inspected and passed.

(e) *Offer for inspection by persons moving by ship.* No person who has moved on any ship or other ocean-going craft from Hawaii to the continental United States, Puerto Rico, Guam, or the Virgin Islands of the United States, shall remove or attempt to remove any baggage or other personal effects from the designated inspection area as provided in § 318.13–10(h) on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has had passed by the inspector, the baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, such person shall state his or her name and address, and provide corroborative identification to the inspector.

(f) *Loading of certain cargoes.* (1) Except as otherwise provided in paragraph (f)(2), no person shall present to any common carrier or contract carrier for movement, and no common carrier or contract carrier shall load, any cargo containing fruits, vegetables, or other articles regulted under this subpart that are destined for movement from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless the cargo has been offered for inspection, passed by an inspector, and bears a USDA stamp or USDA inspection sticker, or unless a certificate or limited permit is attached to the cargo as specified in § 318.13–3(d).

(2) Cargo designated in paragraph (f)(1) may be loaded without a USDA stamp or USDA inspection sticker, and without an attached certificate or limited permit if the cargo is moved

(i) As containerized cargo on ships or other ocean-going craft or as air cargo; and

(ii) The carrier has on file documentary evidence that a valid certificate or limited permit was issued for the movement; and

(iii) A notation of the existence of these documents is made by the carrier on the waybill, manifest, or bill or lading that accompanies the shipment.

(g) *Removal of certain cargoes in Guam.* No person shall remove or attempt to remove from a designated inspection area as provided in § 318.13–10(h), on or off the means of conveyance, any cargo moved from Hawaii to Guam containing fruits, vegetables, or other articles regulated under this subpart, unless the cargo has been inspected and passed by an inspector in Guam.

(h) *Space and facilities for baggage inspection.* Baggage inspection will not be performed until the person in charge or possession of the ship, other ocean-going craft, or aircraft provides space and facilities on the means of conveyance, pier, or airport that are adequate, in the inspector's judgment, for the performance of inspection.

10. A new § 318.13–11 would be added to read as follows:

§ 318.13–11 Disinfection of means of conveyance.

If an inspector, through an inspection pursuant to this subpart, finds that a means of conveyance is infested with or contains plant pests, and the inspector orders disinfection of the means of conveyance, then the person in charge or in possession of the means of conveyance shall disinfect the means of conveyance and its cargo in accordance with an approved method contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and in a manner prescribed by the inspector, prior to any movement of the means of conveyance or its cargo. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "Materials incorporated by reference."

§§ 318.13–13 through 318.13–17 [Redesignated as 318.13–12 through 318.13–16]

11. Sections 318.13–13 through 318.13–17 would be redesignated as 318.13–12 through 318.13–16.

§ 318.13–12 [Amended]

12. Newly designated § 318.13–12 would be amended as follows:

a. In the first sentence of paragraph (a) "Before any ship, vessel, other surface craft, or aircraft from Hawaii" would be removed and "Before any aircraft moving to Guam from Hawaii, or any ship, vessel, or other surface craft from Hawaii" would be inserted.

b. In the second sentence of paragraph (a) the colon after "inspection area" would be replaced with a period, and the remainder of that sentence would be removed.

13. Newly designated § 318.13–13 would be revised to read as follows:

§ 318.13–13 Movements by the Department of Agriculture.

Notwithstanding any other restrictions of this subpart, articles subject to the requirements of the regulations in this subpart may be moved if they are moved:

(a) By the United States Department of Agriculture for experimental or scientific purposes;

(b) Pursuant to a Departmental permit issued for the article and kept on file at the port of departure;

(c) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plant pests and diseases; and,

(d) With a Departmental tag or label bearing the number of the Departmental permit issued for the article securely attached to the outside of the container of the article or securely attached to the article itself if not in a container.

Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands

§ 318.58–1 [Amended]

14. Section 318.58–1 would be amended by adding a new paragraph (f) to read as follows:

* * * * *

(f) *Certificate.* A document signed by an inspector certifying that a particular ship, vessel, other surface craft, or aircraft, or any specified lot or shipment of fruits or vegetables or other plant

materials, via baggage, parcel post, express, freight or other mode of transportation, has been inspected and found apparently free from articles the movement of which is prohibited by the quarantine and regulations in this subpart, and from the plant pests referred to in said quarantine; or that the lot or shipment is of such a nature that no danger of infestation or infection is involved; or that it has been treated in a manner to eliminate infestation. A certificate covering treated products must state the treatment applied.

§ 318.58-2 [Removed]

15. Section 318.58-2 would be removed.

§ 318.53-3 [Redesignated as § 318.58-2 and amended]

16. Section 318.58-3 would be redesignated as § 318.58-2, the section heading would be revised, paragraphs (a), (b) and (c) would be redesignated as (b), (c) and (d), and a new paragraph (a), and new heading for paragraph (b) would be added to read as follows:

§ 318.58-2 Regulated articles.

(a) *Prohibited movement.* Fruits, vegetables, and other products specified in § 318.58 and not eligible for inspection and certification under § 318.58-4 or otherwise expressly authorized movement in the regulations in this subpart are prohibited movements.

(b) *Regulated movement.* Subject to

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17. Section 318.58-3 would be revised to read as follows:

§ 318.58-3 Conditions of movement.

(a) *To any destination.* Any regulated articles may be moved interstate from Puerto Rico or the Virgin Islands of the United States in accordance with this subpart to any destination if

(1) The movement is authorized by a valid certificate issued in accordance with § 318.58-4, or

(2) Movement is exempted from certificate or limited permit requirements by administrative instructions in this subpart.

(b) *Segregation of certified articles.* Articles authorized movement by a certificate after treatment in accordance with § 318.58-4(b), taken aboard any ship, vessel, other surface craft, or aircraft in Puerto Rico or the Virgin Islands of the United States must be segregated and protected from infestation by any plant pest or disease under the supervision of an inspector.

(c) *Attachment of certificates and limited permits.* Except as otherwise provided for certain air cargo and containerized cargo on ships moved in accordance with § 318.58-10, each box, bale, crate, or other container of regulated articles moved under a certificate or limited permit shall have the certificate or limited permit attached to the outside of the container: *Provided*, that if a certificate or limited permit is issued for a shipment of more than one container or for bulk products, the certificate or limited permit shall be attached to or stamped on the accompanying waybill, manifest, or bill of lading.

§ 318.58-5 [Removed]

§ 318.58-4 [Redesignated as § 318.58-5]

18. Section 318.58-5 would be removed, and § 318.58-4 would be redesignated as § 318.58-5.

19. A new § 318.58-4 would be added to read as follows:

§ 318.58-4 Issuance of certificates.

An inspector may issue a certificate for the movement of regulated articles upon compliance with the regulations in this subpart and under either of the following conditions:

(a) *Certification on basis of inspection or nature of lot involved.* An inspector may issue a certificate for fruits and vegetables designated in § 318.58-2(b) after he has inspected them and found that they appear free from infestation and infection, or has determined without an inspection that the lot for shipment is of such a nature that there appears to be no danger of infestation or infection.

(b) *Certification on basis of treatment.* Fruits and vegetables designated in § 318.58-2(b) may be certified after undergoing an approved treatment contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and if the articles are handled after treatment in accordance with all conditions that the inspector requires. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "materials incorporated by reference." Treatments shall be applied at the expense of the shipper, owner, or person in charge of the articles. The Department of Agriculture or its inspector will not be responsible for loss or damage resulting from any treatment prescribed or supervised under this subpart.

§ 318.58-3c [Redesignated as § 318.58-4a]

20. Section 318.58-3c would be redesignated as § 318.58-4a.

§ 318.58-7 [Amended]

21. Section 318.58-7 would be amended as follows: (a) By removing "ships, vessels, or aircraft" and inserting "ships or other ocean-going craft"; (b) by adding the phrase", or aircraft moving from Puerto Rico or the Virgin Islands of the United States to Guam" after the words "United States" and before the words ": *Provided*, That"; and (c) by amending the reference to "318.58-11" to read "318.58-12" in the proviso.

22. Section 318.58-8 would be revised to read as follows:

§ 318.58-8 Articles and persons subject to inspection.

Persons, means of conveyance (including ships, other ocean-going craft, and aircraft), baggage, cargo, and any other articles that are destined for movement, are moving, or have been moved from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States are subject to agricultural inspection at the port of departure and/or the port of arrival. If an inspector finds any article prohibited movement by the quarantine and regulations of this subpart, he or she, taking the least drastic action, shall order the return of the article to the place of origin or the exportation of the article, under safeguards satisfactory to him or her, or otherwise dispose of it, in whole or part, to comply with the quarantine and regulations of this subpart.

23. Section 318.58-9 would be revised to read as follows:

§ 318.58-9 Inspection of means of conveyance.

(a) *Inspection of aircraft prior to departure.* No person shall move any aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, District, or Territory of the United States, except Guam, unless the person moving the aircraft has contacted an inspector and offered the inspector the opportunity to inspect the aircraft prior to departure and the inspector has informed the person proposing to move the aircraft that the aircraft may depart.

(b) *Inspection of aircraft moving to Guam.* Any person who has moved an aircraft from Puerto Rico or the Virgin Islands of the United States to Guam shall contact an inspector and offer the inspector the opportunity to inspect the aircraft upon the aircraft's arrival in Guam, unless the aircraft has been inspected and cleared in Puerto Rico or the Virgin Islands prior to departure in accordance with arrangements between the operator of the aircraft, the Animal

and Plant Health Inspection Service, and the government of Guam.

(c) *Inspection of ships upon arrival.* Any person who has moved a ship or other ocean-going craft from Puerto Rico or the Virgin Islands of the United States to any other State, District, or Territory of the United States shall contact an inspector and offer the inspector the opportunity to inspect the ship or other ocean-going craft upon its arrival.

§§ 318.58–10 and 318.58–14 [Removed]

§ 318.58–11 [Redesignated as § 318.58–10]

24. Sections 318.58–10 and 318.58–14 would be removed, and § 318.58–11 would be redesignated as § 318.58–10 and revised to read as follows:

§ 318.58–10 Inspection of baggage, other personal effects, and cargo.

(a) *Offer for inspection by aircraft passengers.* Passengers destined for movement by aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District, except Guam, shall offer their carry-on baggage and other personal effects for inspection at the place marked for agricultural inspections, which will be located at the airport security checkpoint or the aircraft boarding gate, at the time they pass through the checkpoint or the gate. Passengers shall offer their check-in baggage for inspection at agricultural inspection stations prior to submitting their baggage to the check-in baggage facility. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that the baggage or personal effects have been inspected and passed as required. Passengers shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. Where an inspection of a passenger's baggage or other personal effects discloses an article in violation of the regulations in this part, such passenger shall state his or her name and address, and provide corroborative identification to the inspector.

(b) *Offer for inspection by aircraft crew.* Aircraft crew members destined for movement by aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District, except Guam, shall offer their baggage and personal effects for inspection at the inspection station designated for the employing airline not less than 20 minutes prior to the scheduled departure time of the aircraft or the rescheduled departure time as posted in the public areas of the airport. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Aircraft crew members shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. Where an inspection of a crew member's baggage or personal effects discloses an article in violation of the regulations in this part, such crew member shall state his or her name and address, and provide corroborative identification to the inspector.

(c) *Baggage inspection for persons traveling to Guam on aircraft.* No person who has moved from Puerto Rico or the Virgin Islands of the United States to Guam on an aircraft shall remove or attempt to remove any baggage or other personal effects from the area secured for customs inspections before the person has offered to an inspector, and had passed by the inspector, his or her baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, such person shall state his or her name and address, and provide corroborative identification to the inspector.

(d) *Baggage accepting and loading on aircraft.* No person shall accept check-in aircraft baggage for movement and no person shall load any check-in aircraft baggage destined for movement from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District, except Guam, unless a certificate is attached to the baggage, or the baggage bears a USDA stamp, inspection sticker, or other indication applied by an inspector representing that the baggage has been offered for inspection and passed by an inspector.

(e) *Offer for inspection by persons moving by ship.* No person who has moved on any ship or other ocean-going craft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District shall remove or attempt to remove any baggage or other personal effects from a designated inspection area as provided in § 318.58–10(h), on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and had passed by the inspector, the baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. Where an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, such person shall state his or her name and address, and provide corroborative identification to the inspector.

(f) *Loading of certain cargoes.* (1) Except as otherwise provided in paragraph (f)(2) of this section, no person shall present to any common carrier or contract carrier for movement, and no common carrier or contract carrier shall load, any cargo containing fruits, vegetables, or other articles regulated under this subpart that are destined for movement from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District, except Guam, unless the cargo has been offered for inspection, passed by an inspector, and bears a USDA stamp or USDA inspection sticker, or unless a certificate or limited permit is attached to the cargo as specified in § 318.58–3(c).

(2) Cargo designated in paragraph (f)(1) of this section, may be loaded without a USDA stamp or USDA inspection sticker and without an attached certificate or limited permit if the cargo is moved

(i) As containerized cargo on ships or other ocean-going craft or as air cargo; and

(ii) The carrier has on file documentary evidence that a valid certificate or limited permit was issued for the movement; and

(iii) A notation of the existence of these documents is made by the carrier on the waybill, manifest, or bill of lading that accompanies the shipment.

(g) *Removal of certain cargoes in Guam.* No person shall remove or attempt to remove from a designated inspection area as provided in § 318.58–10(h), on or off the means of conveyance, any cargo moved from Puerto Rico or the Virgin Islands of the United States to Guam containing fruits, vegetables, or other articles regulated under this subpart, unless the cargo has been inspected and passed by an inspector in Guam.

(h) *Space and facilities for baggage inspection.* Baggage inspection will not be performed until the person in charge or possession of the ship, other ocean-going craft, or aircraft provides space and facilities on the means of conveyance, pier, or airport that are

adequate, in the inspector's judgment, for the performance of inspections.

25. A new § 318.58–11 would be added to read as follows:

§ 318.58–11 Disinfection of means of conveyance.

If an inspector, through an inspection pursuant to this subpart, finds that a means of conveyance is infested with or contains plant pests, and the inspector orders disinfection of the means of conveyance, then the person in charge or in possession of the means of conveyance shall disinfect the means of conveyance and its cargo, in accordance with an approved method contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and in a manner prescribed by the inspector, prior to any movement of the means of conveyance or its cargo. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "Materials incorporated by reference."

§ 318.58–12 [Redesignated as § 318.58–14]

26. Section 318.58–12 would be redesignated as § 318.58–14.

27. A new § 318.58–12 would be added and reserved as follows:

§ 318.58–12 [Reserved]

28. Section 318.58–13 would be revised to read as follows:

§ 318.58–13 Movements by the Department of Agriculture.

Notwithstanding any other restrictions of this subpart, articles subject to the requirements of the regulations in this subpart may be moved if they are moved:

(a) By the United States Department of Agriculture for experimental or scientific purposes;

(b) Pursuant to a Departmental permit issued for the article and kept on file at the port of departure;

(c) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plant pests and diseases; and,

(d) With a Departmental tag or label bearing the number of the Departmental permit issued for the article securely attached to the outside of the container of the article or securely attached to the article itself if not in a container.

29. A new § 318.58–15 would be added to read as follows:

§ 318.58–15 Costs and charges.

Plant Protection and Quarantine shall furnish the services of the inspector during regularly assigned hours of duty at the usual places of duty without cost to the person requesting the services. Plant Protection and Quarantine will not assume responsibility for any costs or charges, other than those indicated in this paragraph, in connection with the inspection, treatment, conditioning, storage, forwarding, or any other operation incidental to the movement of regulated articles under this subpart.

30. A new § 318.58–16 would be added to read as follows:

§ 318.58–16 Cancellation of certificates.

Any certificate that has been issued or authorized under this subpart may be withdrawn by an inspector orally or in writing; if he or she determines that the holder of the certificate has not complied with all conditions under the regulations for the use of the document. If the cancellation is oral, the decision and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

Done at Washington, DC, this 28th day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–2066 Filed 2–2–88; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 929

Cranberries Grown in the States of Massachusetts, et al.; Amendments to the Administrative Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on several amendments to administrative rules and regulations of the cranberry marketing order. The proposals would: (1) Require handlers to file inventory reports at earlier dates and add a fourth reporting date; (2) increase the total quantity of cranberries exempt from program assessments from 75 to not more than 300 barrels per year; and (3) delete portions of applicable sections that currently contain the Cranberry Marketing Committee's (CMC) old office address.

DATE: Comments must be received by March 4, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Divison, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Jacquelyne R. Schlatter, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in 10 states. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

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

There are approximately 31 handlers of cranberries subject to regulation under the cranberry marketing order, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose

gross annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This proposed rule invites comments on several amendments to administrative rules and regulations of the cranberry marketing order. The proposals would: (1) Require handlers to file inventory reports at earlier dates and add a fourth reporting date; (2) increase the total quantity of cranberries exempt from program assessments from 75 to not more than 300 barrels per year; (3) delete portions of applicable sections that currently contain the Cranberry Marketing Committee's (CMC) old office address.

The first proposal would require handlers to file handler inventory reports five days earlier than currently required, and would add a fourth reporting period with a September 5 deadline. Currently handlers are required to file such reports no later than the 10th day of February, May, and August of each fiscal period. The proposed changes would require handlers to file such reports no later than the 5th day of the above mentioned months and add a fourth reporting period with a September 5th deadline. The impact of this proposed regulation on handlers would not be significant. This proposal would simply require these reports to be filed earlier and at one additional date and any potential costs to handlers would appear to be significantly offset when compared to the potential benefits to the industry. These reports contain important information essential to the CMC in formulating marketing policies and recommendations on marketable quantity regulations and base allotment percentages. The CMC management staff needs more time to compile and analyze the information before distribution at CMC meetings, and this proposal would allow the CMC that additional time.

The second proposal would increase the minimum handling exemption from 75 to not more than 300 barrels per year. This proposal would relieve handlers of certain marketing order requirements by not requiring them to pay assessments if they handle not more than 300 barrels of cranberries per year. This proposal would also exempt handlers who handle not more than 300 barrels of cranberries per year from the set aside provisions of the order. These provisions have not been used since 1972. The CMC reports that it is costly and burdensome to collect assessments on such small shipments of cranberries. These handlers would still have to file receipt, inventory, and handling reports to the CMC, as required by the order. The impact of this proposal on affected handlers would be beneficial because the change would expand the minimum handling exemption.

The last proposal would delete the listing of the CMC's office address from applicable sections in the rules and regulations. The CMC office has relocated to Wareham, Massachusetts and its old address should not appear in the rules and regulations.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3507], the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They will not be made effective until OMB approval has been obtained.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 929

Marketing agreements and orders, cranberries, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

For the reasons set forth in the preamble, 7 CFR Part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Subpart—Rules and Regulations

1. The authority citation for 7 CFR Part 929 continues to read as follows.

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

2. Section 929.101 is amended by revising the section to read as follows:

§ 929.101 Minimum exemption.

The requirements of § 929.41 *Assessments* § 929.54 *Withholding* shall not apply to any handler in a fiscal year during which the handler handles not more than a total of 300 barrels of cranberries.

3. Section 929.105 is revised to read as follows:

§ 929.105 Reporting.

(a) Each report required to be filed with the committee pursuant to §§ 929.6 and 929.48 shall be mailed to the committee office or delivered to that office. If the report is mailed, it shall be deemed filed when postmarked.

(b) Certified reports shall be filed with the committee, on a form provided by the committee, by each handler not later than the 5th day of February, May, and August of each fiscal period and the 5th day of September of the succeeding fiscal period showing:

(1) The total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled from the beginning of the reporting period indicated through January 31, April 30, July 31, and August 31 respectively, and

(2) The respective quantities of cranberries and cranberry products held by the handler on February 1, May 1, August 1, and August 31 of each fiscal period.

4. Section 929.160 is amended by revising paragraph (c) to read as follows:

§ 929.160 [Amended]

* * * * *

(c) Names of candidates together with evidence of qualification for public membership on the Cranberry Marketing Committee shall be submitted to the committee at its business office.

* * * * *

Dated: January 27, 1988.

Robert C Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–2129 Filed 2–2–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 948

Irish Potatoes Grown in Colorado Area 2; Proposed Change in Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the minimum diameter for round variety potatoes from 2 inches to 2⅛ inches and for long varieties (except Russet Burbank) grading U.S. Grade No. 2 from 1⅞ inches to 2 inches minimum diameter or four ounces minimum weight. This action would also change the starting date of maturity requirements from September 1 to August 25 beginning with the 1988–89 crop year. The size change would also apply to imported red skinned, round type potatoes. This action is intended to prevent potatoes of undesirable size and

quality from being distributed in fresh market channels.

DATES: Comments must be received by February 18, 1988.

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

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

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 948 [7 CFR Part 948], as amended, regulating the handling of Irish potatoes grown in designated counties of Colorado Area No. 2. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

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

There are approximately 123 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. Also, there are about 23 potato importers subject to the requirements of the potato import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes and importers of potatoes may be classified as small entities.

The Colorado Agricultural Statistics Service estimated planted acreage for the 1987–88 crop in the San Luis Valley (Area 2) at 59,000 acres, an increase of 4,000 acres over the 55,000 acres harvested in 1986–87. Shipments during the 1986–87 season totaled 29,745 loads at about 480 hundredweight (cwt.) per load. Of the total, 97 percent or 13,814,866 cwt., entered the fresh market, and the remaining three percent (462,103 cwt.) was shipped to processors. Culls approximated 1.4 million cwt, which were utilized for starch.

The breakdown of fresh shipments by variety was 70.4 percent Centennial Russets (9,725,665 cwt.), 23.5 percent Russet Burbanks (3,246,494 cwt.), 5.9 percent reds (815,077 cwt.), and 0.2 percent Other varieties (27,630 cwt.).

Two percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 60 percent U.S. No. 1, 22 percent U.S. Commercial, 17 percent U.S. No. 2, and one percent U.S. No. 1/ Size B.

While this regulation would increase the minimum diameter for round variety potatoes and all long varieties (except Russet Burbank) grading U.S. No. 2 and would also establish an earlier starting date for maturity requirements for the 1988–89 crop year, exemptions to the handling regulation would continue to be available. For example, each person may handle up to but not more than 1,000 pounds of potatoes without regard to the requirements of the handling regulation. This exception does not apply to any shipment which exceeds 1,000 pounds of potatoes. Furthermore, grade, size, maturity, and inspection requirements are not applicable to shipments of potatoes for seed, livestock feed, relief or charity, or canning, freezing, and "other processing."

The handling requirements for fresh Colorado Area No. 2 potatoes are specified in § 948.386 [46 FR 52324, October 27, 1981] and, with the exception of the maturity requirements, are in effect all year long. The current minimum grade, size, and maturity requirements require that fresh potatoes be shipped under the following conditions. Round variety potatoes must grade at least U.S. No. 2 and be at least 2 inches in diameter. Russet Burbank potatoes must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All other long varieties must grade at least U.S. Commercial and be at least 2 inches in diameter or at least 4 ounces in weight, or grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All varieties of potatoes may be Size B if graded at U.S. No. 1. Size B potatoes have a minimum diameter of 1½ inches and a maximum diameter of 2¼ inches and no minimum or maximum weight requirement. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period September 1 through October 31, specify that all potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

This proposed rule would increase the minimum diameter for round variety potatoes from 2 inches to 2⅛ inches and for long varieties (other than Russet Burbank) grading U.S. Grade No. 2, from 1⅞ inches to 2 inches or a 4 ounce minimum weight. This action would also change the starting date of maturity requirements from September 1 to August 25 beginning with the 1988–89 crop year. These changes were recommended by the Colorado Potato Administrative Committee Area 2.

The changes in the size requirements would eliminate the less desirable sizes of potatoes from the marketplace without shorting the market. Requiring handlers to ship larger sized potatoes, which are preferred in the marketplace, would be expected to foster increased consumption and have a positive impact on the industry.

The change in the starting date of the maturity requirements would recognize the industry's switch to earlier maturing varieties and the need to ensure the maturity of early season shipments in the interest of the Colorado potato industry and potato consumers. The maturity requirements are based on the degree of skinning on a shipment of potatoes, and are effective during the period September 1 through October 31 each season. Maturity requirements relate to the amount of skin on the potato, which is a factor in the storability of potatoes. All varieties of potatoes that grade U.S. No. 2 cannot be more than "moderately skinned" which means that not more than 10 percent of the potatoes in a lot more than one-half of the skin missing or "feathered" For all other grades, potatoes cannot be more than "slightly skinned" which means that not more than 10 percent of the

potatoes in the lot have more than one-fourth of the skin missing or "feathered." These requirements prevent badly skinned potatoes from being distributed to fresh market outlets.

In recent years the producers in this area have switched to earlier maturing varieties, and season shipments now begin in late August rather than September. To reflect these changes in production and marketing practices, the starting date for maturity requirememts would be changed to August 25 each season. The earlier starting date is proposed in the interest of producers, handlers, and consumers and would have no measurable effect on the quantity of potatoes shipped from Colorado Area No. 2. The earlier starting date would enable the Colorado Area No. 2 potato industry to better compete with other potato producing areas in the U.S. by ensuring the shipment of qualities acceptable to buyers early in its season. The shipment of unacceptable quality potatoes early in the season can have a negative impact on market demand and grower returns throughout the entire season.

Quality assurance is very important to the Colorado (Area 2) potato industry both within the outside of the State. Providing the public with acceptable quality produce which is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. To the extent that this action would increase the quality of potatoes in the marketplace, it would also be of benefit to both Colorado (Area 2) potato growers and handlers.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports, then must meet the quality standards set for the particular area.

In the case of potatoes, the current import regulation [§ 980.1, 34 FR 8043] specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (M.O. 945) during each month of the marketing year and that for round white types, they be based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31, and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year.

The quality standards imposed upon potatoes grown in Colorado Area 2 are applied only to imports of red-skinned, round type potatoes and only during the months of September through June. During July and August, the import requirements are based upon those in effect for potatoes grown in Washington.

While it is being proposed that the maturity requirements for Colorado Area 2 potatoes be made effective at an earlier date, it has been determined that shipments from this area in late August are minimal, and that those from Washington continue to dominate throughout the month. Imports of red skinned, round type potatoes during July and August are in most direct competition with the same type as produced in Washington State, the area covered by Order No. 946. Therefore, the import requirements for round red varieties would continue to be based upon those established for Colorado Area 2 only from September 1 through June 30. Accordingly, the language of the determinations made in § 980.1(a)(2) concerning direct competition does not have to be changed.

While no change would be made in the import requirement pertaining to maturity, imports of round red-skinned potatoes would have to meet the increased minimum size requirement (from 2 to 2-⅛ inches) being proposed herein during the September 1 to June 30 period. No change is required in the language of § 980.1 or § 948.386(h) *Applicability to imports.* However, a conforming change to § 948.386(h) would be made to revise obsolete language.

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

A comment period of 15 days is deemed appropriate because the shipping season for potatoes has begun, and it is important that any change resulting from this rulemaking be in effect as soon as possible to be of maximum benefit to producers and handlers. Furthermore, producers and handlers of potatoes in the production area are already aware of the recommended changes.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

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

2. Section 948.386 (46 FR 52324, Oct. 27, 1981) is amended by revising paragraphs (a)(1), (a)(3), (b) introductory text, and (h) to read as follows:

§ 948.386 Handling regulations.

* * * * *

(a) *Minimum grade and size requirements.*—(1) Round varieties, U.S. No. 2, or better grade, 2–⅛ inches minimum diameter.

* * * * *

(3) *All other long varieties except Russet Burbank.* U.S. Commercial, or better grade, 2 inches minimum diameter or 4 ounces minimum weight, or U.S. No. 2 grade, 2 inches minimum diameter or 4 ounces minimum weight.

* * * * *

(b) *Maturity (skinning) requirements.*—From August 25 through October 31 minimum maturity requirements shall be: * * *

* * * * *

(h) *Applicability to imports.* Pursuant to section 8e of the act and § 980.1 *Import regulations* [7 CFR 980.1], Irish potatoes of the red skinned round type, except certified seed potatoes, imported into the United States during the period September 1 through June 30 each year shall meet the minimum grade, size, and quality requirements prescribed in paragraph (a) of this section, and during the period September 1 through October 31 shall meet the maturity requirements as specified in paragraph (b) of this section.

Dated: January 27, 1988.

Robert C. Keeney,

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

[FR Doc. 88–2178 Filed 2–2–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-27; Notice No. SC-88-1-NM]

Special Conditions; British Aerospace BAe ATP Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes a special condition for the British Aerospace BAe ATP Airplane with PW124 series engines. Control of these engines is provided electronically with mechanical backup. A special condition is proposed because airplanes with these series engines will have novel or unusual design features associated with the installation of the full authority electronic engine control system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of lightning. This notice contains the safety standards which the Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical, are protected.

DATE: Comments must be received on or before February 23, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-27, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-27. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-27." The postcard will be date/time stamped, and returned to the commenter.

Background

On March 26, 1982, British Aerospace made an application to the Federal Aviation Administration for an amended type certificate for the advanced turboprop (ATP) airplane. Subsequently, the manufacturer determined that a new U.S. type certificate was desirable and changed his application to reflect this.

BAe and ATP Design Features

General

The BAe ATP airplane is a stretched variant of the British Aerospace HS 748 (formerly Hawker Siddeley HS 748). It is 17.5 feet longer and carries 72 passengers. Other differences from the HS 748 include: type II overwing emergency exits, new doors, Pratt and Whitney (Canada) PW124A engines, six bladed propellers, swept fin, improved wing center section structure, new wing tips and main landing gear, modified nose gear, new electrical generating system and hydraulic pumps, introduction of a bleed air environmental control system (ECS), weight increase to 49,800 pounds, smaller windows, electronic flight instrument systems and electronic engine controls.

Because the regulations do not include adequate airworthiness standards for lightning protection for the PW124 series engines with full authority electronic controls, this special condition is proposed.

Lightning Protection

The regulations incorporated by reference include standards for protection from ignition of fuel vapor (§ 25.954) and from damage to the structure of the airplane by lightning (§ 25.581). These standards do not, however, provide the level of safety for the electronic engine control system that is inherently provided by traditional designs which utilize mechanical means to connect the engines to the flight deck.

The BAe ATP with PW124 engines is being designed with the propulsion systems using electrical interfaces for critical functions such as crew inputs to the engines. The system also provides mechanical manual reversion. The electrical part of these systems can be susceptible to disruption to both the command/response signals and the operational mode logic as a result of direct lightning strike causing electrical or magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a special condition is being proposed which requires that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Discussion: The following "threat definition" is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition. It is based on SAE report AE4L-87-3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in JAR AMC-S5 or Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stoke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D) A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H) In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is make up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential polynominal equations:

$i(t) = I_o(e^{-at} - e^{-bt})$

where:

t = time in seconds,
i = current in amperes, and

		Severe strike (Component A)	Restrike (Component D)	Multiple stroke (1/2 Component D)	Multiple burst (Component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	2,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics:					
i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and $(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t = $0+_{sec}$	1.4×10^{11} @t = $0+_{sec}$	0.7×10^{11} @t = $0+_{sec}$	2.0×10^{11} @t = $0+_{sec}$
di/dt, (amp/sec)	=	1.0×10^{11} @t = .5 us	1.0×10^{11} @t = .25 us	0.5×10^{11} @t = .25 us	.....
Action Integral (amp^2 sec)	=	2.0×10^{6}	0.25×10^{6}	$.0625\times10^{6}$	.....

Type Certification Basis

The United Kingdom (UK) type certification basis for this airplane will be Joint Airworthiness Requirements (JAR) 25. Based on the provisions of 14 CFR 21.17 and the Bilateral Airworthiness Agreement between the U.S. and the UK, BAe, through CAA–UK, will show compliance with Part 25 of the FAR, as amended by Amendments 25–1 through 25–54, and Amendment 25–62, including any exceptions and exemptions which are identified in the Type Certificate Data Sheet.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(a) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as described in §§ 11.28 and 11.29(b) and may become part of the type certification basis in accordance with § 21.101.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Condition

Accordingly, the FAA proposes the following special condition as part of the type certification basis for the British Aerospace BAe ATP airplane with PW124 series engines.

1. The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. *Lightning Protection.* Each electronic propulsion control system, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

Issued in Seattle, Washington, on January 15, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–2117 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 25

[Docket No. NM-28; Notice No. SC-88-2-NM]

Special Conditions; Boeing Model 767 Series Airplanes With PW4000 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 767 series airplanes with PW4000 series engines. The airplanes with these series engines will have novel or unusual design features associated with the installation of the digital electronic propulsion control system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of lightning, the susceptibility to external radio frequency (RF) energy sources, and the overall propulsion control system integrity. This notice contains the safety standards which the Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical, are maintained.

DATE: Comments must be received on or before March 21, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-28, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-28. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-28." The postcard will be date/time stamped, and returned to the commenter.

Background

On September 26, 1986, the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, made an application to the Federal Aviation Administration for an amended type certificate for the Model 767 series airplanes.

Boeing 767 Design Features

General

The Boeing 767 series airplane is a 290 passenger (maximum), fuel efficient, low noise (Stage 3), twin-engine transport. The 200 series and 21 foot longer 300 series airplanes were previously approved with JT9D series and CF6 series engines, both of which have electronic engine controls with conventional (hydro-mechanical) backup. The twin-aisle transports are currently approved for a maximum takeoff weight of 351,000 pounds and have a maximum operating altitude of 43,100 feet.

The installation of the PW4000 series engines will incorporate a full authority digital electronic engine control system with no backup. The regulations incorporated by reference on the type certificate for the Boeing 767 series airplanes do not include adequate airworthiness standards for this installation and, as a result, these special conditions are proposed.

Lightning Protection

The regulations incorporated by reference include standards for protection from ignition of fuel vapor (§ 25.954) and from damage to the structure of the airplane by lightning (§ 25.851). These standards do not, however, provide the level of safety for the electronic propulsion control system that is inherently provided by traditional designs which utilize mechanical means to connect the engines to the flight deck.

The 767 with PW4000 engines is being designed with the propulsion systems using only electrical interfaces for critical functions such as crew inputs to the engines. These systems can be susceptible to disruption to both the command/response signals and the operational mode logic as a result of direct lightning strike attachment or electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a Special Condition is being proposed which requires that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Discussion: The following "threat definition" is proposed as a basis to use in determining compliance with the proposed lightning protection special condition. It is based on SAE report AE4L-87-3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in Joint Airworthiness Requirements (JAR) AMC-S5 or Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and it systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control system may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient

factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation, and,

3. *Multiple Burst:* (Component H) In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental theat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waverforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential polynominal equations:

$i(t) = I_0 (e^{-at} - e^{-bt})$

where:

t = time in seconds,

I = current in amperes, and

		Severe strike (Component A)	Restrike (Component D)	Multiple stroke (½ Component D)	Multiple burst (Component H)
I_0, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics:					
I_{peak}	=	200 KA	100 KA	50 KA	10 KA
and $(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t = 0+sec	1.4×10^{11} @t = 0+sec	0.7×10^{11} @t = 0+sec	2.0×10^{11} @t = 0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t = .5 us	1.0×10^{11} @t = .25 us	0.5×10^{11} @t = .25 us	....
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	.....

Protection From Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from gound-based transmitters. With the trent toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be cabable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the proposed RF special condition is shown with paragraphs 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10KHz-2 MHz	100	100
2 MHz-30 MHz	1,000	1,000
30 MHz-100 MHz	100	100
100 MHz-200 MHz	200	3,000
200 MHz-1 GHz	2,000	6,000
1GHz-2 GHz	2,000	14,000
2 GHz-8GHz	600	14,000
8 GHz-10GHz	2,000	14,000
10 GHz-40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: In the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

Propulsion Control System

The Propulsion Control System for the Boeing 767 with PW4000 series engines is made up of: (1) A dual channel Full

Authority Digital Electronic Control (FADEC) mounted on each engine's fan case; (2) an array of interfacing aircraft computers which provided data necessary for thrust management, data validation, and reversion modes; (3) power levers in the aisle stand; (4) the hydromechanical interfaces on the engines; (5) the power supplies; and (6) the interconnecting wiring. The electronic components of this array that are directly associated with setting and controlling the thrust of each engine, while meeting the requirements of §§ 25.901 and 25.903, may not necessarily exhibit a level of system integrity that was envisioned under the original B767 certification basis. Although the software function contained in the engine's FADEC has been validated to a "critical" level during the engine certification program, Part 25 contains no specific requirements for evaluating the design integrity of the FADEC and the overall control system, as installed in the airplane. Unlike conventional hydromechanical controls, the electronic control does not exhibit a "wear out" characteristic, but rather exhibits an in-service failure rate which may be somewhat random with time. Therefore, endurance tests or other "mechanical" type evaluations and subsequent tear downs do not establish any significant degree of implied or inherent design integrity as has been the case with mechanical systems evaluated in accordance with Part 33 of the FAR.

The applicable airworthiness requirements for the engine installation do not contain adequate standards by which to determine an acceptable level of safety for a full authority digital electronic engine control system installed on a transport airplane. Therefore, a special condition is required to establish that the overall propulsion control system (including the full authority digital electronic control) exhibits an acceptable level of system integrity.

Type Certification Basis

The type certification basis for the Boeing Model 767 series airplanes is Part 25 of the FAR, as amended by Amendments 25–1 through 25–45, with certain exceptions and exemptions which are identified in the Model 767 series Airplane Type Certificate No. A1NM. These exceptions and exemptions and certain noise and environmental requirements and a Special Federal Aviation Regulation are not pertinent to the special conditions.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as described in §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Boeing Model 767 series airplane with PW4000 series engines.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. *Lightning Protection.* In addition to compliance with the requirements of §§ 25.581 and 25.954 of the FAR concerning lightning protection, each electronic propulsion control system must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

3. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* Each propulsion control system must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to externally radiated electromagnetic energy sources which may be reasonably anticipated in service.

4. *Propulsion Control System.* In addition to the requirements of §§ 25.901(c) and 25.903(b) of the FAR, the components of the propulsion control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

Issued in Seattle, Washington, on January 15, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

FR Doc. 88–2116 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–CE–03–AD]

Airworthiness Directives; Mitsubishi Models MU–2B, MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directives (AD), applicable to all Mitsubishi Models MU–2B, MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60 airplanes equipped with Bendix Model M–4C and M–4D autopilots and/or Bendix electric pitch trim systems. This proposed AD would require: (a) The standardization of the function, location and color of the autopilot/manual electric pitch trim system disconnect/interrupt push button; (b) verification that the system can be disconnected, interrupted or shut off by at least three independent methods; and (c) changing the LIMITATION section of the Airplane Flight Manual of certain models together with an associated placard on the main instrument panel. This proposal is the result of a request from the National Transportation Safety Board (NTSB), which while investigating a series of fatal MU–2B accidents, concluded that pilots were becoming confused in the operation of the interrupt/disconnect switches for the electric pitch trim and autopilot systems. Compliance with this proposed AD would preclude pilot confusion and possible loss of airplane.

DATES: Comments must be received on or before March 24, 1988.

ADDRESSES: Mitsubishi Service Bulletins (S/B) No. 206 dated October 13, 1987, and S/B 066/22–006 dated December 18, 1987, applicable to this AD may be obtained from Beech Aircraft Corporation (Licensee for Mitsubishi), Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; Telephone (316) 681–7279, or may

be examined in the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88–CE–03–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: For Mitsubishi Aircraft International, Inc. (MAI) Type Certificate (TC) A10SW series airplanes manufactured in the U.S.: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, ACE–130W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4419. For Mitsubishi Heavy Industries, Inc. (MHI) TC A2PC Series airplanes manufactured in Japan: Herbert Peters, Aerospace Engineer, Western Aircraft Certification Office, ANM–173W, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007; Telephone (213) 297–1367.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this Notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88–CE–03–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The National Transportation Safety Board (NTSB), after reviewing fatal accidents involving the apparent sudden loss of control of Mitsubishi MU–2B Series airplanes resulting in uncontrolled collisions with the ground/water, requested that the FAA conduct an investigation of the Bendix M–4 Series autopilot systems as installed on the MU–2B airplanes and take such appropriate action as deemed necessary to correct any deficiencies identified. The result of this investigation, with cooperation between MHI, MAI, Beech Aircraft Corporation (licensee for MHI), Bendix Corporation, and the FAA, revealed that there are at least seven different configurations of the disconnect/interrupt switches for the autopilot and electric pitch trim systems. This situation could lead to pilot confusion and an inability to safely operate the MU–2B Series airplanes. A pilot's familiarity with the autopilot disconnect procedures in one MU–2B model airplanes does not guarantee the same familiarity with another MU–2B model airplane even if owned by the same operator. This situation could lead to pilot confusion and affect his ability to safely operate an MU–2B Series airplane. This confusion was apparently a factor in an MU–2B airplane crash at Bartlett, Texas on June 2, 1986. MHI agreed and issued S/B No. 206 dated October 13, 1987, correcting this installation on those MU–2B–30 and –35 model airplanes manufactured in Japan in accordance with Type Certificate (TC) A2PC, equipped with a Japanese Civil Airworthiness Board (JCAB) approved Bendix M–4 autopilot installation.

Subsequently MHI and Beech issued S/B No. 066/22–006 dated December 18, 1987, which covers those MU–2B model airplanes equipped with an FAA approved installation of the Bendix M–4 autopilot by providing one manual electric pitch trim switch configuration or one combination autopilot/electric pitch trim disconnect/interrupt switch configuration. The disconnect/interrupt switch is a red bi-level momentary push-button device with a partial depression disconnecting the autopilot. Continued further depressing of the switch will disconnect/interrupt the lectric pitch trim system. This switch is located below and outboard of the electric pitch trim switch on the outboard horn of the control yoke. This proposed airworthiness action provides standardization of switch location, color and function in MU–2 Series airplanes equipped with a Bendix M–4 autopilot.

To reduce the possible misuse of the autopilot/manual electric pitch trim system the FAA prepared an "Accident Prevention Program" flyer which explains the operation of the autopilot/electric pitch trim systems and the reasons the pilot should not assist the autopilot system perform its intended function. This flyer was made available to all MU–2B owner/operators through Beech Aircraft Corporation.

During FAA review of the proposed associated AFM revisions, the FAA determined that there may be a large altitude loss in the coupled autopilot approach mode resulting from an autopilot/manual electric pitch trim (AP/MEPT) runaway malfunction on certain MU–2B–35 and –36 model airplanes incorporating the AP/MEPT system installed in accordance with Supplemental Type Certificate (STC) SA1693SW or on certain MU–2B–35, –36A and –60 model airplanes incorporating the AP/MEPT system installed in accordance with approved MAI data. This large altitude loss is an airplane operating limitation and must be incorporated in the LIMITATION section of the affected model Airplane Flight Manual and displayed to the pilot by the installation of a permanent red placard, using letters a minimum of 0.10 inches in height, which states: "COUPLED AUTOPILOT APPROACHES BELOW 125 KCAS OR 300 FEET AGL NOT PERMITTED."

To verify that all MU–2B Model airplanes equipped with Bendix AP/MEPT systems are uniform in configuration and function, a "one time" visual check and functional ground test of the autopilot/manual electric pitch trim is also proposed. This visual check will verify that the disconnect/interrupt switch is red in color and that this switch is located on the outboard horn of the control yoke, and further verify that the autopilot circuit breaker is properly labeled. The proposed functional test is a ground test requiring manually overpowering the autopilot and verifying that the manual pitch trim wheel stops moving after each of the following actions: (1) The disconnect/interrupt switch is depressed; (2) the autopilot circuit breaker is pulled; and (3) the autopilot master switch or airplane master switch or radio master switch (as appropriate) is positioned to "OFF".

S/B No. 206 was approved and made mandatory in Japan by the issuance of JCAB AD No. TCD 2856–87 dated October 29, 1987. The JCAB which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Japan has classified this

S/B No. 206 and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under JCAB registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of JCAB combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of MU-2B S/B No. 206 and No. 066/22-006, and the mandatory classification of S/B No. 206 by the JCAB. Based on the foregoing, the FAA has determined that the condition addressed by these service bulletins is an unsafe condition that may exist on products of this type design certificated for operation in the United States. Consequently an AD is proposed which would correct the undesired condition and is applicable to all Mitsubishi MU-2B model airplanes equipped with a Bendix M-4C or M-4D autopilot and/or a manual electric pitch trim system. The proposed AD would require the incorporation of S/B No. 206 and/or No. 066/22-006 as appropriate to: (a) Standardize the location, functions and color of the disconnect/interrupt switch; (b) verify that the system can be disconnected, interrupted or shut off by at least three independent methods; and (c) change the LIMITATION section of certain MU-2B model airplanes together with mounting an associated red placard on the main instrument panel prohibiting coupled autopilot approaches below 125 KCAS or 300 feet AGL.

The FAA has determined there are approximately 274 airplanes affected by the proposed AD. The cost of complying with this proposed AD is estimated to be $400 per airplane, with a total cost estimated to be $109,600 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

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

List of Subjects in 14 CFR Part 39

All transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Mitsubishi: Applies to Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 (all Serial Numbers, with or without the SA suffix) airplanes certificated in any category, equipped with Bendix M-4C or M-4D autopilots and/or Bendix electric pitch trim systems.

Note 1: The serial number of airplanes manufactured in the United States by Mitsubishi (MAI) under Type Certificate (TC) A10SW are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries, Inc. (MHI) under TC A2PC have no suffix.

Compliance: Within the next 200 flight hours or five (5) calendar months, whichever occurs first.

To minimize the possibility of confusion in autopilot/manual electric pitch trim disconnect/interrupt switch location, accomplish the following:

(a) Modify the control yoke in the affected model and serial numbered airplane as follows:

(1) For MU-2B-30 and -35 model airplanes manufactured under TC A2PC equipped with a Japanese Civil Airworthiness Board (JCAB) approved Bendix M-4C autopilot, in accordance with MHI Service Bulletin (S/B) No. 206 dated October 13, 1987, or

(2) For all other MU-2B model airplanes equipped with an FAA approved installation of the Bendix M-4 autopilot, in accordance with MHI S/B No. 066/22-006, dated December 18, 1987.

(b) For MU-2B-35 and −36 model airplanes with Bendix autopilots installed in accordance with STC SA1693SW and MU-2B-35, −36A and −60 model airplanes with Bendix M-4D autopilots installed in accordance with approved MAI data, accomplish the following:

(1) Insert additional placard data in the LIMITATION Section of the Airplane Flight Manual (AFM) as follows:

"COUPLED AUTOPILOT APPROACHES BELOW 125 KCAS OR 300 FEET AGL NOT PERMITTED."

(2) Fabricate and install a permanent red colored placard in full view of the pilot using white colored letters of a minimum of 0.10 inches in height which states:

"COUPLED AUTOPILOT APPROACHES BELOW 125 KCAS OR 300 FEET AGL NOT PERMITTED."

(c) Insertion of a copy of this AD in the "LIMITATIONS" section of the AFM satisfies the requirements of paragraph (b)(1) of this AD.

(d) Prior to returning the aircraft to service, accomplish a visual configuration check and system functional ground test, and record successful completion in the appropriate airplane maintenance record as prescribed by FAR 91.173, as follows:

(1) Visually verify that:

(i) The disconnect/interrupt switch is red in color and located on the outboard horn of the control yoke; and,

(ii) The disconnect/interrupt switch is properly labeled as shown in Figure 7 of MHI S/B N. 206 for the A2PC airplanes or as shown in Figure 8 of Figure 9, (as appropriate for the control wheel configuration) of MHI S/B No. 066/22-006 for A10SW airplanes, as applicable; and,

(iii) The autopilot circuit breaker is properly labeled.

(2) If a manual electric pitch trim system only is installed, engage the system and press the trim button to cause the manual pitch trim wheel to rotate, then verify that after each of the following operations is performed the manual pitch trim wheel stops moving when:

(i) The disconnect/interrupt switch is depressed; or,

(ii) The Master Electric Power switch is positioned to "OFF"; or,

(iii) The Radio Master switch is positioned to "OFF" (if installed and so configured) or;

(iv) The electric trim circuit breaker is pulled.

Note 2: It is very important to verify that the manual pitch trim wheel stops moving after each of the above operations.

(3) If an autopilot system is installed, with or without a manual electric trim system, engage the system and then verify:

(i) That the autopilot system can be overpowered by pushing or pulling on the control yoke; and,

(ii) That, while overpowering the autopilot, the manual pitch trim wheel stops moving when each of the following operations is performed:

(A) The disconnect/interrupt switch is depressed; or,

(B) The autopilot master switch is positioned to "OFF" (On some MU-2B airplanes equipped with MHI installed manual electric trim system, the RADIO MASTER switch must be used to disconnect the system in lieu of the autopilot master switch); or

(C) The autopilot circuit breaker is pulled.

Note 3: It is very important that the manual pitch trim wheel stops moving after each of these opertions.

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

(f) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM-170W, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 900009-2003; and on the MAI airplanes, if approved by the Manager, Wichita Aircraft Certification Office, ACE-115W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation (Licensee to Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111; or may examine the documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 22, 1988.

James O. Robinson,

Acting Director, Central Region.

[FR Doc. 88-2107 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-129-AD]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to Fokker Model F-28 series airplanes, that would require a modification of the emergency lighting system. This proposal is prompted by reports that certain elements of the emergency lighting system may not illuminate automatically if normal airplane power is lost. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation.

DATES: Comments must be received no later than March 18, 1988.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-129-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V. Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands. This information may be examined at the FAA, Northwest Mountain Region, 17900, Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald E. Gonder, Technical and Administrative Support Staff, ANM-103, telephone (206) 431-1928; or Mr. Robert Huhn, Standardization Branch, ANM-113, telephone (206) 431-2339. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-129-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been reports that the emergency lighting system on Fokker Model F28 series airplanes may not come on automatically upon impact when both engines stop and the normal aircraft power is lost, if the battery remains attached to the power bus. In this situation, the voltage drop out relay would prevent the independent lighting system from operating. The voltage drop out relay remains energized until the DC bus voltage drops to 10 to 12 volts. Accordingly, during an impact, if the battery remains attached to the bus and is above 10 to 12 volts, the external emergency lighting system for illuminating the ground and the independent lighting system for illuminating the cabin are inhibited from operating. Additionally, adequate illumination levels may not be provided. This condition, if not corrected, could result in failure of the emergency lighting system to operate when required during an emergency situation.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the emergency lighting system in a manner approved by the FAA.

Fokker has issued Service Bulletin F28/33-26, dated October 12, 1983, which lists affected airplanes' serial numbers and provides general instructions for modification of the emergency lighting system on affected airplanes. However, specific accomplishment instructions are not provided in the service bulletin because of the differences among each airplane's individual electronic configurations.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD, that it would take approximately 60 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $122,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, 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 ($2,400). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations 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.

§ 39.132 [Amended]

2. By adding the following new airworthiness directive:

Fokker B.V. Applies to Model F28 series airplanes, as listed in Service Bulletin F28/33–26, dated October 12, 1983, certificated in any category. Compliance is required within the next 12 hours after the effective date of this AD, unless previously accomplished.

To ensure the operation of the emergency lighting system when required during an emergency situation, accomplish the following:

A. Modify the emergency lighting system in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region, to ensure that all elements of that system operate when normal airplane power is disconnected.

Note.—Information describing methods for accomplishing the modification is contained in Fokker Service Bulletin F28/33–26, dated October 12, 1983.

B. After installing the modification, perform a functional test of the modified emergency lighting system to verify proper operation. The functional test is considered to be successful if all elements of the emergency lighting system operate when normal airplane power is disconnected.

Note.—Normal airplane power is defined as excluding the airplane batteries.

C. 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, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. 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 modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker, B.V. Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 27, 1988.

Temple H. Johnson, Jr.,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–2191 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–152–AD]

Airworthiness Directives; SAAB-Fairchild Model SF–340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to certain SAAB–Fairchild Model SF–340A series airplanes, which currently requires the installation of a positive stop to limit the maximum flap setting to 20° to prevent an uncommanded pitch excursion. This action provides for optional modifications which, if incorporated, allow removal of the limitations required by the AD.

DATES: Comments must be received no later than April 4, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention, Airworthiness Rules Docket No. 87–NM–152–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Scania, Product Suport, S–58188, Linkoping Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing data for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–152–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On March 7, 1986, the FAA issued AD 86–06–03, Amendment 39–5258 (51 FR 8791; March 14, 1986), to require certain operational limitations and the installation of a positive stop on the flap quadrant on SAAB–Fairchild Model SF–340A series airplanes to prevent flap settings in excess of 20°. This action was necessary to prevent uncommanded pitch excursions which had been reported to have occurred when the wing flaps were extended to 35° while the horizontal stabilizer had an accumulation of ice.

Subsequent investigation of one related incident revealed that a 5mm (0.2 inch) layer of clear ice with rough surface had formed over a large part of the boots on the tailplane. Coarse distribution roughness, such as that found on an airplane after flying in freezing rain, has been found to have more serious aderse effects on the Model SF–340A tail section than the typical horn ice shapes previously tested.

Since issuance of AD 86–06–03, SAAB has developed a cambered tail section, a row of vortex generators on the right-hand stabilizer, and an upspring on the elevator control system in order to reinstate the use of the 35° flap setting. This design was based on flight and wind tunnel tests, including ice simulation tests using horned shapes

and sandpaper surfaces to simulate three icing conditions. Tests have shown that, with the new cambered stabilizer, there is no reversal of elevator stick force. This modification, No. 1462, is described in SAAB Service Bulletin SF 340–55–008, Revision 1, dated October 27, 1987.

Further, on one test airplane, it was found that a stall can occur before activation of the stick pusher if flaps are set at 35°, and if inflation of boots should occur in a slow speed turn. Therefore, it is considered necessary to change the schedule when the stick pusher is activated to a low angle of attack when the boot de-ice system is activated.

The de-icing boot inflation sequence includes a boot segment inflation pressure schedule of six seconds. During testing, it was noted that the boots did not completely inflate when operating them at the extreme low temperatures of the icing envelope. The low temperature inhibits the inflation and deflation rate which, in turn, affects the boot de-icing performance.

SAAB has issued Service Bulletin SF 340–27–049, Revision 1, dated July 21, 1987, which describes a modification, No. 1784, to increase the boot inflation pressure schedule time from six to twelve seconds in order to allow the boot segment to completely inflate at the coldest of the icing envelope temperatures.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the U.S., an AD is proposed which would provide an optional terminating action for the requirements of AD 86–06–03 by modifying the airplane in accordance with the two service bulletins previously mentioned. The installation of these modifications will provide optimum boot performance, provide stall warning when the boots are inflated, prevent an uncommanded pitch down, and ensure pitch control with flap configurations greater than 20°.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately 94 manhours per airplane to accomplish the optional modification, and that the average labor cost would be $40 per manhour. Parts are estimated to be $83,709 per airplane. Based on these figures, the cost to U.S. operators to incorporate the optional modification is $87,469 per airplane.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model SF–340A airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

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 amending AD 86–06–03, Amendment 39–5258 (51 FR 8791; March 14, 1986), by adding a new paragraph 5. to read as follows:

Saab-Fairchild: Applies to Model SF–340A series airplanes, serial numbers 003 through 048, inclusive, certificated in any category. Compliance is required as indicated below, unless previously accomplished.

To prevent uncommanded pitch excursions, accomplish the following:

1. Within the next 7 days after the effective date of this AD, incorporate the following into the limitations section of the airplane flight manual: "More than 20° flap is NOT authorized at any time." This may be accomplished by including a copy of this AD in the airplane flight manual.

2. Within the next 21 days after the effective date of this AD, install a mechanical stop on the flap handle to limit the flap extension to a maximum setting of 20°, in accordance with SAAB-Fairchild Service Bulletin SF 340–27–036, dated February 13, 1986.

3. 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 the inspections and/or modifications required by this AD.

4. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

5. Installation of Modification 1784 in accordance with SAAB Service Bulletin SF 340–27–049, Revision 1, dated July 21, 1987, and Modification 1462 in accordance with SAAB Service Bulletin SF 340–55–008, Revision 1, dated October 27, 1987, constitutes terminating action for the requirements of paragraph 1. and 2., above.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania, Product Support, S. 58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 27, 1988.

Temple H. Johnson, Jr.,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–2192 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–52]

Proposed Amendment of Transition Area; Rockport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Rockport, TX. The development of a new standard instrument approach procedure (SIAP) to the San Jose Island Airport, Rockport, TX, utilizing the Corpus Christi Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposed revision necessary. The intended effect of this proposed revision is to provide adequate controlled airspace for aircraft executing this new SIAP to the San Jose Island Airport. Coincident with this proposed revision would be the changing of the status of the San Jose Island Airport from visual flight rules (VFR) to instrument fight rules (IFR).

DATES: Comments must be received on or before March 10, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–52, Department of

Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–52." The postcard will be data/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Rockport, TX. The development of a new SIAP to the San Jose Island Airport utilizing the Corpus Christi VORTAC, has necessitated the proposal of this revision. The intended effect of this proposed revision is to provide adequate controlled airspace for aircraft executing this new SIAP. Coincident with this proposed revision would be the changing of the status of the San Jose Island Airport from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) 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. Section 71.181 is amended as follows:

Rockport, TX [Amended]

By adding to the end of the legal description: "and within a 7-mile radius of the San Jose Island Airport (latitude 27°56'38.6"N., longitude 96°59'04.6"W.)."

Issued in Fort Worth, TX on January 20, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–2108 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Reopening and Extension of Public Comment Period on Proposed Amendments to Oklahoma Permanent Regulatory Program

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

ACTION: Proposed Rule; reopening and extension of public comment period.

SUMMARY: Oklahoma submitted required revisions to previously submitted proposed amendments to the Oklahoma permanent regulatory program (hereinafter referred to as the Oklahoma program). As required under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), OSMRE is announcing receipt of these revisions and reopening the public comment period for 15 days.

The amendments consist of changes to several parts of the Oklahoma program that were identified as necessary to ensure that the State's regulations were no less effective than the Federal regulations, as revised since January 19, 1981, when the Oklahoma program was originally approved. This notice sets forth the times and locations that the Oklahoma program and proposed amendments will be available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendments.

The proposed regulations concern the general section; permanent regulatory program; restriction on financial interests of state employees; exemption for coal extraction incident to government-financed highway or other construction; areas designated unsuitable for mining by the act; requirements for coal exploration; requirements for permit, permit processing, revisions, renewals, or sale of permit rights; administrative and judicial review; permit applications; small operator assistance; bond and insurance requirements; permanent

program performance standards; and state inspections and enforcement.

DATES: Written comments relating to Oklahoma's proposed modification of its program not received on or before 4:00 p.m., c.s.t. on February 18, 1988 will not necessarily be considered in the decision process.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135. Copies of the Oklahoma program, the proposed modification to the program, and all written comments received in response to this notice will be available for public review at the Tulsa Field Office, OSMRE Headquarters Office, and the Oklahoma Department of Mines (ODM) during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting the Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430;

Office of Surface Mining Reclamation and Enforcement, 100 L Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492;

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981 (46 FR 4910). Information pertinent to the general background, the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Oklahoma program can be found in the Federal Register notices of January 19, 1981 (46 FR 4910), April 2, 1982 (47 FR 14152), May 4, 1983 (48 FR 20050), and August 28, 1984 (49 FR 34000).

Other actions taken with regard to the Oklahoma program, and program amendments can be found at 30 CFR 936.10, and 936.15.

II. Submission of Amendments

In accordance with the provisions of 30 CFR 732.17(d) through (f), OSMRE notified Oklahoma by letter, (Administrative Record No. OK–681), of the changes necessary to ensure that the State's Act was no less stringent than SMCRA and that its regulations were no less effective than the Federal regulations, as revised since January 19, 1981, when the program was originally approved. To comply with this notification, Oklahoma completed a partial rewrite of its regulations. The rewrite was submitted to OSMRE for approval in three parts. These were submitted August 19, 1986:

(Administrative Record No. OK–747), August 29, 1986

(Administrative Record No. OK–749), and January 16, 1987

(Administrative Record No. OK–780).

The proposed regulations, consisting of Parts 700, General Definitions; 701, Permanent Regulatory Program; 705, Restriction on Financial Interests of State Employees; 707, Exemption for Coal Extraction Incident to Government-Financed Highway or other Construction; 761, Acres Designated Unsuitable for Mining by the Act; 762, Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations; 764, Processes for Designating Areas Unsuitable for Surface Coal Mining Operations; 772, Requirements for Coal Exploration; 773, Requirements for Permits and Permit Processing; 774, Revision; renewal; and Transfer, Assignment, or Sale of Permit Rights; 775, Administrative and Judicial Review; 777, General Content Requirements for Permit Applications; 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information; 779, Surface Mining Permit applications—Minimum Requirements for Information on Environmental Resources; 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 783, Underground Mining Permit Applications—Minimum Requirements for information on Environmental Resources; 784, Undergound Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 785, Requirements for Permits for Special Categories of Mining; 795, Small Operator Assistance; 800 Bond and Insurance Requirements for surface coal Mining and Reclamation Operations; 810, Permanent Program Performance Standards—General Provisions; 815, Permanent Performance Standards—Coal Exploration; 816, Permanent Program Performance Standards—Surface Mining; 817, Permanent Program Performance Standards—Underground Mining Activities; 819, Special Permanent Program Performance Standards—Auger Mining; 823, Special Permanent Program Performance Standards—Operations on Prime Farmland; 824, Special Permanent Program Performance Standards—Mountaintop Removal; 827, Special Permanent Program Performance Standards—Coal Preparation Plants not Located Within the Permit area of a Mine; 828, Special Permanent Program Performance Standards—In Situ Processing; 842, State Inspections; 843, State Enforcement; 845, Civil Penalties; and 850, Training, Examination, and Certification of Blasters; would replace those of the currently approved regulatory program.

Copies of the proposed changes were sent to various agencies for comment and notices were published in the Federal Register to allow the public to submit written comments or request a public hearing. Proposed Rule for the August 19, 1986 and August 29, 1986 submittals were published together on October 15, 1986 (51 FR 36405). The Proposed Rule for the January 16, 1987 submittal was published on February 25, 1987 (52 FR 5550).

OSMRE reviewed the proposed changes and sent two separate letters (Administrative Record No. OK–804) to Oklahoma identifying those proposed amendments that were not as effective as the Federal rules. Oklahoma revised parts of the amendment and resubmitted the entire package for review to OSMRE on September 18, 1987, (Administrative Record No. OK–824).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15. If approved by OSMRE and promulgated by Oklahoma, the proposed amendments will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Tulsa, Oklahoma, will not necessarily be considered in the final rulemaking or included in the Oklahoma Administrative Record.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Dated: January 26, 1988.

[FR Doc. 88-2142 Filed 2-2-88; 8:45 am]

BILLING CODE 4310-15-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3214-5]

Approval and Promulgation of State Implementation Plans, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming; Stack Height Analyses and Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve (1) the stack height regulations for Utah, Montana, Colorado and South Dakota, (2) the stack height demonstration analyses for Montana, North Dakota, South Dakota, and Wyoming, and (3) the stack height demonstration analyses for Utah with one exception as noted below. Each state was required to review its State Implementation Plan (SIP) for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that these states have satisfied their obligations under section 406 of the Clean Air Act (CAA) to review their SIPs with respect to EPA's revised stack height regulations.

Today's action does not include the Kennecott stack height analyses which were submitted as part of the Utah SIP revision. EPA will address that part of the Utah Stack Height SIP, analyses of the Kennecott stack, in a separate rulemaking.

Today's action acknowledges the commitments from Wyoming and North Dakota to implement the Federal stack height regulations until the States adopt the required regulations and such regulations are approved by EPA.

EPA received the Colorado stack height demonstration analyses, but because of questions remaining with the submittal, EPA is addressing the Colorado demonstration analyses in a separate rulemaking.

DATES: Comments must be received on or before March 4, 1988.

ADDRESSES: Written comments should be addressed to: Chief, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

Copies of the states' submittals are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293-1762.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the CAA. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, revising certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, and on July 18, 1984, the Court of Appeals mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), promulgated on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the basis for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of the CAA, all states were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of the EPA stack height regulations promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

State Submissions

A. Demonstration Analyses

EPA has received stack height reviews for Montana, North Dakota, South Dakota, Utah and Wyoming. The Montana review was submitted on November 25, 1985, with subsequent submittals dated January 28, 1986, June 5, 1986, and September 2, 1986; the North Dakota review on April 18, 1986; the South Dakota review on August 20, 1986, and subsequent submittal on December 3, 1986; the Utah review on May 7, 1986; and the Wyoming review on August 8, 1986. Each State has found that no existing emissions limitations have been affected by stack height credits above GEP or any other dispersion technique prohibited by EPA regulations.

EPA has determined that the states' inventories above *de minimis* height and de minimis emission level are complete. EPA has carefully reviewed the states' findings that no emission limits have been affected by prohibited dispersion techniques. EPA concurs in those findings except with regard to the Kennecott stack in Utah. EPA has not completed its evaluation of the Kennecott stack's emission limit, which will thus be addressed in a separate action. Summaries of the states' findings are presented in the chart below. Detailed documentation of the states' findings and of EPA's review is

contained in EPA's technical support document, its air compliance files, and state files, all of which are available for public inspection.

A summary of each State's findings is provided below.

WYOMING

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height	SO_2[1] (t/yr)
Basin electric:					
(Laramie River)	Unit 1	182.9	H+1.5L	193.5	5000+
	Unit 2	182.9	H+1.5L	193.5	
	Unit 3	182.9	H+1.5L	193.5	
Pacific Power & Light:					
(Jim Bridger Power Plant)	Unit 1	152.7	H+1.5L	199.0	5000+
	Unit 2	152.7	H+1.5L	199.0	
	Unit 3	152.7	H+1.5L	199.0	
	Unit 4	152.7	H+1.5L	199.0	
(Dave Johnson Power Plt.)	Unit 1	151.1	H+1.5L	160.3	5000+
	Unit 2	151.1	H+1.5L	160.3	
	Unit 3	151.1	H+1.5L	160.3	
	Unit 4	76.3	H+1.5L	160.3	
(Wyodak Power Plant)	Unit 1	122.3	H+1.5L	143.7	5000+
Utah Power & Light:					
(Naughton)	Unit 2	68.21	Grandfathered [2] (1968).		5000+
	Unit 3	143.29	H+1.5L	144.8	
Black Hills P & L:					
(Neil Simpson)	Unit 5	76.2	H+1.5L	92.6	
FMC Wyoming:					
(Green River)	NS-1-A	91.4	H+1.5L	119.75	5000+
	NS-1-B	91.4	H+1.5L	119.75	
Wyoming Refinery	TCC Unit	69.2	H+1.5L	69.77	

[1] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and prohibited by 40 CFR 50.118(a).
[2] Documentation provided. Grandfathered means stack in existence in given year.

NORTH DAKOTA

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[4] (t/yr)
Amoco Oil Refinery		60.7	De minimis		5583
ANG Coal Gasification Co.		125.2	H+1.5L	127	9948
Basin Electric Power Corp:					
AVS	1	182.9	H+1.5L	189	5615
AVS	2	182.9	H+1.5L	189	
AVS	3	210.2	H+1.5L	189	
L. Olds	1	106.7	H+1.5L	191	8718
L. Olds	2	152.4	H+1.5L	191	18110
KOCH Hydrocarbon		65.5	[1]	65.5	1298
Minnkota Power Coop:					
M.R. Young	1	91	2.5[2]	199	12353
Square Butte Elec. Power Corp:					
M.R. Young	2	168	2.5[2]	199	13206
Montana Dakota Utilities:					
Coyote 1	1	151.8	2.5H[2]	221	15780
Heskett	1	91.5	H+1.5L	97.5	4635
	2	91.5	H+1.5L	94	4414
Nokota Company		152.4	H+1.5L	152.4	
United Power Assciation[3]	1 and 10	78	H+1.5L	11.3	11121
UPA/CPA:					
Coal Creek	1	201	2.5H[2]	222	20196
Coal Creek	2	201	2.5H[2]	222	21322

[1] A stack height of 65m is used in all dispersion modeling scenarios conducted by the company and the State.
[2] Documentation provided to show reliance.
[3] This is a merged stack. The merging did not result in any increase in the allowable emissions and was associated with the installation of a new boiler (Unit 10) meeting NSPS.
[4] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and phohibited by 40 CFR 50.118(a).

UTAH

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[3] (t/yr)
Deseret	Unit 1	182.9	H+1.5L	177.9 [1]	
U.P. & L Hunter	Unit 2 [5]	182.9	H+1.5L	177.9 [1]	
	Unit 1	183.08	H+1.5L	185.05	
	Unit 2	183.08	H+1.5L	185.05	
	Unit 3	183.1	H+1.5L	185.0	

UTAH—Continued

Plant name	Stack I.D	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[3] (t/yr)
U.P. & L Huntington	Unit 1	182.93	H + 1.5L	[1]176.83	9448
	Unit 2	182.93	H + 1.5L	[1]176.83	
I.P.P.	Unit 1	216.46	H + 1.5L	230.2	17870
	Unit 2	216.46	H + 1.5L	230.2	-
U.S. Steel Blast Furnace	Unit 1	79.2	Grandfathered [2] (1946)		
	Unit 2	79.2	Grandfathered [2] (1946)		
	Unit 3	68.6	Grandfathered [2] (1946)		
U.S. Steel Coke Combustion	Unit 1	76.2	Grandfathered [2] (1946)		
	Unit 2	76.2	Grandfathered [2] (1946)		
	Unit 3	76.2	Grandfathered [2] (1946)		
	Unit 4	76.2	Grandfathered [2] (1946)		
Chevron USA	HCC Cracker	88.4	Grandfathered [2] (1946)		6085
Chevron Research	Cat. Dis. Air Heater	69.8	([6])	([6])	
Chevron Research	Retort	69.8	([6])	([6])	
AMAX	Melt Reactor	76.22	H + 1.5L	86.13	
	Electroytics	76.22	H + 1.5L	86.13	
	Emergency Off Gas	76.22	H + 1.5L	86.15	
	Spray Dryer 1	76.22	H + 1.5L	86.1	
	Spray Dryer 2	76.22	H + 1.5L	86.13	
	Spray Dryer 3	76.22	H + 1.5L	86.13	
Phillips Petro	Thermal Cat. Cracking	80.8	Grandfathered [2] (1952)		5733
White River (Phase I)	3 Boilers	76.2	H + 1.5L	76.2	
White River (Phase II)	1 Boiler	76.2	H + 1.5L	76.2	
	2 Retort	76.2	H + 1.5L	111.28	
White River (Phase III)	2 Elutriators	76.2	H + 1.5L	92.98	
	2 Shale Lifts	76.2	H + 1.5L	92.98	
	1 Hydrogen Plant	76.2	H + 1.5L	76.2	
	3 Power Plants	76.2	H + 1.5L	76.2	
	2 Ball Heaters	76.2	H + 1.5L	92.98	
Tosco	Preheat [5]	([4])	H + 1.5L	([4])	
	Elutriator [5]	([4])	H + 1.5L	([4])	
	Proc. Shale Wetters [5]	([4])	H + 1.5L	([4])	
U.P. & L Gadsby	Unit 1	76.2	Grandfathered [2] (1951)		
	Unit 2	76.2	Grandfathered [2] (1952)		
	Unit 3	76.2	Grandfathered [2] (1955)		

[1] Source modeled; no significant difference in emission limitations found.
[2] Documentation provided. Grandfathered means stack in existence in year given.
[3] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and prohibited by 40 CFR 50.118(a).
[4] Feasibility approval issued Dec. 28, 1983; construction still has not started; PSD permit has not been issued; EPA has advised the State that it is not approving a GEP height on these proposed stacks until a permit is issued and in compliance with the GEP regulation requirements. The State in a SIP revision, gives an actual and GEP height for these stacks. However, the State has committed to review plans for emission limitations based on PSD & stack height requirements.
[5] Proposed stacks.
[6] Permit expired; source shot down.

MONTANA

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[5] (t/yr)
ASARCO (East Helena)	Sinter	128	Grandfathered [4] (1939)		5000+
	Blast Furnace	130	Field Study [1]	114.3	
	Zinc Slag	107	Modeling [2]	65	
Conoco (Billings)	Boiler	82	H+1.5L	[3]75.7	
Montana-Dakota (Sidney)	Coal Boiler	76	H+1.5L	95.3	
Montana Power (Billings)	Coal Boiler	107	Grandfathered [4] (1968)		5000+
Montana Power (Colstrip)	Coal Boiler I	152.4	H+1.5L	164.6	
	Coal Boiler 2	152.4	H+1.5L	164.6	
	Coal Bioler 3	211	H+1.5L	212.6	
	Coal Boiler 4	211	H+1.5L	212.6	
Exxon (Billings)					5000+

MONTANA—Continued

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[5] (t/yr)
Cenex (Laurel)					5000+

[1] SIP was based upon demonstration height of 114 meters; emission limitation stated in Montana regulation 16.8.1414.
[2] Modeling done at 65m. No predicted violation of federal ambient standard at given emission rate.
[3] Modeling confirmed no violations of federal ambient SO_2 standards.
[4] Documentation provided. Grandfathered means stack in existence in given year.
[5] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and prohibited by 40 CFR 50.118(a).

SOUTH DAKOTA

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP heights (M)	SO_2[1] (t/yr)
Big Stone Power Plant		152	H+1.5L	161.5	

[1] The state has determined that all the listed facilities below dod not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and prohibited by 40 CFR 50.118(a).

B. Stack Height Regulation

EPA has received stack height regulation revisions, from Utah, Montana, Colorado and South Dakota. Also, EPA received commitments to comply with the federal stack height regulations from North Dakota and Wyoming. The rules from Colorado, Utah, Montana and South Dakota and the commitments from Wyoming and North Dakota apply to all new sources and modifications as required in 40 CFR 51.164 (old citation § 51.18(1)), as well as existing sources as required in 40 CFR 51.118 (old citation § 51.12(j), (k), (1)). This means that these rules and commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA haws reviewed the revisions to these regulations and has determined that they are consistent with EPA's requirement for GEP stack height and disperson techniques as as revised on July 8, 1985. (Reference to the old citation is made because on November 7, 1986, 51 FR 40656, EPA restructured 40 CFR Part 51. The regulations themselves have not changed; the numbering sequence has changed.) Discussion on these States' submittals as well as the status of the North Dakota and Wyoming regulations are given below.

Colorado

In a letter dated May 13, 1986, Governor Richard Lamm submitted revisions to Colorado Regulation No. 3 (Regulation Requiring an Air Contaminant Emission Notice, Emission Permission Fees) of the Colorado SIP modifying stack height evaluations. The changes consisted of (1) new definitions of dispersion techniques, good engineering practice, nearby and excessive concentrations (Section XII. D.) and (2) rules clarifying technical modelling and monitoring requirements (Section XII. C.). These revised rules bring the Colorado reglations into conformity with regulations promulgated by the EPA.

Montana

In a letter dated March 28, 1986, Governor Ted Schwendin, submitted modifications to the Montana SIP which revised rules governing stack height and dispersion techniques. The modification repeals Administrative Rules of Montana (ARM) 16.8. 1201, 16.8.1202 and 16.8 1203 in Sub-Chapter 12 and adds ARM 16.8. 1204 (Definition), 16.8.1205 (Requirements), and 16.8.1206 (Exemptions).

Montana regulations do not specifically define "emission limitation and emission standards." However, the regulation, ARM 16.8.1205, subjects the source(s) to all emission limitation requirements in the Montana Clean Air Act. Montana regulations do not specifically define "stack in existence"; however, Montana implies its use in its definition of GEP and in its stack height requirements (ARM 16.8.1205) and exemptions (16.8.1206).

The Montana regulations are designed to limit the use of tall stacks. Further, the State underscores the change in its regulations as reflecting the policy of the State to achieve acceptable levels of ambient air quality through the use of continuous emission reduction and not through the use of dispersion techniques or tall stacks.

Utah

The Utah SIP revision to comply with the stack height requirement was submitted on May 2, 1986, by Governor Norman H. Bangerter. The submittal includes regulations to address (1) GEP stack height/dispersion techniques (2) a new section 17 of the SIP that lists all existing stacks in Utah greater than 65 meters and (3) a technical support document for Section 17 of the SIP.

New definitions are added to Part I of the Utah Air Conservation Regulations (UACR). They are UACR 1.1.128 (dispersion techniques), UACR 1.1.129 (excessive concentration), UACR 1.1.130 (good engineering practice), UACR 1.1.131 (nearby), UACR 1.1.132 (stack) and UACR 1.1.133 (a stack in existence). Part III of the UACR (UACR 3.8), which defines the stack height exemptions and requirement for source owners or operators, was also revised to be more consistent with federal regulations.

North Dakota and Wyoming

The States of North Dakota and Wyoming submitted letters of commitment to adopt, in future SIP revisions, stack height regulations similar to the new federal regulations. The North Dakota letter dated April 18, 1986, was submitted by Mr. Dana Mount, Division Director of Environmental Engineering, North Dakota Health Department. The Wyoming letter dated December 4, 1986, was submitted by Mr. Charles Collins, Administrator, Wyoming Air Quality Division. North Dakota has submitted proposed regulations to EPA and plans to finalize such regulations by mid 1987. Wyoming, however, has missed two State/EPA Agreements commitment dates to adopt the appropriate regulation. EPA is considering federal promulgation of stack height regulations for Wyoming. In the interim, EPA believes that the States' commitments to comply with the Federal regulations are acceptable.

South Dakota

On August 7, 1986, Governor William Janklow submitted revisions to the South Dakota SIP adopting federal stack height regulations. South Dakota has incorporated by reference EPA definitions for good engineering practices (40 CFR 51.1 (ii)) and dispersion techniques (40 CFR 51.1 (hh)), which were promulgated on July 8, 1985, into the South Dakota Air Quality Regulations (SDAQR) 74:26:01:12. This is to ensure that new sources comply with emission limitations and other requirements of the CAA. (**Note.**—As stated above, EPA restructured 40 CFR Part 51 on November 7, 1986 (51 FR 40656). The citation in SDAQR 74:26:01:12 referenced regulations 40 CFR 51.1(ii) and (hh) which are 40 CFR 51.100 (ii) and 51.100 (hh) in the new Federal citation. The South Dakota regulation and the Federal regulations are one and the same.)

In a letter dated January 30, 1987, Joel Smith, South Dakota Administrator for Air Quality and Solid Waste, committed to adopting the definitions "nearby" and "excessive concentration" (51.100(jj) and (kk), new citation) with the next regulatory update (mid 1987). In August 1987, EPA received draft regulations from South Dakota which incorporates by reference in SDAQR 74:26:01:12 all applicable stack height regulations (51.100(z), (ff), (gg), (hh), (ii), (jj), (kk) and (n). South Dakota anticipates adoption of the regulations in late September 1987. EPA has determined that the draft regulation SDAQR 74:26:01:12 is consistent with the Federal stack height requirements and will approve in final action such regulation after adoption and submittal to EPA.

South Dakota did not have to meet public availability requirements for the one existing source that was evaluated. The source's stack height is documented by the State and is proposed for approval in this notice.

For new or modifying sources, the new source review and prevention of significant detrioration review lie with EPA (these programs have not been delegated to the State).

Thus, EPA believes that requirements for any source in 40 CFR 51.118 are satisfied.

EPA Action

EPA believes that the stack height regulations submitted by Utah, Montana, Colorado and South Dakota are consistent with the revised Federal regulations. EPA is, therefore, proposing to approve such regulations.

The commitments from North Dakota and Wyoming to comply with Federal regulations, until adequate state regulations are adopted, are acknowledged by EPA.

The stack height GEP analyses submitted by Utah, Montana, Wyoming, North Dakota and South Dakota have been determined to be acceptable. Therefore, EPA proposes to approve these stack height demonstrations. As noted earlier, the Kennecott stack height analyses submitted as part of the Utah SIP Revision will be addressed in a separate rulemaking.

Under 5 U.S.C. 605(b), I certify that this SIP approval will not have a significant economic impact on a substantial number of small entities.

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

Authority: 42 U.S.C. 7401–7642.

Date: September 30, 1987.

James J. Scherer,

Regional Administrator.

[FR Doc. 88–404 Filed 2–2–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[FCC 88–1; File Nos. 1970–DSS–MP/ML–86; 1971–DSS–MP/ML–86; 1972–DSS–MP–86]

Modification of Space Station Authorizations of RCA American Communications, Inc., in the Domestic Fixed-Satellite Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Tentative decision.

SUMMARY: This action addresses a modification request made by RCA American Communications, Inc. (RCA) seeking authority to operate its 12/14 GHz K–3 satellite from 85° W.L. with transponders capable of operating either with 27 MHz or 54 MHz with 60 watt instead of 45 watt travelling wave tube amplifiers. The FCC proposes to accommodate high power density satellites such as K–3 by assigning these satellites to a discrete segment of orbital arc. If implemented, this discrete orbital arc segment will be used to separate high power density 12/14 GHz satellites from low power density 12/14 GHz satellites and thus greatly reduce the potential interference conflicts between satellites of differing power densities and transmission parameters.

DATES: Comments must be filed on or before March 7, 1988 and reply comments on or before March 28, 1988.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon, Jr. or Joseph Harcarufka at (202) 634–1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Tentative Decision* in the matter of the applications of RCA American Communications, Inc., File Nos. 1970–1971–DSS–MP/ML–86 and 1972–DSS–MP–86, adopted January 4, 1988 and released January 26, 1988.

The full text of this document is available for inspection and copying during normal business hours in the Domestic Facilities Division Public Reference Room (Room 6220), 2025 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Tentative Decision

1. In the *Tentative Decision*, we are considering the modification request of RCA American Communications, Inc. (RCA) to redesign and operate its K–3 satellite and redesign its K–4 ground spare satellite with 60 watt travelling wave tube amplifiers. RCA intends to use its K–3 satellite capacity exclusively for the distribution of video program services.

2. The Commission finds merit in the RCA request, but recognizes that in order to accommodate the K–3 satellite, it has to develop an alternative orbital assignment plan for the 12/14 GHz band. The Commission proposes using a discrete segment of the orbital arc to accommodate high power density satellites such as RCA's K–3 satellite. The Commission proposes using the orbital arc from 87 degrees to 93 degrees west longitude as the initial high power density segment and because of certain technical advantages, the Commission proposes spacing 12/14 GHz satellites within the discrete segment with 1.5 degree separations at 87.0, 88.5, 90.0, 91.5 and 93.0 degrees west longitude. Satellite operators authorized to build high-power satellites who cannot reach coordination agreements with adjacent satellite operators in the standard 12/14 GHz, 2 degree spaced, orbital arc or who prefer to operate in the high power density segment, may be assigned to a location within this special orbital arc segment.

3. Pursuant to the procedures set out in § 1.415 of the Commission's rules, 47

CFR 1.415, interested parties may file comments on these proposals on or before March 7, 1988 and reply comments on or before March 28, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Final Decision* to follow.

4. In accordance with the provisions of § 1.419 of the Commission's rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and ten copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Comments and reply comments should be sent to: Office of the Secretary, Federal Communications Commission, Wshington, DC 20554. All documents will be available for public inspection during regular business hours at the Domestic Facilities Division Public Reference Room, Room 6220, 2025 M Street NW., Washington, DC. For general information on how to file comments, please contact the FCC Consumer Assistance and Information Division at (202) 632–7000.

5. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a tentative decision until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* 47 CFR 1.1231.

Ordering Clause

6. Accordingly, *it is ordered*, pursuant to sections 4(i), 4(j), 214(c) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 4(j), 214(c), 303(r) and section 553 of the Administrative Procedures Act, 5 U.S.C. 553, we hereby give notice that the policies set forth in this document are adopted as a Tentative Decision.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–2202 Filed 2–2–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 69

[MM Docket No. 87–465]

Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-channel Land Mobile Operations

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for the Association of Maximum Service Telecasters (MST) to file comments and reply comments in response to the *Notice of Inquiry* in the MM Docket No. 87–465 (52 FR 47736; December 16, 1987). This *Notice* requested comments on proposals to amend Part 73 of the Commission's rules to address the problem of interference between television and land mobile stations.

DATES: Comments are due February 17, 1988, and reply comments are due March 2, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Whitsett, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Order Granting Request for Extension of Time To File Comments

In the matter of Resolution of Interference between UHF channels 14 and 69 and Adjacent-channel Land Mobile Operations.

Adopted: January 4, 1988.
Released: January 26, 1988.
By the Chief, Mass Media Bureau.

1. On November 30, 1987, the Commission released a *Notice of Proposed Rule Making/Notice of Inquiry* in MM Docket No. 87–465 *(Notice)*, FCC 87–336, to solicit comments on proposals to amend Part 73 of the Commission's rules to address the problem of interference between television stations operating on channels 14 or 69 and land mobile stations operating on frequencies adjacent to either channel.

2. On December 16, 1987, the Association of Maximum Service Telecasters (MST) requested an extension of time until February 17, 1988, for filing comments, and an extension until March 2, 1988, for filing reply comments. MST contends that it needs additional time because (1) it is filing reply comments in the advanced television systems proceeding; (2) the Commission's proposed amendments in this proceeding raise complex and difficult technical and policy issues; and (3) the extension will not cause administrative delay because the Commission cannot implement its proposed amendments before resolving issues in the advanced television systems proceeding. MST also stated that the Land Mobile Communications Council, an interested party, has no objection to the requested extension of time.

3. For all of the reasons cited by MST in its Motion for Extension of Time, we believe it would be beneficial to provide the additional time sought.

4. Accordingly, *in is ordered* that the date for filing comments in MM Docket No. 87–465 is extended until February 17, 1988, and the date for filing reply comments is extended until March 2, 1988. This action is taken pursuant to authority provide in section 4(i) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's rules.

5. For further information concerning this proceeding, contact Louis C. Whitsett, Mass Media Bureau, (202) 632–7792.

Federal Communications Commission.
Alex D. Felker,
Chief, Mass Media Bureau.
[FR Doc. 88-2203 Filed 2-2-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 87-491]

Maritime Services; Use of Digital Selective Calling (DSC) Equipment; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the dates by which comments and reply comments are to be submitted to the Commission.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, (202) 632-7175.

SUPPLEMENTARY INFORMATION: December 1, 1987, the Commission published a Summary Notice of Proposed Rule Making in this proceeding at 52 FR 45665. The "DATES" paragraph in the item's Preamble contained the correct due dates for comments and reply comments while paragaraph 9 of the item contained incorrect dates. Accordingly, the first sentence of paragraph 9 is corrected to read, "Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments by the dates indicated in the Preamble to this document.".

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88-2204 Filed 2-2-88; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1041, 1048, and 1049

[Ex Parte No. MC-37 (Sub-No. 40)]

Commercial Zones and Terminal Areas

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule, extension of comment period.

SUMMARY: The comment period in this proceeding is being extended because interested parties have demonstrated a need for more time.

DATES: The due date for comments is extended to March 21, 1988.

ADDRESSES: The original and 10 copies of comments referring to Ex Parte No. MC-37 (Sub-No. 40) should be sent to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas J. Barry, (202) 275-7540
or
Richard B. Felder, (202) 275-7691
[TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: This proceeding was instituted by notice of proposed rulemaking (NPR) published January 5, 1988 (52 FR 155) to amend the commercial zone and terminal area regulations (49 CFR 1048 and 1049 and at 49 CFR 1041.21). The NPR fixed February 4, 1988 as the date for comments. By this notice, the due date for comments is extended to March 21, 1988.

Decided: January 27, 1988.

By the Commission, Heather J. Gradison, Chairman.
Noreta R. McGee,
Secretary.
[FR Doc. 88-2315 Filed 2-2-88; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 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.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 29, 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

Farmers Home Administration
CFR Part 1901–K, Certificates of Beneficial Ownership and Insured Notes
FmHA 471–7
On occasion
Individuals or households; Businesses or other for-profit; 2,685 responses; 679 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Foreign Agricultural Service
Certificate of Quota Eligibility
On occasion
Businesses or other for-profit; 600 responses; 100 hours; not applicable under 3504(h)
John Nuttall (202) 447–2916

New

Farmers Home Administration
Application to Obtain Additional Funding
On occasion
State or local governments; Non-profit institutions; 130 responses; 520 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 88–2241 Filed 2–2–88; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liasion.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting via conference call on February 5, 1988. The conference will be held in order to continue discussion and make a timely decision regarding the Communication sub-committee's recommendation for the President's Volunteer/Action Awards.

TIME AND PLACE: The conference call will take place on February 5, 1988. Discussion by a quorum of the board members will begin at 2:00 p.m. and a vote taken at 2:30 p.m. Board members will be allowed to call in their votes until 4:00 p.m. As one of the conference call sites, the National Association of Broadcasters located at 1771 N Street, NW., Washington, DC will be open to the public.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Date: February 1, 1988.

Robert H. Brumley,
Deputy General Counsel.

[FR Doc. 88–2356 Filed 2–2–88; 8:45 am]
BILLING CODE 3510–BP–M

Export Administration

[Docket Nos. 6678–01 and 6678–02]

Actions Affecting Export Privileges; Sven Olof Hakanson

Summary

In the matter of: Sven Olof Hakanson, individually and doing business as Sunitron A.B., Respondent.

Pursuant to the Decision and Order of the Administrative Law Judge, which Decision and Order is affirmed by me, Sven Olof Hakanson, individually and doing business as Sunitron A.B., with an address at Hagtornsvagen 4, S–183 62 Taby, Sweden, is denied all export privileges for a period of twenty (20) years from the date hereof.

Order

On December 29, 1987, the Administrative Law Judge entered his recommended Decision and Order in the above referenced matter. Pursuant to section 2412(c)(1) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420) (1982 and Supp. III 1985)), that Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: January 28, 1988.

Paul Freedenberg,

Acting Under Secretary for the Bureau of Export Administration.

Decision and Order

Appearance for Respondents: Mr. Sven Olof Hakanson, Hagtornsvagen 4, S–183 62 Taby, Sweden.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, Washington, DC 20230.

Preliminary Statement

On October 28, 1986, the Office of Export Enforcement (OEE), United States Department of Commerce (Agency), issued an amended charging letter to Respondent Sven Olof Hakanson, individually and doing business as Sunitron, A.B. (hereinafter collectively referred to as "Respondents") [1]. The amended charging letter alleges that Respondents violated §§ 387.4 and 387.6 of the Export Administration Regulations (15 CFR Parts 368–399), (the Regulations). The amended charging letter, dated October 28, 1986, was served on Respondents on April 2, 1987.

Respondents filed an answer to the initial charging letter on August 15, 1986. They have not filed a supplemental answer to the amended charging letter. Neither party has requested a hearing in this matter. Agency Counsel has moved for judgment on the record, pursuant to § 388.14 of the Regulations, which provides for adjudications on the record without a hearing. The present posture of the case is also consistent with a default, pursuant to § 388.8 of the Regulations, for failure to answer the outstanding amended charging letter. Since the procedure for both is the same, both sections are cited as the basis for this action.

Facts

In the amended charging letter of October 28, 1986, the Agency alleged that, between on or about January 11, 1980 and on or about November 1, 1982, Respondents, in two separate transactions, reexported a total of six U.S.-origin computers from the Federal Republic of Germany (F.R.G.) through Sweden to the United Soviet of Socialist Republics (U.S.S.R.).

Between January 11, 1980 and November 15, 1981, Respondents purchased two U.S.-origin computers from a supplier in the F.R.G. Respondents reexported these two U.S.-origin computers from the F.R.G. through Sweden to the U.S.S.R. In a second transaction occurring between April 15, 1981 and November 1, 1982, Respondents reexported four additional U.S.-origin computers from the F.R.G. through Sweden to the U.S.S.R.

The charging letter further states that between approximately January 1, 1983 and May 30, 1983, Respondents purchased three U.S.-origin computers from a Swedish company and reexported those computers from Sweden to Czechoslovakia without obtaining the reexport authorization from the Agency.

Each of the above-described transactions was undertaken by Respondents without the reexport authorization from the Agency which Respondents knew or had reason to know that such authorization, was required by § 374.1 of the Regulations. Accordingly, by engaging in the three transactions described above, Respondents violated §§ 387.4 and 387.6 of the Regulations, as alleged in the amended charging letter of October 28, 1986. Each of those violations involved U.S.-origin goods controlled under section 5 of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985)) (the Act), for national security reasons.

In their answer, Respondents admit, the allegations of the amended charging letter, that they reexported, in two separate shipments, a total of six U.S.-origin computers which they had purchased from a supplier in the F.R.G., from the F.R.G. through Sweden to the U.S.S.R. They also admit that they reexported, from Sweden to Czechoslovakia, three U.S.-origin computers. Further, Respondents admit that they did not have authority from the Agency to reexport these computers to the ultimate end-user. Thus, in accordance with § 388.7 of the Regulations, Respondents' answer constitutes an admission that they committed three violations of § 387.6 of the Regulations (three transactions involving the reexport of U.S.-origin computers within the reexport authorization required by § 374.1 of the Regulations).

Discussion

While they admit to reexporting U.S.-orgin computers to the U.S.S.R. and Czechoslovakia without reexport authorization from the Agency, Respondents assert in their answer that they were unaware of any such reexport requirement. Thus, the only question in this proceeding is whether Respondents also violated § 387.4 of the Regulations in committing the above-described violations.

Respondents' defense to the Agency's allegation that they violated § 387.4 of the Regulations is that they "had no reason to believe, that such a permission was necessary * * *." Agency Counsel contends that statements made by Respondent Hakanson in connection with the Agency's investigation, as well as statements made by him in other contexts, show Respondents' "defense" to be a sham.

Agency Counsel particularly cites an interview with an OEE Special Agent on October 1, 1985, in which Respondent Hakanson expounded at length regarding both his knowledge of U.S. export control laws and his involvement in a series of transactions, including the transactions identified in the amended charging letter (Exh. 1). In that interview, Respondent Hakanson admitted to conspiring with two other individuals, in the 1979–1980 time frame, to violate U.S. export control laws. He further admitted that during that time period he and his co-conspirators specifically discussed U.S. export control laws and stated that they were all "fully aware that U.S. regulations were going to be violated" in connection with their contemplated activities.

While that statement alone is sufficient to support a finding that Respondents "knew or had reason to know" of the requirements of the Act and the Regulations, including the reexport requirements, the interview also establishes that Respondents were specifically aware in 1980 that U.S. export control laws prohibited the export or reexport of U.S.-origin computers to the U.S.S.R.[2] Hakanson also admitted to being aware of the restriction on the transfer of U.S.-origin computers to the U.S.S.R. during an investigation undertaken by a Swedish County Prosecutor, (Exh. 2) and in an interview submitted by the Respondents in a related administrative proceeding. (Exh. 3)

Agency Counsel argues, and I agree that Exh. 1–3 clearly establish that

[1] An initial charging letter was issued by the Agency on July 21, 1986. Respondents filed an answer to that charging letter on August 16, 1986, admitting certain allegations and denying others. On September 19, 1986, Agency Counsel's petition to amend the charging letter was granted. The amended charging letter deletes allegations and names relating to a conspiracy but does not alter the basic charges.

[2] On January 11, 1980, the Agency issued a General Order suspending all outstanding validated export licenses or other authorizations for export to the U.S.S.R. would be issued, pending review and revision of U.S. policy in light of Soviet intervention in Afghanistan. (45 FR 3027, January 18, 1980) The General Order is the "U.S. embargo laws [*sic*]" referenced in the report of interview.

Hakanson knew or had reason to know of the reexport requirements of the Act and the Regulations. In fact, Hakanson acted in clear disregard of the Act and the Regulations in carrying out the transactions identified in the amended charging letter.

Based on the above findings of fact, I conclude that an Order denying Respondents' U.S. export privileges for a period of 20 years from the date a final order becomes effective by being entered in this proceeding.[3] The final order in these proceedings will constitute the final administrative disposition and action, on these charges, against Respondents.

Order

I. For a period of 20 years from the date of the final Agency action, Respondents Sven Olof Hakanson, individually and doing business as Sunitron A.B., Hagtornsvagen 2–4, 183–62 Taby, Sweden,

and all successors, or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges or participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion or any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(i) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)). That disposition will constitute the sole basis for any entry in the Table of Denial Orders, until modified. (15 CFR Part 388 (Supp. No. 1, 1987)).

Date: December 29, 1987.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88–2168 Filed 2–2–88; 8:45 am]

BILLING CODE 3510-DT-M

[3] I do not concur in Agency counsel's suggestion of an "indefinite" denial period. The practice, started over a decade ago, of fixing definite periods appears to be better from a denied party's viewpoint. The use of the term "indefinite" is also questioned. Formerly the word "permanent" was used in these sanctions. "Indefinite" was reserved for situations whereby answering interrogatories or some other such action on the part of the Respondent could effect the removal of the cause of the denial and lead to the restoration of export privileges.

International Trade Administration

Carnegie Mellon University et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–175R. *Applicant:* Carnegie Mellon University, Pittsburgh, PA 15213. *Instrument:* Interferometric Spectrometer, Model DA3.16 with Accessories. *Manufacturer:* Bomem, Canada. *Intended Use:* See notice at 52 FR 18263, May 14, 1987. *Reasons for This Decision:* The foreign article provides an unapodized resolution of $0.026cm^{-1}$.

Docket Number: 88–025. *Applicant:* United States Department of Energy, Argonne National Laboratory, Argonne, IL 60439–4812. *Instrument:* Tunable Picosecond Dye Laser System. *Manufacturer:* Lambda Physik, GmbH, West Germany. *Intended Use:* See notice at 52 FR 46639, December 9, 1987. *Reasons for This Decision:* The foreign article provides a 50 ps pulse duration over a tuning range of 380 to 910 nanometers.

Docket Number: 88–033. *Applicant:* Brigham Young University, Provo, UT 84602. *Instrument:* Nitrogen Dioxide Analyzer, Model LMA–3. *Manufacturer:* Scintrex, Canada. *Intended Use:* See notice at 52 FR 46814, December 10, 1987. *Reasons for This Decision:* The foreign instrument provides direct continuous measurement of NO_2 with a detection limit of 5 parts per trillion.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent

to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-2234 Filed 2-2-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Colorado; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-214. *Applicant:* University of Colorado, Boulder, Co 80309. Instrument. Rapid Kinetics Stopped Flow Instrument. *Manufacturer:* Hi Tech, United Kingdom. *Intended use:* See notice at 52 FR 30942, August 18, 1987. *Reasons for This Decision:* The foreign instrument provides an operating temperature range of −100°C to +100°C, is capable of measuring kinetics at pressures up to 3 bar and provides N_2 purging of the flow circuit and reservoir.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each in intended to be used, is being manufactured in the United States. This capability is pertinent to each applicant's intended purposes. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-2235 Filed 2-2-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Delaware et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 87-295. Applicant: University of Delaware, Newark, DE 19717-1303. *Instrument:* Pressure-Jump Spectrometer Consisting of Relaxation Digitizer, Model DIA-RP and DIA-RRD. *Manufacturer:* DiaLog, West Germany. *Intended Use:* See notice at 52 FR 42028, November 2, 1987. *Reasons for This Decision:* The foreign instrument measures the kinetics of cation and anion reactions on soils and soil constituents at micro- and millisecond time scales. *Advice Submitted by:* The Department of the Air Force, Air Force Weapons Laboratory, January 4, 1988.

Docket Number: 87-307. Applicant: University of Texas, Austin, TX 78713-7909. *Instrument:* Mass Spectrometer, Model 261V. *Manufacturer:* Finnigan-MAT, West Germany. *Intended Use:* See notice at 52 FR 43218, November 10, 1987. *Reasons for This Decision:* The foreign instrument provides fully automated, high precision, simultaneous multiple collection (7 collectors, 6 movable for Sr, Nd, Pb and U and 1 fixed for Ca) of very small samples. *Advice Submitted by:* The National Bureau of Standards, December 18, 1987.

Docket Number: 87-207. Applicant: Texas A&M University, College Station, TX 77843. *Instrument:* Arc Furnace Melt Spinner Apparatus. *Manufacturer:* Edmund Buhler Co., West Germany. *Intended Use:* See notice at 52 FR 27039, July 17, 1987. *Reasons for This Decision:* The foreign article provides rapid quenching of molten alloys and a vacuum capability for rapid chamber evacuation to $<5\times10^{-7}$ torr. *Advice Submitted by:* The National Bureau of Standards, December 14, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The Department of the Air Force and National Bureau of Standards advise that: (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-2236 Filed 2-2-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-047]

Elemental Sulphur From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers 7 producers and/or exporters of this merchandise to the U.S. and generally the period December 1, 1985 through November 30, 1986. The review indicates the existence of dumping margins for certain firms during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 3, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION: On October 29, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 41601) the final results of its last administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). Seven respondents requested in accordance with 19 CFR 353.53a(a) that we conduct an administrative review. We published a notice of initiation on January 20, 1987 (52 FR 2123). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff*

Schedule of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of elemental sulphur, currently classifiable under TSUSA item 415.4500 and HS item numbers 2503.10.00, 2503.90.00, and 2802.00.00.

The review covers 7 producers and/or exporters of Canadian elemental sulphur to the United States and generally the period December 1, 1985 through November 30, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the ex-factory or delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign and U.S. inland freight and brokerage and handling. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the ex-factory, C & F, or delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight and volume rebates. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Producer/exporter	Period of review	Margin (percent)
B.P. Resources Canada	12/85-11/86	[1] 5.56
Cities Service Oil & Gas	12/85-11/86	[1] 0
Imperial Oil	12/85-11/86	0
InterRedec	12/84-11/86	0
Petrogas	12/85-11/86	[1] 0
Sulco Chemical	12/85-11/86	3.78
Texaco Canada, Inc	12/85-11/86	0

[1] No shipments during the period; margin from the last review in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For the remaining producers/exporters not covered by this review the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (50 FR 37889, September 18, 1985, 51 FR 43954, December 5, 1986, 51 FR 45153, December 17, 1986, and 52 FR 41601, October 29, 1987).

For any future entries of this merchandise from a new producer/exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1986 and who is unrelated to any reviewed firm, a cash deposit of 3.78 percent shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Dated: January 27, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-2233 Filed 2-2-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a futures contract market in the Nikkei Stock Average. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before March 4, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Nikkei Stock Average futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: On May 29, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the Nikkei Stock Average futures contract (52 FR 20136). On September 16, 1987 and November 19, 1987, the Commission republished in the **Federal Register**, for 15-day and 30-day comment periods, respectively, notices of availability of the terms and conditions of this contract (52 FR 34978 and 52 FR 44466). In a January 20, 1988 letter to the Commission, the CME

requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have a further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, 20581, by the specified date.

Issued in Washington, DC on January 28, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–2157 Filed 2–2–88; 8:45 am]

BILLING CODE 6351-01-M

Kansas City Board of Trade; Proposed Amendments Relating to the Value Line Average and Mini Value Line Average Stock Index Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Kansas City Board of Trade ("KCBT" or "Exchange") has submitted for the Value Line Average (VLA) and Mini VLA futures contracts proposed changes in the method of computing the underlying cash index. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before March 4, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the KCBT VLA futures contracts.

FOR FURTHER INFORMATION: Contact Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254–7227.

SUPPLEMENTARY INFORMATION: The Exchange submitted proposed amendments to change the method of computation of the cash index underlying the VLA stock index futures contracts to an arithmetic average from a geometric average.

With regard to this proposal, the KCBT noted that, although the VLA index is computed using a geometric procedure, the value of a cash equity portfolio is determined arithmetically. The Exchange states that the VLA futures contracts, in comparison to other stock index futures contracts, are more difficult to use for hedging and arbitrage because a geometric average tends to underperform an arithmetic average. The Exchange believes that the proposed change in computation procedures "* * * will significantly improve the accuracy with which the index tracks an actual portfolio. The change will also cause the fair value of the futures to be at a premium to cash * * *, thus trading in what has become accepted as the proper relationship. We feel both of these will significantly enhance the utility of the product."

The KCBT proposes that the change in computation procedures will become effective with the commencement of trading in the first contract month with no outstanding open interest upon Commission approval. All existing open interest as of the date of the change would continue to be traded based on a geometric average.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, by the specified date.

Issued in Washington, DC, on January 28, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–2158 Filed 2–2–88; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 87–C0003]

BernzOmatic; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with BernzOmatic, a Division of Newell Co., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with

the Office of the Secretary by February 18, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

SUPPLEMENTARY INFORMATION:

Dated: January 29, 1988

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between BernzOmatic a Division of Newell Co., a corporation (hereinafter, "BernzOmatic") and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. Since its acquisition in 1982, BernzOmatic has been a division of Newell Co., a corporation organized and exisitng under the laws of the State of Delaware with its principal corporate offices located at 29 E. Stephenson St., Freeport, Illinois.

3. Prior to its acquisition by Newell, BernzOmatic manufactured certain liquid propane (LP) fueled radiant camping heaters (hereinafter, "heaters"), identified and described in paragraphs 6–8 below, (a) for sale to a consumer for use in or around a permanent or temporary household or residence, in recreation, or otherwise, or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation, or otherwise. These heaters are "consumer products" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2052(a)(1).

4. BernzOmatic manufactured, sold and distributed these heaters nationwide for resale in stores located throughout the United States. BernzOmatic, therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4) and (11) of the CPSC, 15 U.S.C. 2052(a)(1), (4) and (11).

5. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory agency established by Congress pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

II. The Product

6. It is estimated that BernzOmatic manufactured 38,000–42,000 of Model TX–900 and TX–900A (and possibly other presently unknown model numbers) propane fueled, radiant camping heaters from 1962 through 1966.

7. As far as can be determined, the heater is a blue and green metal cabinet approximately 9 inches wide x 14 inches high x 7 inches deep. There is a panel/door in the rear of the heater which swings open so that 2 L.P. gas cylinders can be inserted to fuel the heater. The name "BernzOmatic" is imprinted on the front.

8. As far as can be determined, the operating instructions and warnings, which may be adhered to the inside of the rear panel/door, state, among other things, "CAUTION! For COMPLETELY SAFE OPERATION this heater SHOULD BE USED ONLY IN WELL VENTILATED AREAS, since all combustion heaters consume oxygen and exhaust fumes can be harmful. DO NOT USE WHEN SLEEPING!", or, in the althernative, it may contain the following language: "CAUTION! USE ONLY IN WELL VENTILATED AREAS." An undetermined number of the heaters contain no such warning whatsoever.

III. Staff Allegations Concerning Heaters and of Failure by BernzOmatic to Comply With the Reporting Requirements

9. Primarily through information obtained from BernzOmatic, the staff is aware of at least 32 fatalities, 1 case of permanent injury and 4 other injuries of an indeterminate nature allegedly associated with the use of these heaters. These incidents have occurred from 1965—1987. Additionally, the staff has information indicating at least 3–5 other fatalities allegedly associated with these heaters which have not been confirmed.

10. A substantial portion of those incidents which the staff has been able to investigate occurred after the users had retired for the night either in campers or in truck bed caps. Several investigations indicated that the windows of the campers or caps were ajar to some degree.

11. A test was performed by the staff on a heater which was found at the site of the latest fatality. The staff operated and observed the heater for 30 minutes and concuded that it functioned normally.

12. Testing performed by the State of Washington In January 1971 of the TX–900A, showed that it was, in the opinion of the Commission's staff, quite possible to operate this heater in such a way as to cause it to emit a lethal level of carbon monoxide in a relatively short period of time, when operated in a poorly ventilated camper.

13. The staff believes that the words of the lighting instructions and of the warning label may be inadequate (or in some cases may have been totally absent) to provide sufficient warning for users to be able to properly appreciate the dangers associated with the use of the heater.

14. A limited recall of the heaters was reportedly undertaken by BernzOmatic in 1966 and again in 1971.

15. The staff believes that BernzOmatic had received sufficient information to reasonably support the conclusion that the heaters described in paragraphs 6–8 above, contained a defect which could create a substantial product hazard, but failed to report such information to the Commission as required by section 15(b) of the CSPA, 15 U.S.C. 2064(b). Section 15(b) requires a manufacturer of consumer products who obtains information that reasonably supports the conclusion that its product contains a defect which could create a substantial product hazard to immediately inform the Commission of the defect.

IV. Response of BernzOmatic

16. BernzOmatic denies each and all of the staff allegations herein, except that BernzOmatic admits it performed voluntary recalls of the heaters in 1966 and again in 1971. BernzOmatic also is currently performing an additional voluntary recall.

17. BernzOmatic further and specifically denies that the subject heaters contain a defect which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), and also specifically denies any obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to these radiant heaters. Further, section 15(b) requires the manufacturer to report "unless the manufacturer has actual knowledge that the Commission has been adequately informed."

18. BernzOmatic contends that the Commission has long been aware of

conerns associated with unvented, gas heaters in general and has obtained information in connection with a series of industry-wide rulemakings conducted by the Commission beginning in 1974 and continuing until 1981 concerning unvented, gas heaters. In 1980, the Commission estimated that approximately 70 deaths occur each in the U.S. associated with CO poisoning and unvented, gas heaters produced by many manufacturers. In 1980 the Commission issued a safety standard requiring an oxygen depletion safety shutoff system for unvented gas-fired heaters. The standard was revoked in 1984 in favor of a voluntary standard.

V. Response of Staff

19. Despite BernzOmatic's contention that "the Commission has long been aware of concerns associated with unvented, gas heaters in general" and its other contentions contained in paragraph 18 above, it is the Staff's view that any such general body of knowledge of which the Commission may have been aware does not relieve BernzOmatic of its obligation to report pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b), as stated in paragraph 15 above.

VI. Agreement of the Parties

20. BernzOmatic and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

21. BernzOmatic agrees to settle the Commission's claim for a civil penalty by payment in the amount of $350,000 within 30 days of final acceptance of this Settlement Agreement by the Commission and service of the Commission's Order on BernzOmatic. This payment is made in settlement of allegations by the staff, disputed by BernzOmatic, that BernzOmatic failed to report to the Commission pursuant to the requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to certain heaters described in paragraphs 6–8 above. BernzOmatic makes no admission of any fault, liability or statutory violation and expressly denies any fault, liability or statutory violation. The Commission does not make any determination that such heaters contain a defect which could create a substantial product hazard or that a violation of the CPSA has occurred.

22. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint has been issued.

23. Upon final acceptance of this Settlement Agreement by the Commission, BernzOmatic knowingly, voluntarily and completely waives any rights it may have: (1) To an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty. By making this waiver, BernzOmatic does not concede that the heaters identified and described in paragraphs 6, 7 and 8 above contain a defect which creates or could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a).

24. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of $350,000 settlement amount by BernzOmatic, the Commission agrees to waive its right to pursue any penalty proceeding for a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the matters encompassed by this Settlement Agreement and Order.

25. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

26. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject BernzOmatic to appropriate legal action.

27. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

28. Nothing in this Agreement should be construed as limiting BernzOmatic's obligation to report pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b).

BernzOmatic, a Division of Newell Co.

Dated: December 10, 1987.

Roger L. Maxon,

Director of Industrial Relations.

The Consumer Product Safety Commission.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation

Dated: December 22, 1987.

Melvin I. Kramer,

Complaint Counsel.

ORDER

Upon consideration of the Settlement Agreement of the parties, it is hereby *Ordered* that BernzOmatic, a Division of Newell Co., shall pay within 30 days of final acceptance of this Settlement Agreement and service of this Order, a civil penalty in the sum of $350,000 to the Consumer Product Safety Commission.

Provisionally accepted on the 28th day of January, 1988.

By Order of the Commission.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88–2243 Filed 2–2–88; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Collection of Information Submitted to the Office of Management and Budget for Review

Reason for This Notice: The Department of Defense 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).

Title, Applicable Form, and Applicable OMB Control Number: Recruiting Incentives Survey; No Form; and No Previous OMB Control Number

Type of Request: New.

Annual Burden Hours: 7,500.

Annual Responses: 15,000.

Needs and Uses: The Recruiting Incentives Survey will measure the attitudes of high school students towards an array of actual or possible Army recruiting incentives and career opportunities using a methodology which can determine quantitatively the magnitude of the importance of the incentive.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer. Written comments and recommendations on the proposed

information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1988.

[FR Doc. 88–2249 Filed 2–2–88; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures; Meeting; Change in Date

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures scheduled for February 23, March 1–2, and March 8–10 as published in the **Federal Register** (Vol. 53, No. 14, Page 1815, Friday, January 22, 1988, FR Doc. 88–1314) will be held on February 20–21, March 2–3, and March 18–19, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1988.

[FR Doc. 88–2250 Filed 2–2–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures will meet in closed session on March 30, 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 this meeting the Task Force will review verification aspects with regard to US programs, facilities, technologies and defense contractors and determine which START verification approaches are most appropriate from the acquisition viewpoint.

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 this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1988.

[FR Doc. 88–2251 Filed 2–2–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Intent To Grant a Limited Exclusive Patent License to Roberts Pharmaceutical Corp.

The Department of the Army announces its intension to grant Roberts Pharmaceutical Corporation, a corporation of the State of New Jersey, a limited exclusive license under U.S. Patent No. 4,665,173, issued May 12, 1987, entitled "2-Acetyl- and 2-Propionylpyridine Selenosemicarbazones" by Daniel L. Klayman, et al.

The proposed limited exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR Part 404. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Patent Counsel, Walter Reed Army Institute of Research, Washington, DC 20307–5100.

For further information concerning this notice, contact: Lieutenant Colonel Francis A. Cooch, Patent Counsel, Building T–20, Room 296E, Walter Reed Army Institute of Research, Washington, DC 20307–5100, Telephone no. (Area Code 202) 576–4369/4370.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–2148 Filed 2–2–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CDFA No. 84.031A]

Invitation for Applications; New Awards Under the Strengthening Institutions Program for Fiscal Year 1988, Title III, Part A of the Higher Education Act, as Amended

Purpose: Provide grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability in order to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

Deadline for Transmittal of Applications: April 11,1988.

Applications Available: Applications will be mailed by February 22, 1988, to the Office of the President of all institutions that are designated eligible to apply for a grant under the Strengthening Institutions Program.

Available Funds: Public Law 100–202 provides $152,370,000 for Title III of the Higher Education Act (Pub. L. 89–329), as amended. Of this amount, $60,060,500 will be available under the Strengthening Institutions Program. It is estimated that of this amount, $13,000,000 will be available for new awards.

Estimated Range of Awards: $20,000 to $25,000 for 12-month planning grants; $125,000 to $200,000 for one- to three-year development grants; $350,000 to $500,000 for four- and five-year development grants.

Estimated Project Period and Average Size of Awards: $23,000 for 12-month planning grants; $185,000 for one- to three-year development grants; $450,000 for four- and five-year development grants.

Estimated Number of Awards: 10 planning grants and 48 development grants.

Special Funding Considerations: In tie-breaking situations described in the Strengthening Institutions Program regulations, 34 CFR 607.23, the Secretary awards additional points under §§ 607.21 and 607.22 to an application from an institution which has an endowment fund of which the current market value, per FTE student, is less than the average, per FTE student, at similar type institutions; or which has library expenditures, per FTE student, which are less than the average, per FTE student, at similar type institutions. For the purposes of these funding considerations, an applicant must be able to demonstrate that the current market value of its endowment funds,

per FTE, or library expenditure, per FTE, is *less* than the following national averages for base year 1985–86.

	Average market value of endowment fund, per FTE	Average library expenditures, per FTE
Two-year public institutions	$28.00	$120.00
Two-year nonprofit, private institutions	321.00	105.00
Four-year public institutions	109.00	306.00
Four-year nonprofit, private institutions	955.00	380.00

Applicable Regulations: (a) The General Administrative Regulations, 34 CFR Parts 74, 75, 77 and 78, and (b) the Strengthening Institutions Program Regulations, 34 CFR Part 607.

For Information, Contact: Dr. Louis J. Venuto, Chief, Strenghtening Institutions Program Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, ROB–3, Washington, DC 20202, Telephone: (202) 732–3314.

Program Authority: 20 U.S.C. 1057.

Dated: January 26, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–2222 File 2–2–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.178]

Amendment of Invitation; Applications for New Awards Under the Leadership in Educational Administration Development (LEAD) Program for Fiscal Year 1987

On September 18, 1986, the Secretary of Education published in the **Federal Register** at 51 FR 33218 a notice of proposed rulemaking for the LEAD Program. On March 24, 1987, the Secretary published in the **Federal Register** at 52 FR 9440 the final regulations for the LEAD Program. In addition, the Office of Educational Research and Improvement published an application notice on October 6, 1986, (51 FR 35550), inviting applications for grants to establish or operate a technical assistance center in each of the 50 States. The closing date for applications from the 50 States was December 5, 1986. Congress later enacted legislation permitting participation by the District of Columbia in the LEAD Program, and the Secretary then published an application notice on December 11, 1986, for a LEAD Center in the District of Columbia.

Since these documents were published, Congress enacted the Higher Education Technical Amendments Act of 1987, which authorized grant assistance for support of a technical assistance center in each of these additional entities: Guam, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. The Secretary therefore advises eligible parties of the opportunity to apply for grant assistance for establishment or operation of a technical assistance center in Guam, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. Grant assistance to the Trust Territory of the Pacific Islands is subject to the Compact of Free Association Act of 1985, Pub. L. 99–239. In particular, section 105(h)(2) of that Act provides that:

> The laws of the United States generally applicable to the Trust Territory of the Pacific Islands shall continue to apply to the Republic of Palau and the Republic of Palau shall be eligible for such proportion of Federal assistance as it would otherwise have been eligible to receive under such laws prior to the effective date of the Compact, as provided in appropriation Acts or other Acts of Congress.

The deadline for submission of grant applications for centers in Guam, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands is April 22, 1988. Aside from this amended deadline and the obsolete schedule for an information conference, all other information provided in the application notice published on October 6, 1986, remains in effect.

FOR FURTHER INFORMATION CONTACT: Hunter Moorman, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502-C, Capitol Place, Washington, DC 20208, (202) 357–6116.

(20 U.S.C. 4206)

Dated: January 28, 1988.

Chester F. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–2221 Filed 2–2–87; 8:45 am]

BILLING CODE 4000–01–M

National Advisory and Coordinating Council on Bilingual Education; Meeting.

AGENCY: Department of Education.

ACTION: Notice of Meeting. The public is being given less than 15 days' notice of this meeting due to scheduling problems due to scheduling conflicts.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: February 11 and 12, 1988, 8:30 a.m. until 5:00 p.m. The meeting will be conducted at the Holiday Inn, 550 C Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC. 20202 (202) 732–5063.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the off limited English proficient populations. The meeting of the Council is open to the public.

The proposed agenda includes the following:

I. Roll Call
II. Approval of Minutes of Previous Meeting
III. Introduction of Visitors
IV. Presentation of Information by OBEMLA Director or Designee

V. Presentation of information by Members of General Public or Organizations on Agenda Items (Limited to 5 minutes per person from any one group)
VI. Committee Reports
VII. Old Business
VIII. New Business
IX. Meetings of Individual Committees
X. Reconvening of Council
XII. Adjournment

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC. 20202, Monday through Friday from 9:00 a.m.–5:30 p.m.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–2322 Filed 2–2–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E 88–05; Certification Notice—10]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to published in the **Federal Register** a notice reciting that the certification has been filed. Four owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
First Energy Associates, Needham, MA	1–12–88	Combined Cycle	65.4	Batavia, NY, New York.
Simpson Paper Co., Ripon, CA [1]	11–23–87	Simple Cycle	49.5	Ripon, CA.
ANR Venture Management Company, Detroit, MI	11–18–87	Combined Cycle	170	Westville, NJ.
Encogen One Partners Ltd., Houston, TX [2]	9–16–87	Combined Cycle	255	Sweetwater, TX.

[1] The Notice of this certification originally appeared in the FEDERAL REGISTER on December 24, 1987, (52 FR 48751) erroneously indicating that it was a combined cycle instead of a simple cycle (52 FR 48751).
[2] The Notice of this certification originally appeared in the FEDERAL REGISTER on October 8, 1987 (52 FR 37644) erroneously indicating that the name was Enserch Development Corp. instead of Encogen One Partners Ltd.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on January 26, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–2167 Filed 2–2–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board, New Production Reactor Technology Assessment Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: New Production Reactor Technology Assessment Panel of the Energy Research Advisory Board (ERAB).

Date and Time: February 12, 1988—8:30 a.m.–5:00 p.m.

Place: Department of Energy, 1000 Independence Ave. SW. Room 8E–089, Washington, DC 20585.

Contact: Philip M. Stone, Executive Assistant, Office of Energy Research, Department of Energy, Washington, DC 20585, (202) 586–5444.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The New Production Reactor Technology Assessment Panel is a subgroup of ERAB and reports to the parent Board. The Panel will review and assess four reactor types as candidate technologies for the New Production Reactor (NPR): the Low Temperature Heavy Water Reactor; the Light Water Reactor; the High Temperature Gas-Cooled Reactor; and the Liquid Metal Reactor. Specifically, the Panel will review and assess the Department's proposed evaluation criteria for the NPR; assess the adequacy of each of the four candidate reactor technologies to meet the criteria; and assess schedule and technical risks, benefits, and costs in implementing a NPR program with each technology.

Tentative Agenda:

8:30 am Organization of the Panel (charge, membership, schedules, subpanels)
9:00 am Discussion and Conclusions regarding the Department's Evaluation Criteria
11:00 am Overview of Four Technologies
1:45 pm Review of Previous Studies
4:30 pm Discussion of Interim Report
5:30 pm Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Philip Stone at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Less than 15 days notice is given because of an immediate need to prepare an interim report by March 1, 1988 as required by the Secretary.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9:00 am and 4:00 pm, Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on January 26, 1988.

J. Ronald Young,

Director, Office of Management, Office of Energy Research.

[FR Doc. 88-2166 Filed 2-2-88; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board, Research and Technology Utilization Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Research and Technology Utilization Panel of the Energy Research Advisory Board (ERAB).

Date and Time: February 9, 1988—8:30 am–5:00 pm.

Place: Department of Energy, 1000 Independence Ave., SW., Room 1E-245, Washington, DC 20585.

Contact: Claire H. Sink, Executive Secretary, Research and Technology Utilization Panel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3560.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The Research and Technology Utilization Panel is a subgroup of ERAB and reports to the parent Board. The Research and Technology Utilization Panel is reviewing the process and effectiveness of the movement of scientific research and technology from DOE and its contractors to industry, universities, and state and local governments; reviewing the technology transfer objectives and efforts of the major Departmental programs; evaluating the significance of past activities in this area; and is to make recommendations to improve the activities. The purpose of this Panel meeting is to discuss the information gathered at the three previous meetings of the Panel, and the report itself, in preparation for the Panel's progress report to the ERAB on February 10–11, 1988.

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Claire Sink at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Less than 15 days notice is given because it was determined after the January 13, 1988 Panel meeting that the Panel needed more time to discuss the material gathered so that the Chairman of the Panel could make an appropriate presentation to the Board on February 10–11, 1988.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Ave., SW. Washington, DC between 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 25, 1988.

J. Ronald Young,

Director, Office of Management, Office of Energy Research.

[FR Doc. 88-2165 Filed 2-2-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-205-000 et al.]

Central Illinois Public Service Co. et al.; Electric Rate and Corporate Regulation Filings

January 28, 1988.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Public Service Company

[Docket No. ER88-205-000]

Take notice than on January 19, 1988, Central Illinois Public Service Company (CIPS) tendered for filing a rate schedule change with respect to the June 11, 1987 Power Supply Agreement between CIPS and the Illinois Municipal Electric Agency (IMEA). The rate schedule change, made pursuant to agreement between CIPS and IMEA, is a change in the rate of return on common equity used to determine the overall rate of return on net investment that should be used in the formula rate contained in the Power Supply Agreement. The change is based on the increase in the FERC benchmark rate of return on common equity, announced by the FERC in its October 19, 1987 Notice of Benchmark Rate of Return on Common Equity for Public Utilities in Docket No. RM86-12-000.

Copies of the filing were served upon IMEA and the Illinois Commerce Commission.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company

[Docket No. ER88-213-000]

Take notice than on January 22, 1988, Duke Power Company tendered for filing pursuant to Section 2.C of the Settlement Agreement, a reduction in the Settlement Rates (Twenty-Third (Proposed) Revised Leaf No. 40) attributable to a reduced Corporate tax rate from 40% to 34% of federal taxes effective January 1, 1988.

Duke requests a waiver of all notice and filing requirements which would otherwise be applicable under the Commissions Rules and Regulations.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this document.

3. Empire District Electric Company

[Docket No. ER88-211-000]

Take notice than on January 21, 1988, Empire District Electric Company tendered for filing proposed changes in its Power Purchase Contract and Service Schedule with Associated Electric Cooperatives (Associated).

The proposed changes would extend the term of the contract and service schedule and allow them to remain in effect until January 1, 1991.

Copies of the filing were served upon the Missouri Public Service Commission, the Kansas State Corporation Commisison, the Oklahoma Corporation Commisison, the Arkansas Public Service Commission and Associated.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Public Service Company

[Docket No. ER88-155-000]

Take notice than on January 19, 1988, Iowa Public Service Company tendered for filing an amendment to its original filing in this docket providing additional supporting documentation. This filing involves a short-term sale of capacity and energy to Northern States Power Company.

Copies of the filing were served on Northern States Power Company and the Iowa Utilities Board.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Monongahela Power Company

[Docket No. ER88-206-000]

Take notice than on January 19, 1988, Monongahela Power Company tendered for filing an Notice of Cancellation and Certificate of Concurrence as a Supplement to its FERC Electric Tariff, Original Volume No. 1, which cancels an Electric Service Agreement with the Preston Electric Company. The proposed change will have no effect upon other purchasers under the same rate schedule.

The reason for the proposed change is to remove Preston Electric as a wholesale for resale customer of Monongahela Power Company and to revise and update the list of purchasers under the schedule.

A copy of the filing has been served upon Preston Electric Company and upon the West Virginia Public Service

Commission by Monongahela Power Company.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Montana Power Co.

[Docket No. ER88-207-000]

Take notice that on January 19, 1988, Montana Power Company (MPC) tendered for filing pursuant to Section 205 of the Federal Power Act an agreement dated November 24, 1987 and executed on December 8, 1987 for the sale of firm energy to the Sierra Pacific Power Company during the period from December 1, 1987 through March 31, 1988.

MPC has requested waiver of the notice provisions of Section 35.3 of the Commission's regulations in order to permit the agreement to become effective on the date indicated above in accordance with its terms.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Co.

[Docket No. ER88-210-000]

Take notice that on January 20, 1988, Southern California Edison Company (Edison) tendered for filing pursuant to § 35.15 of the Federal Energy Regulatory Commission's Regulations (18 CFR 35.15) under the Federal Power Act, a Notice of Cancellation of Rate Schedule FERC No. 171, Power Exchange Agreement Between Southern California Edison Company and Imperial Irrigation Distict (Agreement).

Pursuant to § 4.3 of the Agreement, service was to remain in force and effect until midnight on April 30, 1986.

Edison respectfully requests waiver or prior notice requirements and asks the Commission to assign an effective date of May 1, 1986, to the cancellation of Rate Schedule FERC No. 171.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Co.

[Docket No. ER88-212-000]

Take notice that on January 21, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing a Letter Agreement between SWEPCO and Brazos Electric Power Cooperative, Inc. (Brazos), dated December 2, 1987, under which SWEPCO will furnish interruptible As-Available Off-Peak Energy transmission service through its system for up to 6 MWH/hour of energy from the Southwestern Power Administration (SWPA) to SWEPCO's interconnection with Gulf States Utilities Company for the benefit of Brazos. The term of the agreement is from January 1, 1988 through December 31, 1988.

SWEPCO requests an effective date of February 1, 1988, to coincide with the initiation of service and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Public Utility Commission of Texas, Gulf States Utilities Company, the Southwestern Power Administration and Brazos.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this document.

9. Utah Power & Light Co.

[Docket No. ER88-119-000]

Take notice that on January 22, 1988, Utah Power & Light Company tendered for filing its compliance with the Deficiency Notice issued on December 22, 1987. The changes in the filing are reflected by the use of composite Federal and state income taxes allowable for component A of the formula.

Copies of the filing were served upon Utah's jurisdictional customers and the state regulatory commission of Arizona, California, Colorado, Idaho, Nevada and Utah.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. VEPCo-PJM Group Interconnection Agreement, Virginia Electric and Power Company (Referred to as VEPCo), Pennsylvania-New Jersey-Maryland Interconnection (Referred to as the PJM Group)

[Docket No. ER88-208-000]

Take notice that on January 20, 1988, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection tendered for filing on behalf of the above listed parties to the VEPCo-PJM Agreement, Schedule 9.04 superseding Schedule 9.03 currently in effect.

Proposed Schedule 9.04 modifies the rate charged by either party for Other Energy. Fixed adders are replaced by ceiling rates and provision is made for ceiling services charges. The parties have requested an effective date of February 1, 1988 for proposed Schedule 9.04.

Comment date: February 11, 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. 88-2213 Filed 2-2-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3323-2]

Science Advisory Board Closed Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of an ad-hoc Subcommittee of the Science Advisory Board will be held in Washington, DC on February 11-12, 1988 to determine the recipients of the Agency's 1987 Scientific and Technological Achievement Cash Awards. These awards are established to give honor and recognition to EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, and who have published their results in peer-reviewed journals.

Pursuant to the appropriate provision of the Federal Advisory Committee Act, section 10(d) of 5 U.S.C. Appendix 1, and the appropriate provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), I have determined that this meeting may be closed to the public. In determining the actual cash amount of each award, the Agency requires full and frank advice from the Science Advisory Board. This advice will involve professional judgments on those employees whose published research results are deserving of a cash award as well as those that are not. In addition, the Board will advise on the amount of money to be allocated for each award. Discussions of such a personal nature,

where disclosure would constitute an unwarranted invasion of personal privacy, may be closed to the public under section 10(d) of 5 U.S.C. Appendix 1. In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

The Science Advisory Board shall be responsible for maintaining records of the meeting and for providing an annual report setting forth a summary of the meeting consistent with the policy of 5 U.S.C. Appendix 1 section 10(d).

For further information contact: Terry Yosie at (202) 382–4126.

A. James Barnes,

Acting Administrator.

Date: January 28, 1988.

[FR Doc. 88–2185 Filed 2–2–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3323–1]

Science Advisory Board; Neurotoxicology Research Review Subcommittee; Open Meeting; February 29–March 1, 1988

Under Pub. L. 92–463, notice is hereby given that the Neurotoxicology Research Review Subcommittee of the Science Advisory Board will meet from 9:00 a.m. to 5:00 p.m. on February 29th and from 9:00 a.m. to approximately 3:00 p.m. on March 1st in Classroom #2, Environmental Research Center, U.S. Environmental Protection Agency, Route 54 and Alexander Drive, Research Triangle Park, North Carolina.

The purpose of the meeting is to enable the Subcommittee to review the current activities and future needs of EPA's research program for neurotoxicology. To assist in the review, EPA staff have prepared a background document entitled, "Advances in Neurotoxicology Methods." To obtain a copy of this document after February 10, please write or call Ms. Judith Smith, Neurotoxicology Division, Health Effects Research Laboratory (MD–51) U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541–2760.

The meeting is open to the public. Any member of the public wishing to attend should notify Dr. Terry F. Yosie, Director, Science Advisory Board, at 202–382–4126 or Joanna Foellmer by February 22, 1988.

Terry F. Yosie,

Director, Science Advisory Board.

Dated: January 27, 1988.

[FR Doc. 88–2186 Filed 2–2–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180754; FRL–3323–5]

Receipt of Applications for Emergency Exemptions From Virginia and Delaware To Use Dinoseb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: EPA has received specific exemption requests from the Virginia Department of Agriculture and Consumer Services and the Delaware Department of Agriculture (hereafter referred to as "Virginia," "Delaware," or "Applicants") to use the pesticide dinoseb (CAS 88–85–7). Virginia proposes to use dinoseb on green peas, cucumbers, potatoes, snap beans, and lima beans to control broadleaf weeds. Delaware proposes to use dinoseb on green peas, snap beans, lima beans, blackeyed peas, and dry beans to control broadleaf weeds. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemptions.

DATE: Comments must be received on or before February 18, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180754," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7700).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption. The applicable EPA regulations for emergency exemptions are set forth at 40 CFR Part 166.

The Department of Agriculture for the state of Delaware, and the Department of Agriculture and Consumer Services for the state of Virginia, by letters received December 29, 1987, and January 11, 1988, respectively, have requested the Administrator to issue specific exemptions for the use of dinoseb on green peas, snap beans, lima beans, cucumbers, and potatoes in Virginia, and green peas, snap beans, lima beans, dry beans, and blackeyed peas in Delaware to control broadleaf weeds.

On October 7, 1986, EPA suspended all registrations of dinoseb products (51 FR 36634, October 14, 1986). The basis for the suspension of all dinoseb registrations was significant risk of developmental toxicity and other adverse health effects to applicators and other populations exposed to dinoseb.

Subsequently, four registrants submitted requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an immient hazard during the time required to conduct a cancellation hearing. These registrants withdrew their expedited hearing requests on the question of imminent hazard on October 30, 1986, resulting in the immediate entry, pursuant to the terms of the Agency's October 7 decision, of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. The Applicants' specific exemption requests are, therefore, subject to EPA's Subpart D regulations, 40 CFR 164. 130 to 164.133, in addition to the regulations at 40 CFR Parft 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for an

emergency exemption under section 18 for a pesticide use that has been suspended or cancelled shall be considered a petition for reconsideration of the prior suspension or cancellation order. The Administrator will determine that reconsideration is warranted if, among other things, he finds that the Applicant has presented substantial new evidences which may materially affect the prior suspension or cancellation order (40 CFR 164.131(c)). If the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the suspension or cancellation order is justified (40 CFR 164.131(c)).

Should the Administrator decide to lift the suspension of certain dinoseb registrations, the Agency would then determine whether, and under what terms and conditions, dinoseb products might be used in accordance with the terms of the Administrator's order and 40 CFR Part 166.

The Applicants requested specific exemptions for the same uses of dinoseb in April of 1987. The requests for use of dinoseb on snap beans and lima beans were withdrawn in May of 1987, after the issuance of specific exemptions for the use of the pesticide Pursuit to control the broadleaf weeds in these two crops. The rest of the requests were administratively withdrawn by the Agency on September 30, 1987, on the basis that the use seasons were over and there had been insufficient time for EPA to evaluate available information concerning the proposed uses of dinoseb.

II. Emergency Condition

The Applicants state that there are a number of herbicides registered for use in green peas, snap beans, lima beans, potatoes, cucumbers, dry beans, and blackeyed peas. According to the Applicants, trifluralin (Treflan), pendimethalin (Prowl), and metolachlor (Dual) are mainly for control of annual grasses and provided only fair to good control of a few broadleaf weeds. According to the Applicants, chloramben (Amiben) has a high water solubility which results in rapid leaching in coarse-textured soils low in organic matter, common in Virginia and Delaware. Rapid leaching results in poor crop tolerance and short-term, erratic weed control. The Applicants state that bentazon (Basagran) controls only certain seedling broadleaf weeds and frequently causes crop injury which reduces yield and/or delays harvest. Harvest delays are not tolerable because planting is rigidly scheduled to stagger harvest.

According to the Applicants MCPB gives postemergence control of Canada thistle and controls or supresses lambsquarters, pigweed, smartweed, sowthistle, fanweed, annual morningglory, and nighshade. However, the Applicants point out that this compound is in the phenoxy family of herbicides, thus some temporary twisting of some pea varieties may occur. In addition, spray drift has to be avoided as it may injure other broadleaf crops and ornamentals. The Applcants point out that use of MCPB at temperatures above 80 °F can cause crop injury. They also state that MCPB works best early in the season when weeds are small; however, application use parameters as described limit MCPB's use in peas in Virginia and Delaware.

EPTC (Eptam), labeled for use in snap beans and potatoes, and DCPA (Dacthal) labeled for use in snap beans, cucumbers and potatoes, are primarily for control of annual grasses and control few broadleaf weeds, according to the Applicants.

According to Virginia, linuron (Lorox) and metribuzin (Lexone, Sencor) are registered on potatoes for broadleaf control. Linuron controls only a few broadleaf weeds and has little activity against mustard species and jimsonweed, according to Virginia. Metribuzin controls most problem weeds except wild radish, which Virginia claims is found in at least 33% of Virginia potato fields. In addition, Virginia points out that metribuzin cannot be used on several sensitive potato varieties; these varieties make up 80% of Virginia pototoes.

According to the Applicants mechanical cultivation controls only weeds between the rows; weeds in the row can significantly reduce yields and can result in fields that cannot be harvested. In addition, cultivation cannot be done late in the season after the crop reaches a certain height, further limiting its effectiveness. According to the Applicants mechanical cultivation cannot be used in peas because the rows are narrow.

Delaware states that, with the suspension of dinoseb, growers of green peas, dry beans, lima beans, snap beans, and blackeyed peas have no effective and/or economically viable alternative herbicides. Delaware goes on to state that, with the depressed economy of corn and soybean production, these crops represents the only other means for many Delaware farmers to make a profit in farming.

Virginia claims that without the use of dinoseb, pea, lima bean, snap bean, cucumbers, and potato growers can expect a $4.93 million dollar loss. Delaware claims that without the use of dinoseb, pea, lima bean, and snap bean growers can expect a 25% loss in yield valued at $1.1 million for peas, $800 thousand for lima beans, and $300 thousand for snap beans. Monetary losses were not presented for blackeyed peas or dry beans.

III. Proposed Use

Virginia requested emergency exemptions for use of dinoseb on green peas, lima beans, snap beans, potatoes, and cucumbers between March and August of 1988. Delaware requested emergency exemptions for use of dinoseb on green peas, lima beans, snap beans, dry beans, and blackeyed peas between February 1 and August 31, 1988. The Applicants' proposed specific exemption programs involve use of the following dinoseb products: Basanite, Caldon, Chemox General, Chemox PE, Chemsect DNBP, Dinitro, Dinitro-3, Dinitro General, Dynamyte, Elgetrol 318, Gebutox, Hel-Fire, Kiloseb, Nitropone C, Premerge 3, Sinox General, Subitex, Unicrop DNBP, Vertac Dinitro Weed Killer 5, Vertac General Weed Killer, and Vertac Selective Weed Killer.

Virginia proposes to use a total of 43,200 pounds active ingredient on 22,000 acres of crops. The proposed uses involve use of 1,125 pounds ingredient to treat 1,000 acres of green peas, 1,500 pounds active ingredient to treat 500 acres of lima beans, 18,000 pounds of active ingredient to treat 8,000 acres of snap beans, 9,375 pounds of active ingredient to treat 5,000 acres of potatoes, and 13,200 pounds of active ingredient to treat 7,500 acres of cucumbers.

Delaware proposes to use a total of 94,000 pounds active ingredient on 25,000 acres of crops in New Castle, Kent, and Sussex countries. By crop, the proposed uses involve: 36,000 pounds active ingredient to treat up to 10,000 acres of green peas; 40,000 pounds active ingredient to treat up to 11,000 acres of lima beans; 18,000 pounds of active ingredient to treat 4,000 acres of snap beans, blackeyed peas, and dry beans.

In Virginia, dinoseb would be applied at a rate of 0.75 to 1.88 pounds active ingredient per acre to green peas; 0.56 to 3.0 pounds active ingredient per acre to lima beans; 2.25 pounds of active ingredient to snap beans; 1.5 to 2.25 pounds active ingredient to potatoes; and 1 to 1.5 pounds active ingredient to cucumbers. A maximum of 2

applications would be made to lima beans, one preemergence and the other postemergence. A single preemergence application will be made to green peas, snap beans, potatoes, and cucumbers.

In Delaware, dinoseb would be applied at a rate of 0.75 to 3 pounds active ingredient per acre to green peas; 0.56 to 4.5 pounds active ingredient per acre to lima beans; 3 to 4.5 pounds of active ingredient to snap beans, dry beans, and blackeyed peas. A maximum of 2 applications would be made to peas and lima beans, one preemergence and the other postemergence. A single preemergence application will be made to snap beans, dry beans, and blackeyed peas.

Other restrictions to be imposed by the states of Virginia and Delaware include: (1) Application by ground row crop sprayer; (2) use by persons certified by the State in private or commercial categories; (3) no mixing/loading/application by females; (4) mixer/loader/applicator must wear Tyvek suit and chemical-resistant gloves; (5) do not mix with liquid fertilizers; (6) no aerial application; and (7) a 40-day pre-harvest interval would be observed.

IV. Notification and Comment

This notice does not constitute a decision by the Agency on the applications submitted. The Agency's final decision on the specific exemption requests from Virginia and Delaware will be based on whether or not there is sufficient new information to open Subpart D hearings and, if so, the outcome of the Subpart D hearings and compliance with the regulations governing section 18.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes any emergency use of a pesticide if such pesticide were the subject of a suspension notice under section 6(c) of FIFRA. The regulations also provide for the opportunity for public comment on the applications (40 CFR 166.24).

Interested persons may submit written views on the applications for emergency exemption to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period.

Dated: January 21, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-2188 Filed 2-2-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50674; FRL-3321-5]

Issuance of an Experimental Use Permit; Rohm

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to Rohm Haas and Company. This permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St SW., Washington, DC 20460.

Office location and telephone number:

Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit.

707-EUP-110. Extension. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 750 pounds of the herbicide oxyfluorfen on alfalfa to evaluate the control of various weeds. A total of 1,500 acres are involved; the program is authorized only in the States of Arizona, Californria, Idaho, Oregon, and Washington. The experimental use permit is effective from November 1, 1987 to December 31, 1988. A temporary tolerance for residues of the active ingredient in or on alfalfa has been established.

Interested persons wishing to review the experimental use permit are referred to the designated product manager listed above. It is suggested that anyone interested in reviewing the permit notify the Agency in advance by calling 703-557-1830. The permit will be available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: January 20, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-1884 Filed 2-2-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-491; FRL-3323-6]

Pesticide Tolerance Petitions; Rhone-Poulenc Ag Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Att'n.: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM #2, 703-557-2386.	Do.
George LaRocca (PM 15).	Rm. 204, CM #2, 703-557-2400.	Do.
William Miller (PM 16).	Rm. 211, CM #2, 703-557-2600.	Do.
Richard Mountfort (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.

Product manager	Office location/ telephone number	Address
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 8F3584.* Rhone-Poulenc Ag. Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes amending 40 CFR 180.169 by establishing a regulation to permit the residues of the insecticide carbaryl (1-naphthyl N-methylcarbamate) in or on barley grain at 20 ppm. The proposed analytical method for determining residues is high-performance liquid chromatography. (PM 12).

2. *PP 8F3588.* Natural Ag., Division of Bentech Laboratories, Inc., 635 Water Ave., NW., Albany, OR 97321, proposes amending 40 CFR Part 180 by exempting from the requirement of a tolerance for residues of the biochemical plant growth regulator poly-D-glucosamine (chitosan) when applied to pea, barley, and oat seeds. (PM 23).

3. *PP 8F389.* American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide imazethapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid as its ammonium salt) in or on soybeans at 0.1 ppm. (PM 25).

4. *PP 8F3591.* PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272, proposes amending 40 CFR 180.432 by establishing a tolerance for the combined residues of lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate and its associated metabolites containing the diphenyl ether linkage expressed as lactofen, in or on peanuts and peanut hulls at 0.05 ppm. The proposed analytical method for determining residues is capillary column gas chromatography using an electron capture detector. (PM 23).

5. *PP 8F3592.* Merck, Sharp & Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the insecticide abamectin and its delta 8,9-isomer in or on citrus whole fruit at 0.005 ppm, cattle meat and meat byproducts at 0.005 ppm, and milk at 0.001 ppm. The proposed analytical method for determining residues is high-pressure liquid chromatography. (PM 15).

6. *PP 8F3593.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, proposes amending 40 CFR 180.352 by establishing a regulation to permit the residues of the insecticide terbufos (S-[[(1,1-dimethylethyl)thio]methyl]o,o-diethyl phosphorodithioate) and its phosphorylated (cholinesterase-inhibiting) metabolites in or on cottonseed at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 16).

7. *PP 8F3594.* Farrson Chemicals, P.O. Box 7134, Kennewick, WA 99336, proposes amending 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for the pesticide chemical chitosan (poly-D-glucosamine) when applied to grass seeds, vegetable seeds, oil-bearing seeds, rice seeds, and all other cereal seeds. (PM 23).

8. *PP 8F3595.* FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, proposes amending 40 CFR 180.378 by establishing a regulation to permit residues of the insecticide permethrin [(3-phenoxyphenyl) methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate)], and the sum of its metabolites, dichlorovinyl acid [3(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid] and m-phenoxybenzyl alcohol [(3-phenoxyphenyl methanol) acid] in or on asparagus at 2.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 15).

9. *FAP 8H5548.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, proposes amending 21 CFR Part 193 to exempt from the requirement of a tolerance the residues of the herbicide imazapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridine carboxylic acid in or on refined sugar. (PM 25).

10. *FAP 8H5549.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, proposes amending 21 CFR Part 193 by establishing a regulation to permit the residues of the insecticide-nematicide terbufos (S-[[(1,1-dimethylethyl)thio]methyl] o,o-diethyl phosphorodithioate) and its phosphorylated (cholinesterase-inhibiting) metabolites in or on peanut oil at 0.2 ppm. (PM 16).

11. *FAP 8H5550.* Merck Sharp & Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887, proposes amending 21 CFR Part 193 by establishing a regulation to permit the residues of the insecticide abamectin and its delta-8,9-isomer in or on dried citrus pulp at 0.03 ppm and citrus oil at 0.10 ppm. (PM 15).

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

Dated: January 27, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-2187 Filed 2-2-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140092; FRL-3323-3

Access to Confidential Business Information by Toxicology Education Associates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its subcontractor, Toxicology Education Associates (TEA) of Alexandria, VA, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, and 8 of TSCA.

Under contract number 68-02-4232, EPA's subcontractor TEA, 7732 Schelhorn Road, Alexandria, VA will assist the Office of Toxic Substances' Economics and Technology Division in assessing chemical data to prepare oral and written reports that characterize the potential toxicity of chemical compounds undergoing review.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68–02–4232, subcontractor TEA will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified as a subcontractor under the MITRE Corporation (MITRE). Access to TSCA CBI by MITRE was previously announced in the **Federal Register** of September 20, 1985 (50 FR 38199).

Clearance for access by TEA to TSCA CBI under this subcontract is scheduled to expire on September 30, 1988.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide TEA access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this subcontract will take place at EPA Headquarters facilities.

TEA personnel will be required to sign non-disclosure agreements, will be briefed on appropriate security procedures, and must pass a test on those security procedures before they are permitted access to TSCA CBI.

Dated: January 25, 1988

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–2189 Filed 2–2–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 87–585]

Applications for Consolidated Hearing; Family Stations, Inc., et al.

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. Family Stations, Inc.; Bridgeport, TX.	BPED–831115AK	87–585
B. Criswell Center For Biblical Studies; Wichita Falls, TX.	BPED–831208AF	

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 Applicant(s)

1. 307(b)—Noncommercial Educational FM, A, B
2. Contingent Comparative—Noncommercial Educational FM, A, B
3. Ultimate, A, B

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., Washingotn, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–2205 File 2–2–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Citizens Savings and Loan Association, a Federal Savings and Loan Association, Salem, OR; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Citizens Savings and Loan Association, a Federal Savings and Loan Association, Salem, Oregon on January 28, 1988.

Dated: January 28, 1988.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 88–2210 Filed 2–2–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 28, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegation authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

Date: Comments must be received within fifteen working days of the date of publication in the Federal Register.

Address: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as approved in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

For Further Information Contact: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name follows: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal to approve under OMB delegated authority the extension with revision of the following report:

1. *Report title:* Criminal Referral Form
Agency form number: FR 2230
OMB Docket number: 7100-0212
Frequency: On Occasion
Reporters: State member banks, bank holding companies, Edge Act and Agreement corporations, and U.S. branches and agencies of foreign banks.
Annual reporting hours: 1955
Small businesses are affected.
General description of report: This information collective is voluntary [12 U.S.C. 248(a)(1), 625, and 1844(c)] and is given confidential treatment [5 U.S.C. 552(b)(7) and 552a(k) (2)].

This form has been jointly designed and used by the federal financial institutions supervisory agencies, the Department of Justice, and the F.B.I. It is also used by the U.S. Secret Service and U.S. Department of Treasury. The purpose of the form is to detect and tract suspected criminal misconduct involving financial institutions and persons associated with them. The revision address issues raised by recently enacted legislation as well as suggestions made by representatives of supervisory agencies, the federal law enforcement community, and financial institutions in light of experience gained with use of the form since its inception in 1985.

Board of Governors of the Federal Reserve System, January 28, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-2149 Filed 2-2-88; 8:45 am]
BILLING CODE 6210-01-M

Century Financial 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 February 19, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Century Financial Corporation,* Rochester, Pennsylvaina; to become a bank holding companay by acquiring 100 percent of the voting shares of The Century National Bank and Trust Company, Rochester, Pennsylvania.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Powell Valley Bankshares, Inc.,* Jonesville, Virginia; to become a bank holding company bu acquiring 100 percent of the voting shares of Powell Valley National Bank, Jonesville, Virginia. Comments on this application must be received by February 24, 1988.

Board of Governors of the Federal Reserve System, January 29, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-2151 Filed 2-2-88; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 19, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Larry McNeal,* Warner Robins, Georgia; to acquire an additional 26.31 percent of the voting shares of International City Bank, Warner Robins, Georgia.

B. **Federal Reserve Bank of St. Louis** (Randall C., Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Jack Chester Porter,* Mt. Washington, Kentucky, and Maria L. Bouvette Bryant, Mt. Washington, Kentucky; to acquire 100 percent of the voting shares of Central Bancshares, Inc., Pleasureville, Kentucky, and thereby indirectly acquire The Central Bank of North Pleasureville, Pleasureville, Kentucky.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Peter L. Ochs,* Wichita, Kansas, to acquire 27.4 percent; Wesley Rubenich, Wichita, Kansas, to acquire 27.4 percent; Clay Philips, Attica, Kansas, to acquire 2.8 percent; and Jim Fujiwara, Wichita, Kansas, to acquire 2.5 percent of the voting shares of Attica Financial Corporation, Wichita, Kansas, and thereby indirectly acquire First National Bank of Attica, Attica, Kansas.

Board of Governors of the Federal Reserve System, January 29, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-2152 Filed 2-2-88; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control Notice Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has 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 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. Intersted 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 18, 1988.

A. **Federal Reserve Bank of Chicago.** (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Richard A. Omdahl*, Peshtigo, Wisconsin; Mary Omdahl, Peshtigo, Wisconsin, custodian for Sarah Omdahl; Daniel Miron & Rose Miron, Marinette, Wisconsin; Timothy Rennes, Peshtigo, Wisconsin; Shirley Rosera, Cateman, Wisconsin; Kopish, Miron, Boyle, Minerman & Topel, S.C. Profit Sharing Plan and Trust, Marinette, Wisconsin; to acquire 97.4 percent of the voting shares of Peshtigo National Bancorporation, Inc., Peshtigo, Wisconsin, and thereby indirectly acquire Peshtigo National Bank, Peshtigo, Wisconsin.

Board of Governors of the Federal Reserve System, January 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2153 Filed 2-2-88; 8:45 am]

BILLING CODE 6210-01-M

State Bancshares, Inc., et al. Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activites 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 office 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 outweight 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *State Bancshares, Inc.*, Schaller, Iowa; to engage *de novo* in securities brokerage activities pursuant to section 225.25(b)(15) of the Board's Regulation Y.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locoust Street, St. Louis, Missouri 63166:

1. *Dixie Bancshares, Inc.*, Dukedom, Tennessee; to engage *de novo* in making and servicing loans pursuant to section § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the countries of Hamiliton, Weakely and Obion, all in the State of Tennessee; and Graves County, Kentucky. Comments on this application must be received by February 24, 1988.

2. *Gainesville Bancshares, Inc.*, Gainsville, Missouri; to engage *de novo* in selling ordinary life insurance/health insurance and related products in a community with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities are to be conducted from offices in Gainesville, Missouri, to serve the surrounding area.

Board of Governors of the Federal Reserve System, January 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2154 Filed 2-2-88; 8:45 am]

BILLING CODE 6210-10-M

Workingmens 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 February 25, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Workingmens Corporation*, Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Workingmens Co-operative Bank, Boston, Massachusetts.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Rose Holding Co., Roseville, Minnesota, and thereby indirectly acquire The Roseville Bank, Roseville, Minnesota.

2. *1889 Bankcorp*, East Lansing, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer Bank, North Branch, Michigan. Comments on this application must be received by February 19, 1988.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Firstar Corporation, Bloomington, Minnesota, and thereby indirectly acquire Marine Bank-Bloomington, Bloomington, Minnesota.

Board of Governors of the Federal Reserve System, January 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2155 Filed 2-2-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nationa Institutes of Health

National Cancer Institute: Meeting of President's Cancer Panel

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, March 1, 1988, at Columbia University Cancer Center, 701 West 168th Street, New York, NY, in the Julius and Armand Hammer Health Sciences Center Auditorium 401.

This meeting will be open to the public on March 1 from 9 a.m. to 1 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel; the Director, NCI; and a number of New York area researchers dealing with Innovations in Cancer Treatment.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496–1148) will provide a roster of the Panel members, and substantive program information upon a request.

Dated: January 27, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–2194 Filed 2–2–88; 8:45 am]

BILLING CODE 4140–01–M

Office of Human Development Services

Federal Allotments to States for Social Services Expenditures Pursuant to the Title XX, Social Services Block Grant Act; Revised Promulgation for Fiscal Year 1989

AGENCY: Office of Human Development Services, Department of Health and Human Services.

ACTION: Notification of revised allocations of Title XX—Social Services Block Grant Allotment for Fiscal Year 1989.

SUMMARY: This issuance sets forth the revised individual allotments to States for Fiscal Year 1989, pursuant to Title XX of the Social Security Act, as amend (Act). The revision was required by amendments to the Act by Pub. L. 100–203, enacted December 22, 1987, which added American Samoa to the list of eligible jurisdictions under Title XX. The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: HDS Regional Administrators.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act as amended by Pub. L. 100–203 authorizes $2.7 billion for Fiscal Year 1989 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.7 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Nothern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.7 billion is allotted to each State in the same proportion as that State's population bears to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1989, allotments are based upon the Bureau of Census population statistics contained in its publications "Current Population Reports" (Series P-26, No. 86–A issued August 1987 (and "Estimates of the Population of Puerto Rico and the Outlying Areas: 1980 to 1986" (Series P–25, No. 1009 issued July 1987), which was the most recent satisfactory data available from the Department of Commerce at the time of initial promulgation as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1989.

FISCAL YEAR 1989 FEDERAL ALLOTMENTS TO STATES SOCIAL SERVICES—TITLE XX BLOCK GRANTS

	Initial FY89 allotment	Revised FY89 allotment
Total	$2,700,000,000	$2,700,000,000
Alabama	45,147,848	45,144,884
Alaska	5,948,421	5,948,031
American Samoa	N/A	176,282
Arizona	36,537,118	36,534,720
Arkansas	26,422,575	26,420,840
California	300,551,217	300,531,480
Colorado	36,392,307	36,389,917
Connecticut	35,523,436	35,521,104
Delaware	7,051,218	7,050,755
Dist. of Col.	6,973,243	6,972,785
Florida	130,052,090	130,043,552
Georgia	67,994,686	67,990,222
Guam	465,517	465,517
Hawaii	11,830,006	11,829,229
Idaho	11,172,783	11,172,050
Illinois	128,693,088	128,684,639
Indiana	61,299,928	61,295,903
Iowa	31,758,331	31,756,246
Kansas	27,413,978	27,412,178
Kentucky	41,527,554	41,524,828
Louisiana	50,138,283	50,134,992
Maine	13,077,615	13,076,756
Maryland	49,714,988	49,711,724
Massachusetts	64,964,779	64,960,514
Michigan	101,869,496	101,862,808
Minnesota	46,941,286	46,938,204
Mississippi	29,240,834	29,238,914
Missouri	56,432,025	56,428,320
Montana	9,123,140	9,122,541
Nebraska	17,800,706	17,799,537
Nevada	10,727,209	10,726,505
New Hampshire	11,440,128	11,439,377
New Jersey	84,881,964	84,876,391
New Mexico	16,475,121	16,474,040
New York	197,968,801	197,955,804
North Carolina	70,523,322	70,518,692
North Dakota	7,563,629	7,563,132
No. Mariana Island	93,103	93,103
Ohio	119,770,456	119,762,593
Oklahoma	36,815,602	36,813,185
Oregon	30,054,008	30,052,035
Pennsylvania	132,435,915	132,427,220
Puerto Rico	13,965,517	13,965,517
Rhode Island	10,860,881	10,860,168
South Carolina	37,606,497	37,604,028
South Dakota	7,886,671	7,886,153
Tennessee	53,502,372	53,498,859
Texas	185,826,893	185,814,693
Utah	18,547,043	18,545,826
Vermont	6,026,397	6,026,001
Virgin Islands	465,517	465,517
Virginia	64,463,507	64,459,275
Washington	49,714,988	49,711,724
West Virginia	21,376,442	21,375,039
Wisconsin	53,301,863	53,298,364
Wyoming	5,647,658	5,647,287

Date: January 22, 1988.

G. Barry Nielsen,

Director, Office of Policy, Planning, and Legislation.

Approved January 26, 1988.

Sydney Olson,

Deputy Assistant Secretary for Human Development Services.

[FR Doc. 88–2207 Filed 2–2–88; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

New Construction Applications; School Facilities

AGENCY: Office of Construction Management, Interior.

ACTION: Notice for new school construction procedures.

This notice is published to comply with the Conference Report on the Department of the Interior and Related Agencies Appropriations for FY 1988 which states: "The Bureau and the Office of Construction Management (OCM) are directed to notify all tribes that applications for new facilities may be submitted in accordance with the guidelines recently made available by OCM."

The guidelines titled, "Instructions and Application for New School Construction" and dated November 1987, are available upon request through the Office of Construction Management and from the Bureau of Indian Affairs (BIA) Area and Agency offices and the BIA Facility Management Construction Center, P.O. Box 1248, Albuquerque, NM 87103.

All applications will be reviewed and ranked in accordance with the criteria outlined in the guidelines. Top ranking projects will be considered for advance planning and design in accordance with the availability of funds.

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management, Department of the Interior, 18th & C Streets NW., Mail Stop 2415, Washington, DC 20240, (202) 343–3403.

Dated: January 25, 1988.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration

[FR Doc. 88–2146 Filed 2–2–88; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[MT–930–08–4212–13; M 74199]

Conveyance and Order Providing for Opening of Public Land in Bowman County, ND

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice and order will open certain lands that were reconveyed to the United States in an exchange completed pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.)* (FLPMA) to the operation of the public land laws. It will also inform the public and interested local governmental officials of the issuance of the patent.

EFFECTIVE DATE: 9 a.m. on March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM, Montana State Office, P.O. box 36800, Billings, Montana 59107, 406–657–6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described surface estate was conveyed to Kelly Stearns and Susan Stearns.

Fifth Principal Meridian, North Dakota

T. 129 N., R106 W.,
Sec. 3, SE¼NW¼, NE¼SW¼, S½SW¼;
Sec. 4, lots 5, 6, and 7;
Sec. 11, N½NE¼, SE¼NE¼;
Sec. 12, NW¼NW¼;
Sec. 15, lots 1, 2, NE¼NE¼, E½SE¼;
Sec. 22, E½NE¼;
Containing 651.58 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate:

Fifth Principal Meridian, ND

T. 129 N., R. 106 W.,
Sec. 20, NE¼, N½NW¼, S½;
Sec. 21, W½NW¼.
Containing 640 acres.

3. The values of the Federal public land and the nonfederal land in the exchange were appraised at $32,000 each.

Opening Date

At 9 a.m. on March 9, 1988, the lands described in paragraph 2 above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 9, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

January 22, 1988.

[FR Doc. 88–2147 Filed 2–2–88; 8:45 am]

BILLING CODE 4310–DN–M

[CO–010–08–4121–12]

Draft Environmental Impact Statement for the Northwest Colorado Coal Preference Right Lease Applications; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of when written comments on the draft environmental impact statement (EIS) will be accpeted.

SUMMARY: This notice extends the time period in which written comments will be accepted as previously published in the **Federal Register** December 31, 1987 (52 FR 49523), for the Draft EIS for the Northwest Colorado Coal Preference Right Lease Applications. The written comment period is extended from April 8, 1988 to April 29, 1988.

Date: January 26, 1988.

Tom Walker,

Associate State Director, Colorado.

[FR Doc. 88–2144 Filed 2–2–88; 8:45 am]

BILLING CODE 4310–JB–M

Resource Management Planning; Lower Gila North Planning Area et al.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to prepare a Category I Amendment to planning documents for the Lower Gila North, Black Canyon, Middle Gila and Silver Bell planning areas, Lower Gila and Phoenix Resource Areas, Phoenix District, Arizona.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 1610.2(c) and 1610.3–1(d), notice is hereby given of intent to prepare a planning amendment document. This notice also constitutes the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1507.7).

The proposed action is to amend the Lower Gila North Management Framework Plan (MFP) completed in December 1982, the Black Canyon MFP completed June 3, 1974, the Middle Gila MFP completed June 2, 1976, and the Silver Bell MFP completed June 4, 1976. The Category I planning amendment will be based upon existing statutory requirements and policies and will carry out the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA). The MFP amendment and accompanying Environmental Assessment (EA) will provide the basis for modifying the Land Tenure Adjustment sections of the MFPs to make additional land in portions of Maricopa, Pima and Pinal counties available for exchange. Disciplines to be represented and used to prepare the amendment include realty, wildlife, botany, archaeology, geology, economics, range and wilderness.

Information concerning the plan amendment may be obtained from: William T. Childress and Arthur E. Tower, Area Managers, 2015 West Deer Valley Road, Phoenix, Arizona 58027, Phone: (602) 863–4464.

Interested parties may also submit written comments to the area managers for a period of thirty (30) days following this announcement.

Documents pertaining to the plan amendment are available for public review at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona.

Henri R. Bisson,

District Manager.

Date: January 27, 1988.

[FR Doc. 88–2175 Filed 2–2–88; 8:45 am]

BILLING CODE 4310–32–M

[WO–150–08–4830–11]

Renewal of National Public Lands Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of renewal of National Public Lands Advisory Council.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). The Secretary of the Interior has determined, in consultation with the General Services Administration, that renewal of the National Public Lands Advisory Council is necessary and in the public interest. Accordingly, notice is hereby given of the Council's renewal.

The purpose of the National Public Lands Advisory Council is to advise the Secretary of the Interior, through the Director, Bureau of Land Management, on implementation of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579), as well as on policies and programs of a national scope under the jurisdiction of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Bureau of Land Management (150), MS–5558, Department of the Interior, Washington, DC 20240. Telephone: (202) 343–5101.

January 28, 1988.

Robert F. Burford,

Director.

[FR Doc. 88–2219 Filed 2–2–88; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Reclamation

Intent To Prepare Draft Environmental Statement; All-American Canal Project, All-American Branch, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Amendment to notice of intent to prepare a draft environmental statement.

SUMMARY: This Notice of Intent amends and updates that Notice of intent published for the All-American Canal Relocation Project of Monday, April 29, 1985 (50 FR 82, page 16755). The alternatives for the proposed project have changed, and its extent has been increased to include the Coachella Branch of the canal.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement (DES) on lining a 28 mile section of the All-American Branch of the proposed All-American Canal Project (formerly the All-American Canal Relocation Project), located in Imperial and Riverside Counties in southern California. A separate DES will be prepared to address water conservation on the remaining unlined portion of the Coachella Branch since many issues are unique to each branch of the All-American Canal.

The portion of the project dealing with the All-American Branch has been under study since about 1976, and a number of public involvement activities have been carried out with individuals and Federal, State, and local entities. A continuing public involvement program is being planned to obtain public input and to keep the public informed about study progress and decisions. Interested public entities and individuals may provide input to the DES to assure that the full range of pertinent issues is discussed.

A public environmental scoping meeting for the All-American Branch DES will be held in March 1988 in El Centro, California. The date, time, and location of the meeting will be announced in local new releases.

FOR FURTHER INFORMATION CONTACT: The contact person for the DES is Rob Leutheuser. For additional information, write the Bureau of Reclamation, Attention: Code LC–730A, P.O. Box 427, Boulder City, Nevada 89005; or telephone (702) 293–8524 or FTS 598–7524.

SUPPLEMENTARY INFORMATION: the purpose of lining the All-American Branch of the proposed project is to conserve about 62,000–78,000 acre-feet of water a year which currently is lost to seepage from the unlined All-American Canal between Pilot Knob and Drop No. 4. The water would be conserved for beneficial use.

The DES will examine the impacts of project alternatives along 28 miles of the unlined All-American Canal. The alternatives include: (1) In-place concrete lining a 28-mile reach of the existing canal; (2) in-place concrete lining selected portions of the 28 miles; (3) construct a new, concrete-lined canal adjacent to the existing canal; and (4) no Federal action. The DES is scheduled to be completed and available for review and comment by April 1990. (The related draft environmental statement on the Coachella Branch also is scheduled to be available by that date.)

Dated: January 27, 1988.

C. Dale Fuvall,

Commissioner.

Fact Sheet—Draft Environmental Statement To Be Prepared for All-American Branch, All-American Canal Project, California

The Department of the Interior will prepare a draft environmental statement (DES) for lining 28 miles of the All-American Branch of the All-American Canal Project in southern California, Edward M. Hallenbeck, Lower Colorado Regional Director for Interior's Bureau of Reclamation, announced today.

The goal of the proposed All-American Canal Project is to conserve water lost through seepage on unlined sections of the All-American and Coachella Branches of the All-American Canal. This study is an extension of previous investigations an All-American Canal relocation. Separate draft environmental statement will be prepared for the two branches of the canal.

Preliminary investigations on the All-American Branch indicate that about 62,000 to 78,000 acre-feet of water could be conserved in a 28-mile section of unlined All-American Canal between Pilot Knob and Drop No. 4. The proposed project would make this water available for beneficial use.

Alternatives being studied to conserve All-American Branch seepage include in-place concrete lining 28 miles of the existing canal, in-place lining selected portions of the 28 miles, constructing a new, concrete-lined canal adjacent to a portion of the existing canal, and no Federal action.

Hallenbeck said the DES would describe the environmental and social resources and potential impacts of the

proposed project located in Imperial County in southern California. Additional environmental and hydrologic studies are being conducted to update and supplement existing data. Areas being studied include terrestrial and aquatic habitats, sensitive species, archaeological resources, water quality, and potential socioeconomic impacts. The draft environmental statement is scheduled to be completed and available for review and comment in April 1990.

A public involvement program will be carried out to obtain public input, as well as to keep the interested public informed about study progress and decisions. Newsletters are planned for the study. Interested public entities and individuals may provide input to the draft environmental statement to assure that the full range of pertinent issues is discussed.

A public environmental scoping meeting for the draft environmental statement on the All-American Branch of the study will be conducted in El Centro, California, in March 1988. The date, time and location of the meeting will be announced later.

Additional information on the study can be obtained by writing the Regional Director, Bureau of Reclamation, Attention: LC–730A, P.O. Box 427, Boulder City, Nevada 89005; or by telephoning (702) 293–8524.

[FR Doc. 88–2080 Filed 2–2–88; 8:45 am]
BILLING CODE 4310-09-M

All-American Canal Project, Coachella Branch, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to Prepare a Draft Environmental Statement.

SUMMARY: The scope of All-American Canal Project (formerly the All-American Canal Relocation Project), initiated in 1985, has been increased to include the Coachella Branch of the canal.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement (DES) for seepage conservation on the remaining unlined 38 miles of the Coachella Branch of the proposed All-American Canal Project, located in Imperial and Riverside Counties in southern California. A separate DES will be prepared to address lining a portion of the All-American Branch of the canal since many issues are unique to each branch of the All-American Canal.

A public involvement program is being planned to obtain public input on the Coachella Branch of the All-American Canal Project and to keep the public informed about study progress and decisions. Interested public entities and individuals may provide input to the DES to assure that the full range of pertinent issues is discussed.

A public environmental scoping meeting for the Coachella Branch DES will be held in March 1988 in Coachella, California. The date, time, and location of the meeting will be announced in local news releases.

FOR FURTHER INFORMATION CONTACT: The contact person for the draft environmental statement is Rob Leutheuser. For additional information, write the Bureau of Reclamation, Attention: Code LC–730A, P.O. Box 427, Boulder City, Nevada 89005; or telephone (702) 293–8524 or FTS 598–7524.

SUPPLEMENTARY INFORMATION: The purpose of seepage conservation on the Coachella Branch of the proposed project is to preserve some of the 30,000–40,000 acre–feet of water a year which currently is lost to seepage from the remaining unlined section of the Coachella Canal between Siphon No. 7 and Siphon No. 32. The conserved water would be available for beneficial use.

The DES will examine the impacts of project alternatives along the remaining unlined 38 miles of the canal. The alternatives include: (1) In-place concrete lining the entire 38 miles; (2) in-place concrete lining selected reaches of the 38 miles; (3) modify canal operation and maintenance methods; and (4) no Federal action. The DES is scheduled to be completed and available for review and comment by April 1990. (The related daft environmental statement on the All-American Branch also is scheduled to be available by that date.)

Dated: January 27, 1988.

C. Dale Duvall,

Commissioner.

Fact Sheet—Draft Environmental Statement To Be Prepared for Coachella Branch, All-American Canal Project, California

The Department of the Interior will prepare a draft environmental statement (DES) for water conservation on 38 miles of the Coachella Branch of the All-American Canal Project in southern California, Edward M. Hallenbeck, Lower Colorado Regional Director for Interior's Bureau of Reclamation, announced today.

The goal of the proposed All-American Canal Project is to conserve water lost through seepage on unlined sections of the All-American and Coachella Branches of the All-American Canal. This study is an extension of previous investigations on All-American Canal relocation. Separate draft environmental statements will be prepared for each branch of the canal.

Preliminary investigations on the Coachella Branch indicate that about 30,000–40,000 acre-feet of water could be conserved in the remaining 38 unlined miles of the Coachella Canal between Siphon No. 7 and Siphon No. 32. The proposed project would make this water available for beneficial use.

Alternatives being considered to conserve Coachella Branch seepage include in-place concrete lining the remaining unlined section of the canal, in-place concrete lining selected sections of the remaining unlined canal, modifying canal operation and maintenance methods, and no Federal action.

Hallenbeck said the DES would describe the environmental and social resources and potential impacts of the proposed project located in Imperial and Riverside Counties in southern California. Additional environmental and hydrologic studies are being conducted to update and supplement existing data. Areas being studied include terrestrial and aquatic habitats, sensitive species, archaeological resources, water quality, and potential socioeconomic impacts. The DES on the Coachella Branch is scheduled to be completed and available for review and comment in April 1990.

A public involvement program will be carried out to obtain public input, as well as to keep the interested public informed about study progress and decisions. Newsletters are planned for the study. Interested public entities and individuals may provide input to the draft environmental statement to assure that the full range of pertinent issues is discussed.

A public environmental scoping meeting for the draft environmental statement on the Coachella Branch of the project will be conducted in Coachella, California, in March 1988. The date, time, and local of the meeting will be announced later.

Additional information on the study can be obtained by writing the Regional Director, Bureau of Reclamation, Attention: LC–730A, P.O. Box 427, Boulder City, Nevada 89005; or by telephone (702) 293–8524.

[FR Doc. 88–2081 Filed 2–2–88; 8:45 am]
BILLING CODE 4310-09-M

National Park Service

Intention to Negotiate Concession Contract With Adventure Bound, Inc. et al.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate concession permits with Adventure Bound, Inc.; American Wilderness Expeditions, Inc., DBA as Adrift Adventures of Canyonlands; Colorado Outward Bound School, Inc.; Colorado River and Trail Expeditions, Inc.; Descent River Expeditions, Inc.; Don Hatch River Expeditions, Inc.; Holiday River Expeditions, Inc.; Moki Mac River Expeditions, Inc.; Niskanen & Jones, Inc., DBA as San Juan Expeditions; Niskanen & Jones, Inc., DBA as Tag-a-Long Tours; Niskanen & Jones, Inc., DBA as Tag-a-Long Tours; North American River Expeditions, Inc.; Sheri Griffith River Expeditions; Tour West, Inc.; Western River Expeditions, Inc.; and World Wide River Expeditions, Inc. authorizing them to provide guided white water interpretive river trips for the public at Canyonlands National Park, Utah for a period of five (5) years from January 1, 1987, through December 31, 1991.

These permit renewals have been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under existing permits which expired December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given perference in the renewal of the permits and in the negotiation of new permits as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado, 80225, for information as to the requirements of the proposed permits.

Homer L. Rouse,

Acting Regional Director, Rocky Mountain Region.

Date: October 8, 1987.

[FR Doc. 88-2162 Filed 2-2-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations; Kentucky, et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 23, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 18, 1988.

Carol D. Shull,

Chief of Registration, National Register.

Kentucky

Kenton County

Lakeside Park, *Dixie Highway Historic District*, 2696, 2698, 2700, 2708, 2712 Dixie Hwy.

MICHIGAN

Houghton County

Hancock, *Quincy Street Historic District*, 100, 200, and 300 blks of Quincy St. and 416 Tezcuco St.

Kent County

Rood Building

MISSOURI

Dent County

Salem vicinity, *Young, W. A., House*, CR 513

NEW YORK

Westchester County

Peekskill, *Villa Loretto*, Crompond Rd.

WISCONSIN

Ashland County

Morty Site
P-Flat Site No. 47AS47

[FR Doc. 88-2161 Filed 2-2-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-254]

Certain Small Aluminum Flashlights and Components Thereof; Decision To Terminate Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Determination of no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation and termination of investigation.

SUMMARY: The Commission has determined that there is no violation of section 337 in the above-captioned investigation because the subject patent is unenforceable and the subject common-law trademark has not been established. The investigation is therefore terminated on those grounds.

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons, III, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1098. Hearing impaired individuals may contact the Commission's TDD terminal at 202-724-0002.

SUPPLEMENTARY INFORMATION: On August 11, 1987, the ALJ issued an initial determination (ID) in the above-captioned investigation finding no violation of section 337 on the grounds that the patent in controversy is invalid and unenforceable and that the asserted common-law trademark had not been established. On October 1, 1987, the Commission determined to review the issues of: (i) Patent validity, (ii) patent enforceability, (iii) patent infringement, (iv) trademark infringement, and (v) injury. Following review of the ID, including consideration of the submissions of the parties, the Commission has determined that there is no violation of section 337 and, therefore, has terminated the investigation as to all issues and all parties.

Copies of the Commission's determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

By order of the Commission.

Issued: January 25, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-2227 Filed 2-2-88; 8:45 am]

BILLING CODE 7020-02-M

Dismissal of Request for Institution of a Review Investigation; Certain Welded Carbon Steel Pipes and Tubes From India

AGENCY: United States International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-271 (Final), Certain Welded Carbon Steel Pipes and Tubes from India.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR 207.45), that the request does not show good cause or changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731-TA-271 (Final), regarding certain welded carbon steel standard pipes and tubes from India.[1].

FOR FURTHER INFORMATION CONTACT: Jennifer Hinshaw (202-252-1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1802.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1986, the Commission published in the **Federal Register** its determination in investigation No. 731-TA-271 (Final), Certain Welded Carbon Steel Pipes and Tubes from India (51 FR 16908). The Commission determined that an industry in the United States was materially injured, or threatened with material injury, by reason of imports from India of welded carbon steel standard pipes and tubes which had been found by the Department of Commerce to be sold at less than fair value. On May 12, 1986, the Department of Commerce issued an antidumping duty order, notice of which was published in the **Federal Register** (51 FR 17384).

On October 5, 1987, the Commission received a request filed by the Engineering Export Promotion Council of India, the Tata Iron and Steel Co. (TISCO) Ltd., and Jindal Pipes, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731-TA-271 (Final). Under § 207.45 (a) of the Commission's Rules of Practice and Procedure, "In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of suspension or determination." Notice of the Commission's determination was published in the **Federal Register** of May 7, 1986. The petitioners contend that the circumstances of this case constitute "good cause" for conducting an immediate review.

After consideration of the request for review and the responses to the notice inviting comments, the Commission has determined, pursuant to 19 U.S.C. 1675(b) and rule 19 CFR 207.45, that the request does not show good cause or changed circumstances sufficient to warrant institution of a review investigation regarding certain welded carbon steel pipes and tubes from India. A Memorandum Opinion, setting forth the reasons for dismissing this request, will be made available in the Secretary's office.

By order of the Commission.

Issued: January 28, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-2228 Filed 2-2-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-383 (Final)]

Certain Bimetallic Cylinders From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-383 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of certain bimetallic cylinders,[1] provided for in item 678.35 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before March 28, 1988, and the Commission will make its final injury determination by May 13, 1988 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202-252-1178), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain bimetallic cylinders from Japan are being sold in the United States at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on August 4, 1987, by Xaloy, Inc., Pulaski, VA, and Bimex Corp., Wales, WI. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason

[1] The term "welded carbon steel standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA).

[1] Such items consist of an outer shell of steel and an inner lining of a corrosion- and abrasion-resistant alloy that are metallurgically bonded, and are, if imported, reported under items 678.3570, 678.3575, and 678.3580 of the Tariff Schedules of the United States Annotated.

of imports of the subject merchandise (52 FR 35770, September 23, 1987).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representations, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on March 22, 1988, pursuant to section 207.11 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 7, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 28, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 31, 1988, in room 101 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 1, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 84.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 14, 1988. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 14, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatemt must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 28, 1988.

[FR Doc. 88-2224 Filed 2-2-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-261]

Certain Ink Jet Printers Employing Solid Ink; Termination of Investigation of the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination granting a motion to terminate the investigation on the basis of a settlement agreement.

SUMMARY: On December 1, 1987, complainant Dataproducts Corporation and respondents Howtek, Inc. and Tokyo Juki Industrial Co., Ltd. filed a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement. On December 28, 1987, the presiding administrative law judge issued an initial determination (ID) granting the motion to terminate the investigation. The Commission determined not to review the ID. The Commission's decision terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202-252-1104.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 25, 1988.

[FR Doc. 88-2225 Filed 2-2-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-266]

Certain Recloseable Plastic Bags and tubing; Commission Determination Not To Review an Initial Determination Finding Respondent in Default

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination (ID) finding respondent in default.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) ID finding respondent Ideal Plastic Industrial Co., Ltd. (Ideal), in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1102.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On December 9, 1987, the ALJ ordered (Order No. 57) respondent Ideal to show cause why it should not be held in default. No adequate response was received. On December 24, 1987, the ALJ issued an ID (Order No. 59) finding respondent Ideal in default pursuant to Commission rule 210.25 (19 CFR 210.25). No petitions for review of the ID or Government agency comments were received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1802. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 25, 1988.

[FR Doc. 88–2226 Filed 2–2–88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Extension
Bureau/Office: Office of Proceedings
Title of Form: Application for authority under 49 USC to acquire control of a motor carrier or carriers thru ownership of stock or otherwise.
OMB Form No.: 3120–0100
Agency Form No.: OP–F–45
Frequency: Non-Recurring
Respondents: Motor Passenger Carrier & Non-Carriers
No. of Respondents: 11
Total Burden Hrs.: 1,320
Brief Description of the need & proposed use: This form is used by applicants seeking Commission's approval of finance transactions that would result in control of a motor passenger carrier by another carrier. The information is used to determine wherther the proposal meets the proposal meets the criteria for approval.

Noreta R. McGee,

Secretary.

[FR Doc. 88–2196 Filed 2–2–88; 8:45 am]

BILLING CODE 7035-01-M

[No. 35940]

Investigation Into the Lawfulness of Interchange Arrangements Between the Bangor and Aroostook Railroad and CP Rail at Brownville Junction, ME

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision vacating cease and desist order.

SUMMARY: The Commission vacates a cease and desist order entered in *Interchange Arrangements Between BAR and CP*, 361 I.C.C. 615 (1979). It concludes that the order may inhibit contract ratemaking and desirable through route arrangements and that the order is no longer necessary to assure compliance with 49 U.S.C. 10701(c). Although the parties are no longer subject to the specific restrictions contained in the order, they remain subject to the prohibition in 49 U.S.C. 10701(c) against unreasonable discrimination among connecting carriers.

EFFECTIVE DATE: March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Notice of the filing of a petition by Canadian Pacific Limited (CP) to lift the cease and desist order was published August 6, 1987 [52 FR 29318], and comments from interested parties were invited. Comments were filed jointly by the Maine Central Railroad and the Boston and Maine Corporation. Replies were filed by CP and by the Bangor and Aroostook Railroad.

Additional explanation of the Commission's reasons for vacating the cease and desist order is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (D.C. Metropolitan area), (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 27, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Lamboley, and Simmons. Commissioner Lamboley concurred in the result with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88–2197 Filed 2–2–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–290 (Sub-No. 2X)]

Southern Railway Co.; Abandonment and Discontinuance of Operations Exemption; Between Ringgold and Keysville, VA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, et seq., the (1) abandonment by Southern Railway Company of 59.3 miles of line and 2.76 miles of side track; and (2)

discontinuance of operations over a 1.5-mile line and 1.52 miles of siding, all between Ringgold and Keysville, VA, subject to standard employee protective conditions and to the condition that applicant shall not dispose of the bridges until the provisions of section 106 of the National Historic Preservation Act have been met.[1]

DATES: The exemption will be effective on March 4, 1988. Petitions for stay of the exemption must be filed by February 18, 1988, and petitions for reconsideration must be filed by February 29, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-290 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Nancy S. Fleischman, One Commercial Place, Norfolk, VA 23510.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. [TDD for hearing impaired (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357/4359 (DC Metropolitan area), 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 27, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88-2198 Filed 2-2-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Young Radiator Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 18, 1988 through January 22, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,274; Young Radiator Co., Racine, WI

TA-W-20,307; Standard T. Chemical Co., Linden, NJ

TA-W-20,270; Milwaukee Valve Co., Inc., Milwaukee, WI

TA-W-20,254; Alpha Cast, Inc., Whitewater, WI

TA-W-20,297; Indian Well Oil Co., Tulsa, OK

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,271; Seimens Transmission Systems, El Paso, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,301; Industrial Steel Products, Shreveport, LA

U.S. imports of fabricated structural steel decline in the Jan-Sept period of 1987 compared to the same period in 1986.

TA-W-20,296; Baker Huges, Inc., Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,259, Cipher Data Products, Garden Grove, CA

A certification was issued covering all workers of the firm separated on or after October 17, 1986.

TA-W-20,257; Andy's Sportswear, Inc., Boston, MA

A certification was issued covering all workers of the firm separated on or after November 17, 1986.

TA-W-20,348; Maine Woods Div. of Bennett Industries, Livermore Falls, ME

A certification was issued covering all workers of the firm separated on or after December 9, 1986.

TA-W-20,306; Standard Oil Production Co., Midland Operations Sector of The Onshore Business Unit, Midland, TX

A certification was used covering all workers of the firm separated on or after November 9, 1986.

TA-W-20,306A; Standard Oil Production Co., Midland Operations Sector of The Onshore Business Unit, Texas (State Wide)

A certification was issued covering all workers of the firm separated on or after November 9, 1986.

TA-W-20,306B: Standard Oil Production Co., Midland Operations Sector of The Onshore Business Unit, New Mexico (State Wide)

A certification was issued covering all workers of the firm separated on or after November 9, 1986.

TA-W-20,329; Editorial America, S.A., Virginia Gardens, FL

A certification was issued covering all workers of the firm related to the production of Buenhogar, Hombre de Mundo and Geomundo magazine separated on or after October 26, 1986.

TA-W-20,313; M.G. Kinsler Co., Inc., Springfield MA

A certification was issued covering all workers of the firm separated on or after November 23, 1986 and before January 31, 1988.

TA-W-20,273; Umetco Minerals Corp., Blanding, UT

A certification was issued covering all workers of the firm separated on or after November 10, 1986.

TA-W-20,266; Elliott Co., Jeannette, PA

A certification was issued covering all workers of the firm separated on or after November 6, 1986.

TA-W-20,277; Zenith Electronics Corp., Melrose Park, IL

[1] In a matter related to the transaction, Southern granted its affiliate, Norfolk and Western Railway Company (N&W) trackage rights over the 3.02 miles for which Southern seeks the discontinuance of service in this proceeding. A notice of exemption pursuant to 49 CFR 1180.2(d)(7) was served and published in the Federal Register on October 14, 1987, in Finance Docket No. 31120.

A certification was issued covering all salaried workers of the firm separated on or after November 2, 1986.

TA–W–20,275; Zenith Electronics Corp., Glenview, IL

A certification was issued covering all workers of the firm separated on or after November 2, 1986.,

TA–W–20,276; Zenith Electronics Corp., Springfield, MO (Springfield Div.)

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,278, Zenith Electronics Corp., Elk Grove Village, IL

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,279; Zenith Electronics Corp., Chicago, IL (Kostner Avenue)

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,280; Zenith Electronics Corp., Franklin Park, IL

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,281; Zenith Electronics Corp., Northlake, IL

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,282; Zenith Electronics Corp., Chicago, IL (Austin Avenue)

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,283; Zenith Electronics Corp., McAllen, TX

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,284; Zenith Electronics Corp., El Paso TX

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,285; Zenith Electronics Corp., El Paso, TX

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,286; Zenith Electronics Corp., San Francisco, CA

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,287; Zenith Electronics Corp., Sacramento, CA

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,288; Zenith Electronics Corp., Santa Fe Springs, CA

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,289; Zenith Electronics Corp., Secaucus, NJ

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,290; Zenith Electronics Corp., Wallingford, CT

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,291; Zenith Electronics Corp., Lenexa, KS

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,292; Zenith Electronics Corp., Wichita, KS

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,293; Zenith Electronics Corp., Springfield MO (Distribution)

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,294; Zenith Electronics Corp., Denver, CO

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA–W–20,295; Zenith Electronics Corp., Oklahoma City, OK

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

I hereby certify that the aforementioned determinations were issued during the period January 18, 1988–January 22, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

Dated January 26, 1988.

[FR Doc. 88–2138 Filed 2–2–88; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Armco Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 1988.

The petitions filed in this case are available for inspection at the Office of the Director of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 25th day of January 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Armco Inc. (USWA)	Kansas City, MO	1/25/88	1/15/88	20,399	Steel.
Atlas Wireline Serv. (Workers)	Prudhoe Bay, AK	1/25/88	1/11/88	20,400	Oilwells.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Chrysler Corp. (UAW)	East Syracuse, NY	1/25/88	1/13/88	20,401	Manual Transmissions.
Clarksburg Electro-Plating, Inc. (AFGWU of A)	Clarksburg, WV	1/25/88	1/14/88	20,402	Chrome Plating.
Computerized Machine Tools, Inc. (Workers)	Farmington Hills, MI	1/25/88	1/5/88	20,403	Machines.
Control Data Corp. (Company)	Roseville, MI	1/25/88	12/18/88	20,404	Computer Repairs.
Excel Handbags Co, Inc. (Workers)	Miami, FL	1/25/88	11/29/88	20,405	Handbags.
Filmation Studios (Workers)	Canoga Park, CA	1/25/88	1/11/88	20,406	Animated Cartoons.
Four Star Corp. (Workers)	Mesick, MI	1/25/88	1/14/88	20,407	Auto Parts.
General Motors, Corp. (Workers)	Livonia, MI	1/25/88	1/4/88	20,408	Seat Cushions.
Hareus Amersil, Inc.	Sayreville, NJ	1/25/88	1/7/88	20,409	Fused Quartz Silica.
Inmos Corporation (Company)	Colorado Springs, CO	1/25/88	1/14/88	20,410	Semiconductor Chips.
Lake Shore, Inc. (USA)	Kingsford, MI	1/25/88	1/5/88	20,411	Ship Cranes.
M. Smith Co., Inc. (ILGP&N)	Philadelphia, PA	1/25/88	1/11/88	20,412	Luggage.
Mitchell Corp. (Workers)	Ludington, MI	1/25/88	1/11/88	20,413	Bucket Seats.
Peabody Coal Co. (UMWA)	Charleton, WV	1/19/88	1/6/88	20,414	Coal.
Rhone-Poulenc, Inc. (Workers)	Mt. Pleasant, TN	1/25/88	1/11/88	20,415	Agro-Chemical.
SKS Industries (Workers)	Hornell, NY	1/25/88	1/15/88	20,416	Ball & Roller Bearings.
T.D. Engine & Jump Service, Inc. (Company)	Odessa, TX	1/25/88	1/12/88	20,417	Repairs Oilfield Equipment.
Volkswagen of America, Corporate Headquarters (Workers).	Troy, MI	1/25/88	1/11/88	20,418	Auto.
Volkswagen of America, Edward St. Bldg. (Workers).	Madison Hts, MI	1/25/88	1/11/88	20,419	Auto.
Volkswagen of America, Eleven Mile Complex (Workers).	Warren, MI	1/25/88	1/11/88	20,420	Auto.
Volkswagen of America, Hangar Pontiac (Workers)	Pontiac, MI	1/25/88	1/11/88	20,421	Auto.
Volkswagen of America, Howard St. (Workers)	Madison Hts, MI	1/25/88	1/11/88	20,422	Auto.
Volkswagen of America, Parkview Bldg. (Workers)	Warren, MI	1/25/88	1/11/88	20,423	Auto.
Volkswagen of America, Vorelco (Workers)	Warren, MI	1/25/88	1/11/88	20,424	Auto.
Volkswagen of America, VW Credit, Inc. (Workers)	Troy, MI	1/25/88	1/11/88	20,425	Auto.

[FR Doc. 88-2139 Filed 2-2-88; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-210-C]

BethEnergy Mines Inc.; Amendment To Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines Inc., 7012 MacCorkle Avenue SE., Charleston, West Virginia 25304 has filed an amendment to a petition for modification. On August 25, 1987, BethEnergy Mines Inc., submitted a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mine No. 131 (I.D. No. 46-01268) located in Boone County, West Virginia. On November 3, 1987, MSHA published notice of this petition in the **Federal Register** (52 FR 42158), allowing interested parties 30 days to submit comments. On December 10, 1987, petitioner submitted a request to amend the originally submitted petition for modification to include its Mine No. 132 (I.D. No. 46-04789), also located in Boone County, West Virginia. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 4, 1988. Copies of the amendment and the original petition for modification are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 26, 1988.

[FR Doc. 88-2140 Filed 2-2-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-87-300-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley feeder wires, high-voltage cables and transformers) to its No. 4 Mine, Longwall No. 2 (I.D. No. 01-01247) located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to use high-voltage (2300 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

3. In order to safely and efficiently mine the coal seam, a 500 horsepower shearing machine, an approximately 1,000 horsepower face conveyor and a stage loader with a crusher unit driven by 150 horsepower motor will be used.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before

March 4, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 26, 1988.

[FR Doc. 88-2141 Filed 2-2-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-10]

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 Aeronautics Technology Competitiveness.

DATE AND TIME: February 17, 1988, 8:30 a.m. to 4 p.m., and February 18, 1988, 8:30 a.m. to 4 p.m.

ADDRESS: National Air and Space Museum, Director's Conference Room, Third Floor, 7th and Independence Avenue SW., Washington, DC 20560.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Burks, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2807.

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 Aeronautics Technology Competitiveness, chaired by Mr. Louis F. Harrington, is comprised of ten 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 17, 1988

8:30 a.m.—Introduction of Members, Discussion of Charter and Objectives.

12:30 p.m.—Discussion of Assessment Plan of Attack and Resources Available.

4 p.m —Adjourn.

February 18, 1988

8:30 a.m.—Continued Discussion of Assessment Plan.

12:30 p.m.—Summary by Chairman and Task Assignments.

4 p.m.—Adjourn.

January 27, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-2179 Filed 2-2-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice 88-11]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

DATE AND TIME: February 24, 1988, 9:30 a.m. to 5:30 p.m., February 25, 1988, 8:30 a.m. to 5:30 p.m., February 26, 1988, 8:30 a.m. to 1 p.m.

ADDRESS: As listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Space and Earth Science Advisory Committee consults with and advises NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Sciences programs. The Committee will meet to discuss the Office of Space Science and Applications (OSSA) FY 1988 and FY 1989 budgets, OSSA strategic planning, and future committee activities. The group is chaired by Dr. Louis Lanzerotti, and is composed of 32 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the committee).

Type of Meeting: Open.

Agenda

February 24, 1988, National Council on the Aging, 600 Maryland Avenue, SW., Room 100, Washington, DC 20024.

9:30 a.m.—Remarks by the Committee Chairman.

OSSA Program Update

10 a.m.—Overview of FY 1988 and FY 1989 Budgets.

10:30 a.m.—OSSA Program Status.

11:30 a.m.—Advisory Committee Restructuring.

1:30 p.m.—OSSA Strategic Plan.

3:45 p.m.—SESAC Discussion.

5:30 p.m.—Adjourn.

February 25, 1988, National Aeronautics and Space Administration, 600 Independence Avenue, SW., Room 226A, Washington, DC 20546.

8:30 a.m.—OSSA Strategic Planning: Discipline Views.

10:45 a.m.—OSSA Strategic Planning: Transportation Issues.

1:30 p.m.—Science Update: New Findings.

2 p.m.—OSSA Strategic Planning: Discussion.

3:15 p.m.—OSSA Strategic Planning: Space Station Science.

5:30 p.m.—Adjourn.

February 26, 1988, same location as February 25, 1988.

8:30 a.m.—Science Update: Infrared Detection of High Red Shift Objects.

9 a.m.—OSSA Strategic Planning: Office of Exploration Plans.

9:30 a.m.—OSSA Strategic Planning: Discussion.

1 p.m.—Adjourn.

January 27, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-2180 Filed 2-2-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice 88-09]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); 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 Station Advisory Committee.

DATE AND TIME: February 12, 1988, 8:30 a.m. to 5 p.m.

ADDRESS: Capitol Holiday Inn, Room: Columbia South, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code S, National

Aeronautics and Space Administration, Washington, DC 20546, 202/453–4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Dr. John L. McLucas and is composed of 20 members, including individuals who also serve on other committees.

This meeting will be open to the public up to the seating capacity of the room, which is approximately 50 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda:

February 12, 1988

8:30 a.m.—Introduction.
Administrative Items.
9:15 a.m.—Program Overivew.
Background History.
10:15 a.m.—Current Program Status.
Organization.
Major Contracts.
1:15 p.m.—Special Topics.
Transportation.
Operations.
Information Systems.
Evolution.
3:30 p.m.—Committee Identification of Issues.
Work Plan.
5 p.m.—Adjourn.

January 28, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–2181 Filed 2–2–88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

[Docket Nos.: 50–454, STN 50–455, STN 50–456 and STN 50–457]

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–37 and NPF–66 issued to Commonwealth Edison Company (the licensee), for operation of Byron Station, Units 1 and 2 located in Ogle County, Illinois and Facility Operating License Nos. NPF–72 and NPF–75, issued to the licensee, for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The amendments add two radiation monitors in the Technical Specifications and add a requirement that a composite sample of sump effluent be taken prior to discharge into the circulating water system. The licensee's application of February 18, 1987 proposed to add the two radiation monitors in the Technical Specification for Byron and was noticed in the **Federal Register** on March 25, 1987 (52 FR 9561). By application dated November 17, 1987, the licensee added the requirement for the composite sample of sump effluent and requested that the amendment also be applied to Braidwood.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 4, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and 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. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceedings; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceedings as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States 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. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., Sidley and Austin, One

First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings for petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 17, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC; the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Bethesda, Maryland this 27th day of January 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–2214 Filed 2–2–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF–62 issued to Illinois Power Company (the licensee), for operation of Clinton Power Station, Unit 1 located in DeWitt County, Illinois.

These amendments include four proposed changes to Technical Specification sections 3/4.3.7.1, 3/4.3.7.11 and 3/4.3.7.12 concerning radiation monitoring instrumentation. The first proposed change consists of revisions which both account for and allow credit to be taken for redundancy of the common Central Control Terminals (CCTs) where process radiation monitor status and indications are provided. These revisions consist of: including the CCTs in the OPERABILITY requirements for certain radiation monitor channels required to be OPERABLE by the Technical Specifications; changing the ACTION statements, as applicable, to account for inoperability of the CCTs versus inoperability of the monitor itself that provides input to the CCTs; enhancing the CHANNEL CHECK for the applicable radiation monitors to ensure that channel communication is established to the Main Control Room—CCT or Radiation Protection—CCT; and changing the expanded CHANNEL FUNCTIONAL TEST requirements for the radiation monitors to make the wording of the requirement based on the Standard Technical Specifications more specific and applicable to the Clinton design without altering the intent of the requirement.

The second proposed change consists of revisions to the CHANNEL FUNCTIONAL TEST requirement for the Liquid Radwaste Discharge Monitor. The current requirement requires a demonstration of automatic isolation of the release pathway with the monitor controls not set in the OPERATE mode. The proposed change would delete this specific requirement since the monitor is not designed to effect an isolation for the specific condition.

The third proposed change consists of specific revisions to make the channel/instrument descriptions for the Standby Gas Treatment System (SGTS) Exhaust Process Radiation Monitor (PRM) agree with the HVAC Exhaust PRM descriptions since they are designed and operated in a similar manner. These revisions would not change the intent of the Specification or the manner in which the surveillances are conducted.

The fourth proposed change consists of several changes to ACTION 72 of Table 3.3.7.1–1 to make it consistent with other applicable Specifications. To support these changes, which are associated with the OPERABILITY of the Pre-treatment Off-Gas process radiation moniotor, changes are also proposed for related Secifications 4.11.2.7.1 and 4.22.2.7.2.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 4, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and 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. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States 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. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication data and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Council—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, and to Sheldon Zable, Esq., of Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factor specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 30, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Vespasion Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Bethesda, Maryland, this 27th day of January 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2 Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-2215 Filed 2-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-2 (50-280 and 50-281)]

Virginia Electric and Power Co.; Issuance of Amendment to Materials License SNM-2501

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 2 to Materials License No. SNM-2501 held by the Virginia Electric and Power Company for the receipt and storage of spent fuel at the Surry Independent Spent Fuel Storage Installation, located on the Surry Power Station site, Surry County, Virginia. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to change the environmental reporting requirement to coincide and be consistent with existing requirements for the Surry Power Station. It also corrects a typographical error; an administrative inconsistency between the Commission's regulations and the Technical Specifications. The changes do not alter the intent of the Technical Specification nor any safety margins.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated November 16, 1987, and (2) Amendment No. 2 to Materials License No. SNM-2501, and (3) the Commission's letter to the licensee dated January 27, 1988. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room at the Swem Library, College of William and Mary, Williamsburg, Virginia, 23185.

Dated at Rockville, Maryland, this 27th day of January 1988.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety.

[FR Doc. 88-2216 Filed 2-2-88; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Meetings

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-483), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATES AND TIMES: February 5 and 6, 1988—Business Meeting—February 5 beginning at 10:00 a.m. and February 6 beginning at 9:30 a.m..

ADDRESS: Room B318 Rayburn House Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Horsley, Commission Staff Manager, 1825 K Street NW., Suite 310, Washington, DC 20006, 202/634-6501.

SUPPLEMENTARY INFORMATION: The purpose of the business meeting is to discuss privatization options in Postal Service and asset sales, including Naval Petroleum Reserves and AMTRAK, and Potal Service and other matters. The business meeting is open to the public.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 88-2321 Filed 2-2-88; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, Deputy Executive Director, [202] 272-2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549

Revised File No. 270-19, Form BD

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.), the Securities and Exchange Commission has submitted for clearance the following proposed revision to Form BD under the Securities Exchange Act of 1934.

Form BD—Application for Registration as a Broker or Dealer, inclusion of additional language, in Form BD, providing that the applicant consents to service of process for any application for protective decree brought by the Securities Investor Protection Corporation. Two thousand six-hundred and sixteen respondents incur 4.2 burden hours to comply with this rule. However, this revision will not

affect the burden hours incurred by such respondents.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

January 22, 1988.

[FR Doc. 88–2171 Filed 2–2–88; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Extension

File No. 270–71, Form 12b–25

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for an extension of clearance of Form 12b–25; which provides registrants with a vehicle to disclose that filings will be late. The Form effects 4227 filers at 2.5 hours per form for a total of 10,568 burden hours.

Submit comments to OMB Desk Officer, Mr. Robert Neal (202) 395–7340, Office of Information and Regulatory Affairs, Commerce & Lands Branch, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

January 29, 1988.

[FR Doc. 88–2237 Filed 2–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16240; 812–6904]

CTC Mansfield Funding Corp; Application

January 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: CTC Mansfield Funding Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order to permit it to assist The Toledo Edison Company ("Toledo") and The Cleveland Electric Illuminating Company ("Cleveland") in the financing and refinancing of property through leveraged lease financing transactions in which they will be co-lessees.

Filing date: The application was filed on October 16, 1987, and amended on January 15, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the 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 19, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1209 Orange Street, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–2190 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Delaware corporation and all of its shares of common stock are owned by Corporate Trinity Company ("CTC"), a company controlled by The Corporation Trust Company ("CT"). There has been, and the Applicant undertakes that in the future there will be, no public offering of Applicant's common stock or of any other equity security. Applicant also undertakes that there is, and in the future will be, no class of equity securities of Applicant other than its common stock. Applicant has been created to participate as lender in one or more leveraged lease transactions ("Lease Transactions"), in which Toledo, an Ohio corporation, and Cleveland, an Ohio corporation, are the co-lessees (in such capacities, collectively "Lessee"). Toledo and Cleveland will be jointly and severally obligated under the facility leases described below. Toledo and Cleveland are both wholly-owned subsidiaries of Centerior Energy Corporation ("Centerior"), an Ohio corporation that is an exempt public utility holding company under section 3(a)(1) of the Public Utility Holding Company Act of 1935. Centerior will make an initial determination as to whether or not the debt portion of such leveraged leased transaction will be funded through the Applicant's sale of one or more series of its debt securities with differing maturities ("Collateral Trust Notes").

2. Applicant's sole purpose is to assist Toledo and Cleveland in the financing and refinancing,[1] in whole or in part, of Toledo's and Cleveland's undivided ownership interest [2] in Bruce Mansfield Generating Station Units Nos. 1, 2 and 3 and certain common facilities relating thereto, a coal-fired generating station located on the Ohio River at Shippingport, Pennsylvania, (the interest of Toledo and Cleveland in Bruce Mansfield Generating Station Units 1, 2 and 3 and the facilities whose use is common to all three Units is collectively the entire property described and defined as a single Facility in the documents and subject, as a whole, to the lien of each of the Lease Indentures described below and is hereinafter referred to as the "Generating Station"). Pursuant to an Operating Agreement relating to the Generating Station, among other things, Pennsylvania Power Company is authorized to act as agent for the companies entitled to the capacity of and energy from the Generating Station, and has responsibility and control over construction, operation and maintenance of the Generating Station. Rights under such Operating Agreement relating to the undivided interests being financed and refinanced by Toledo and Cleveland will be assigned to the Lessors (referred to below) and reassigned for the benefit of the holders of Secured Notes (as hereinafter defined).[3]

[1] Applicant believes any refinancing will be undertaken infrequently and that every representation concerning the Collateral Trust Notes will apply to each and every series irrespective of whether such series of Collateral Trust Notes refunds a prior series.

[2] Specifically, Toledo owns a 17.30% and a 19.91% undivided interest in each of Units 2 and 3, respectively, and the respective common facilities relating thereto; and Cleveland owns a 6.50%, a 28.60% and a 24.47% undivided interest in each of Units 1, 2 and 3, respectively, and the respective common facilities relating thereto. The remaining percentages of ownership interests of the Units and the common facilities relating thereto are owned by certain other utilities, and the interests of these other utilities can have no effect on the Applicant or holders of Collateral Trust Notes.

[3] Applicant represents that Toledo and Cleveland have received all regulatory approvals necessary for the consummation of the Lease Transactions.

3. Applicant's participation as lender in the Lease Transactions will be limited to making loans pursuant to a Loan and Security Agreement or a Trust Indenture and Security Agreement (in either case, a "Lease Indenture") to certain lessors ("Lessors") under the facility leases forming a part thereof ("Facility Leases") which will be payable from rentals and other payments by the Lessee. Initially the Lessor under each Facility Lease will be a bank or trust company, incorporated and doing business within the United States of America and having a combined capital and surplus of at least $50,000,000, acting as trustee for one or more beneficiaries pursuant to a trust agreement entered into exclusively for the purpose of the lease financing. Under such trust agreement, any successor trustee must be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least $50,000,000. A portion of the purchase price of the property owned by the Lessors and leased to the Lessee ("Leased Property") will be paid by the beneficiaries of the grantor trust that acts as Lessor and that amount will constitute their equity investment in the Leased Property. (See paragraph 15 below.) The loans by Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries, and will be evidenced by non-recourse obligations of the respective Lessors ("Secured Notes").

4. Prior to the issuance of the Collateral Trust Notes, it is possible that interim borrowings by the Lessor of the balance of the purchase price will be made directly from one or more banks. It is expected that such direct borrowings will be refunded in full by borrowings from the Applicant simultaneous with the issuance of the relevant Collateral Trust Notes. To the extent that market conditions do not permit a 100% refinancing of such bank debt, however, the banks will have *pari passu* rights in the collateral under the respective Lease Indentures with a Collateral Trust Noteholder. In all cases, the timely payment of the principal of, and premium, if any, and interest on, the Secured Notes pledged solely for the benefit of the Collateral Trust Noteholders will be sufficient to timely pay the debt service on such Collateral Trust Notes.

5. Under each Facility Lease, the Lessee will be obligated to make rental payments sufficient to pay principal of and premium, if any, and interest on the Secured Notes issued in connection therewith. Such obligations of the Lessee will be required to be absolute and unconditional, without right of counterclaim, setoff, deduction or defense. CTC and CT have entered into an agreement with Toledo and Cleveland pursuant to which CTC and CT have agreed to cause Applicant to make loans to one or more Lessors designated by Toledo and Cleveland from time to time, and Toledo and Cleveland have agreed to provide certain indemnifications to CTC and CT with respect to Applicant's participation.

6. The funds necessary for the purchase of the Secured Notes will be acquired through the issuance by Applicant of its Collateral Trust Notes, which will be secured on a parity basis by a first lien on, and a security interest in, all of the assets of Applicant, consisting primarily of the Secured Notes so acquired and previously acquired and which may include a lien on or security interest in the Leased Property. Secured Notes held by Applicant will consist only of Secured Notes issued in connection with any Facility Leases to which Toledo and Cleveland are parties, as Lessee, relating to their ownership interest in the Generating Station.

7. All Collateral Trust Notes will be issued under a common indenture and a separate supplemental indenture for each series (collectively, the "Collateral Trust Indenture") which will establish the terms of the Collateral Trust Notes of that series. It is expected that the trustee under the Collateral Trust Indenture ("Trustee") will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any indenture of Centerior or its subsidiaries. At each lease closing involving the financing of the debt portion of the purchase price of the Leased Property through the issuance of Collateral Trust Notes, the Secured Notes will be pledged and assigned directly to the Trustee. Applicant expects that the Secured Notes will be offered and sold under cicrumstances making such transactions exempt from the registration requirements under the Securities Act of 1933 ("1933 Act").

8. The Lease Indentures will set forth the terms and conditions under which the Secured Notes will be issued. Each Lease Indenture will require the Lessor to grant to the Applicant (if the Lease Indenture is a Loan and Security Agreement) or a trustee under the Lease Indenture ("Lease Indenture Trustee") (if the Lease Indenture is a Trust Indenture and Security Agreement), an assignment of rents, including basic rentals and certain other payments, to be made by the Lessee under the applicable Facility Lease. The Lease Indenture Trustee or the Applicant may have a lien on, or security interest in, the Leased Property. The Lessor will covenant that, so long as any Secured Note is outstanding, it will not incur any other debt not constituting Secured Notes or otherwise in connection with the Leased Property, and except for certain limited permitted liens, it will not create any lien on or security interest in such property. Thus, these two covenants combined ensure that if a Lessor defaults on a Secured Note, the Leased Property will be available to satisfy the claims of the Trustee, acting for the benefit of Collateral Trust Noteholders. Except for sinking fund provisions and the like which would be disclosed in a prospectus complying with the 1933 Act and the rules and regulations issued thereunder in respect of the Collateral Trust Notes in a public offering of Collateral Trust Notes, the Applicant will be precluded from purchasing any Secured Note. Further, each Lease Indenture will include as events of default, without limitation: (a) Payment defaults on the Secured Notes issued thereunder, and (b) certain events of default under the related Facility Lease.

9. The various series of Collateral Trust Notes will have terms which may differ as to maturity dates, interest rates, sinking fund obligations of Applicant, the right of Applicant to redeem such Collateral Trust Notes and other matters. The interest rates, maturities and principal amounts of each series of Collateral Trust Notes will be established based on prevailing market conditions, thereby giving Applicant flexibility to take advantage of changing market conditions. If the maturity dates and cash flow of the Secured Notes exceed the cash requirements of Applicant's obligations under the Collateral Trust Notes, the resulting funds will be invested by Applicant in certain permitted investments, in each case maturing at such time as necessary to pay Applicant's obligations under the Collateral Trust Notes. The Collateral Trust Notes, which may include commercial paper and intermediate-term and long-term obligations, will be issued in private placements pursuant to section 4(2) of, or in underwritten public offerings registered under, the 1933 Act, or possibly in distributions exempt from registration because they will come to rest outside the United States (provided that the Collateral Trust Notes are offered and sold outside the United States and to non-U.S. persons without

registration under the 1933 Act in reliance upon an opinion of U.S. counsel that registration is not required and that no single offering of Collateral Trust Notes both within and outside the United States will be made without registration of all such Collateral Trust Notes under the 1933 Act without first obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings). In all such cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Collateral Trust Notes from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible).

10. The initial issuance of Collateral Trust Notes will be through an underwritten public offering of one or more series having a maximum aggregate principal amount of approximately $877 million (assuming a total sales price for Toledo's and Cleveland's interests in the Generating Station of $1,0236 billion). Although neither Toledo nor Cleveland will be the actual obligor of the Collateral Trust Notes, they will be considerd the "issuer" thereof for purposes of the 1933 Act and an "obligor" thereof for the purposes of the Trust Indenture Act of 1939. Any registration statement filed under the 1933 Act relating to the Collateral Trust Notes will name Toledo and Cleveland as the joint registrants and will be signed on behalf of Toledo and Cleveland as the joint registrants by such officers and directors of them as may be required under the 1933 Act and the rules, regulations and forms of the SEC thereunder.

Accordingly, the provisions of section 11 of the 1933 Act will apply to Toledo and Cleveland.

11. Applicant will assign and pledge to the Trustee under the Collateral Trust Indenture, as security for the payment of the principal of the premium, if any, and interest on all Collateral Trust Notes, the Secured Notes and other assets held by the Applicant. Each such Secured Note will in turn be secured by the assigned rentals and other assigned payments under such Facility Lease and may be secured by the Leased Property. The Trustee will give immediate notice to the Collateral Trust Noteholders of any rights granted by the Collateral Trust Indenture to it, which will include the right to exercise voting powers in respect of the Secured Notes, to give any consents or waivers with respect thereto or to exercise any rights and remedies in respect thereof. The Collateral Trust Indenture will authorize the Collateral Trust Noteholders to direct, by notice to the Trustee within a specific period of time, that it take any action or cast any vote in its capacity as a holder of the Secured Notes. As a result of this pass-through voting mechanism, the rights and remedies of Secured Noteholders will be exercisable directly by the Collateral Trust Noteholders through their fiduciary, the Trustee. The percentage of aggregate principal amount of Secured Notes directing any action or being voted for or against any proposal will be the percentage of aggregate principal amount of the Collateral Trust Noteholders taking the corresponding position. To the extent the Trustee does not receive instruction, it will take such action with respect to the Secured Notes as a prudent man would in the care of his own property.

12. In the event Toledo or Cleveland defaults in the payment of that portion of rent necessary to pay all amounts due and payable in respect of the Secured Notes, the Applicant or the Lease Indenture Trustee, as the case may be, would have the right to exercise, concurrently with the exercise by the Lessor under the applicable Facility Lease of any remedies available to it under such Facility Lease, all of the rights and remedies against Toledo and Cleveland provided in the related Lease Indenture. The exercise of such rights and remedies would be at the direction of the Collateral Trust Noteholders through the Trustee's instructions to the Lease Indenture Trustee or as pledgee of the Applicant's interests in such Lease Indenture.

13. Among the rights and remedies of a holder of Secured Notes included under the Lease Indenture is the right to demand, after a specified grace period, that Toledo and Cleveland pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of and premium, if any, and interest on the related Secured Notes. Amounts payable by Toledo and Cleveland under the Facility Leases, to the extent of the amount of the principal of and premium, if any, and interest on the relevant Secured Notes, will be paid directly to the Trustee for distribution to the Collateral Trust Noteholders. Therefore the Collateral Trust Noteholders will have access under the Collateral Trust Indenture and the Lease Indentures to the credit of Toledo and Cleveland. Moreover, the Collateral Trust Noteholders will be entitled to realize on the security afforded by the security interest created by the Lease Indentures in an amount up to the aggregate unpaid amount of the relevant Secured Notes secured by such security interest. The combination of the Secured Notes and the obligation of Toledo and Cleveland under the Facility Leases, grant Collateral Trust Noteholders access to the general credit of Toledo and Cleveland and is thus the functional equivalent of a guaranty by them. The Secured Notes and the Lease Indentures will provide that, upon the occurrence of certain casualty events, termination events, special loss events or certain other events, Toledo and Cleveland shall, jointly and severally, assume the obligations represented by the Secured Notes, and the Lessors will grant a lien on and security interest in the Leased Property to secure the Secured Notes. The assumption described in the preceding sentence will be in partial satisfaction of Toledo's and Cleveland's obligation to make payments required of them upon early termination of the Facility Leases in consequence of any such event. The preservation of the right of Toledo and Cleveland to assume the Secured Notes in certain circumstances permits them to avoid an accelerated obligation to prepay the Secured Notes under provisions of the Facility Leases.

14. When funds are held on deposit for a specific purpose for example, under the Lease Indentures for release of the lien on the Trust Estate, United States Government securities sufficient to pay all amounts of principal, interest and premium, if any, without reinvestment may be deposited. In other cases, the Lease Indentures also provide for permitted investments by the Trustee which are at the direction, expense and risk of the beneficiary of the grantor trust in securities of a term of 90 days of less limited to (i) direct obligations of, or guaranteed as to interest and principal by, the United States Government maturing not more than 90 days after such investment; (ii) open market commercial paper of any corporation incorporated under the laws of the United States of America or any State thereof rated "prime-1" or its equivalent by Moody's or "A–1" or its equivalent by Standard & Poor's; (iii) certificates of deposit maturing within 90 days after such investment issued by commerical banks organized under the laws of the United States of America or of any political subdivision thereof having a combined captial and surplus in excess of $500,000,000; provided, however, that the aggregate amount at any one time so invested (a) in open market commercial paper of any corporation shall not exceed $2,000,000 and (b) in certificates of deposit issued by any one bank shall not exceed $10,000,000. The Collateral Trust Indenture will contain similar provisions.

15. Except to the extent payable from the proceeds of refunding the Collateral Trust Notes, or the proceeds of the initial issuance of the Collateral Trust Notes, when the relevant Lease Closing Date does not occur simultaneously, due to the non-recourse nature of Secured Notes and the limited scope of Applicant's activities, payment of the principal of and premium, if any and interest on the Collateral Trust Notes, will be made exclusively from amounts paid by the Lessee under the Facility Leases.

16. It is expected that the Lessors will be grantor trusts formed exclusively for the purpose of lease financing. The original beneficiary of such grantor trust will be a single sophisticated institutional investor. All such beneficial interests will be offered and sold in transactions not involving a public offering within the meaning of section 4(2) of the 1933 Act. Subsequent transfers of such beneficial interests will be made only to "sophisticated investors" including a transferee which is an affiliate of the original beneficiary, to a transferee which is a bank, insurance company or other financial institution or corporation with a net worth at the time of such transfer of not less than $50 million or a subsidiary of any such person, or to any other person with the consent of the parties to the Lease Transaction or without such consent if the original beneficiary is deemed to be, or becomes subject to regulation as, an electric utility, a public utility or a public utility holding company, but in no event shall such transfer violate the 1933 Act. Applicant believes that these restrictions, when considered in light of the nature of leveraged lease transactions, effectively preclude all but the most sophisticated investors from being a transferee. The nature and availability of the tax benefits of the beneficial interest, the legal and regulatory framework of the transactions and the complex financial analysis required assure that only sophisticated institutional investors will be potential transferees of beneficial interests in the Lessor. Moreover, Applicant represents that any sale and lease back transaction as described in the application consummated on or after October 1, 1987, (excluding therefore, the Lease Transactions already consummated as described in the application) will contain limitations designed to ensure that both the original beneficiary of each grantor trust acting as Lessor and each transferee thereof will be a sophisticated investor.

Applicant's Legal Conclusions

Applicant's proposed activities are appropriate in the public interest because the proposed issuance of Collateral Trust Notes would provide a convenient mechanism for Toledo and Cleveland to obtain access to segments of the debt capital market other than the institutional private placement market. The primary reason for making Toledo and Cleveland co-lessees under the Facility Leases is to provide purchasers of the Collateral Trust Notes (and the Lessors under the Facility Leases) with access to the credit of both utility companies and thus to enhance the investment characteristics of the Collateral Trust Notes. An exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because, among other things, investors will be protected under the proposed arrangements to the same extent as under equivalent arrangements where the 1940 Act is inapplicable.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2173 Filed 2-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16239; (812-6908)]

EBI Series Trust, et al.; Application

January 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The EBI Flex Fund and EBI International Fund of EBI Series Trust (the "Trust"), EBI Equity, Inc. ("EBI Equity"), EBI Income, Inc. ("EBI Income") and EBI Cash Management, Inc. ("EBI Cash") (collectively, "Applicants" or the "Funds").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35, 22(c) and 22(d) and Rule 22c-1 thereunder; approval requested under section 11(a).

SUMMARY OF THE APPLICATION: Applicants seek an order amending a prior order (Investment Company Act Release No. 14916, January 27, 1986) ("Prior Order") permitting the assessment of a contingent deferred sales load ("CDSL") on certain redemptions and the waiver of the CDSL under certain circumstances. The amended order will extend the CDSL to all current and future series of Applicants, delete one waiver of the CDSL permitted in the prior order and approve certain exchange privileges as described below.

FILING DATES: The application was filed on October 21, 1987, and amended on December 7, 1987, December 16, 1987, and January 15, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Suite 500, 1315 Peachtree Street NE., Atlanta, Georgia 30309.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-2847, or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. All of the Applicants are registered under the 1940 Act as open-end, diversified, management investment companies. INVESCO Services, Inc. ("Distributor") serves each of the Applicants pursuant to principal underwriting agreements with each of the Applicants. The Prior Order, which amended an original order (Investment Company Act Release No. 13789, February 24, 1984) was issued on behalf of EBI Equity, EBI Income and EBI Cash (collectively, "EBI Funds"). The Trust, a recently organized Massachusetts business trust, consists of two separate investment portfolios and the Trustees of the Trust may authorize additional series. The Trust was not included in the Prior Order. Applicants now request

that the Prior Order be amended to include the Trust and any additional series or classes of shares Applicants may offer in the future on substantially the same basis as Applicants (other than EBI Cash) offer their shares.

2. The Prior Order exempted the three EBI Funds from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c–1 thereunder. Under the Prior Order, the EBI Funds are permitted to impose a CDSL on certain redemptions of shares and to waive such CDSL on redemptions as follows: (1) With respect to investors who are individuals, upon such individual's death, disability or retirement; (2) with respect to investors who are tax-exempt employee benefit plans (i) upon the death, disability or retirement of a plan participant which results in a distribution from the plan, which distribution cannot be funded from other sources (subject to the right to require a certificate from such plan's fiduciary confirming such fact), (ii) upon the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Fund would be improper (subject to the right to require an opinion of counsel to the effect that the continuation of such an investment would be improper), (iii) upon the determination by any applicable regulatory authority that continuation of the investment in the Fund is improper or (iv) upon a change in control of a plan sponsor or the appointment of a new plan fiduciary; and (3) with respect to banks, trust companies and other financial institutions with trust powers which use trust funds to purchase shares of the fund, no CDSL is imposed if such institution made the purchase pursuant to the exercise of discretionary investment authority, as trustee, and not at the direction of the grantor, the beneficiary of any trust or of any other third party (subject to the right to require a certificate from an officer of such financial institution stating that the investment in the Fund was not made at the direction of any third party).

3. Each of the series of the Trust propose to distribute their shares pursuant to separate plans of distribution adopted pursuant to Rule 12b–1 under the 1940 Act (collectively, the "Rule 12b–1 Plans") and to impose a CDSL with respect to redemptions of shares purchased pursuant to such Rule 12b–1 Plans. EBI Income and EBI Equity have previously adopted a Rule 12b–1 Plan, and pursuant to the terms of the Prior Order, have imposed a CDSL. EBI Cash does not presently intend to adopt a plan of distribution under Rule 12b–1 under the Act; however, if shares of EBI Cash are acquired as a result of an exchange of shares from the other EBI Funds or the Trust and the shares tendered are subject to CDSL such charge will carry over to the EBI Cash shares being acquired. In its periodic review of the Rule 12b–1 Plans for EBI Income, EBI Equity and the Trust, the Trustees and Boards of Directors of each such Fund, as the case may be, will consider, among other things, the effect of the CDSL and the waiver thereof. Any subsequently created series of the Trust, the shares of which are issued and sold with a CDSL on substantially the same basis as the shares of beneficial interest in the existing series, will utilize distribution plans under Rule 12b–1 comparable to the Rule 12b–1 Plans referred to above.

4. The Trust proposes to offer its shares without an intial sales charge to investors and proposes to impose a CDSL on the proceeds of certain redemptions of the Trust's shares, and may pay such amounts to the Distributor. The CDSL will be imposed, except as noted below, if an investor makes a partial or complete redemption shares purchased under the Rule 12b–1 Plans. The CDSL will decline from 5% to 0% depending on the length of time the investments have been held by the investors. In no event could the amount of the CDSL, in the aggregate, ever exceed 5% of the lesser of (1) the net asset value of the shared redeemed, or (2) the total cost of such shares, No CDSL will be imposed when the investor redeems (1) amounts derived from increases in the net asset value per share of the Trust series, (2) shares with respect to which the Trust did not pay a commission on issuance (including shares acquired through reinvestment of dividend income and capital gains distributors), or (3) shares which, together with exchanged shares, have been held continuously for 30 months. The amount of any CDSL is calculated by determining the month in which the purchase payment which was the source of the investment being redeemed was made, and applying the appropriate percentage to the amount of the redemption subject to the charge.

5. Applicants further request approval of certain exchange offers under section 11(a) of the 1940 Act. The Trust proposed that shares of any of its series may be exchanged for shares of any of its other series or subsequent series, or for shares of any of the EBI Funds, all exchanges being at the respective net asset value of the shares being exchanged. No CDSL will be imposed at the time of such exchange, but a CDSL will be payable when an investor ultimatley redeems shares of the series of the Trust or EBI Funds acquired as a result of the exchange. Applicants also state that where shares of one Applicant have been exchanged for shares of another Applicant, the dates of the purchase of the shares of the Applicant exchanged into, for purposes of any future CDSL, are assumed to be the dates on which the shares given up in exchange were initially subject ot the Rule 12b–1 Plan. For purposes of determining the length of time shares have been help by an investor, shares held in EBI Cash which are subject to a CDSL will not be credited with the time such shares are held therein. In determining whether a CDSL is payable and, if so, the percentage charge applicable, it is assumed that, a redemption is made of shares not subject to the CDSL first and then of shares subject to the lowest CDSL.

6. The series of the Trust and the EBI Funds proposes to eliminate the waiver of the CDSL permitted under the Prior Order and set forth at paragraph 2 under item (2)(iv) above. That waiver applies to redemptions upon a change in control of a plan sponsor or the appointment of a new plan fiduciary of tax-exempt employee benefit plans. Such waiver would not be applicable under the amended order, but Applicants will continue to apply the waiver at item (2)(iv) with respect to those investors acquiring shares in EBI Equity and EBI Income prior to the time that the terms of the waiver to be permitted by the amended order are set forth in the current prospectuses of EBI Equity and EBI Income and mailed to all then current shareholders of such Funds.

Applicants' Legal Analysis

1. Applicants assert that the imposition of the CDSL and the right to waive it under certain circumstances is fair and is in the best interests of their shareholders. Applicants submit that the proposed CDSL permits shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of shares in the Funds. Applicants also point out that the CDSL will not apply to redemptions of shares held continuously for 30 months after the date of purchase, or to increases in the investor's account through reinvestment of dividend income and capital gains distributions or increases in net asset value per share.

2. Applicants further assert that granting the amendment to the Prior Order would not result in the abuses addressed by section 22(d) of the 1940 Act and will not result in unjust

discrimination among investors. Applicants assert that the waiver of the CDSL will apply only to highly limited categories of persons and would not create a widespread opportunity for investors to avoid the imposition of the CDSL to the detriment of the Funds. Applicants assert that it would be fair and equitable and in the public interest and in the interests of their shareholders for the CDSL to be waived on the redemptions described above since, in the waiver situations described, the redemption is normally unforeseen by the shareholder at the time of purchase.

Applicant's Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. Applicants will comply with the provisions of Rule 12b–1 (or any successor rule) under the 1940 Act, as such rule may be amended from time to time.

3. Applicants will comply with the provisions of proposed Rule 11a–3 under the 1940 Act to the extent applicable when, and if, such rule is adopted.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–2174 Filed 2–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16241; 812–6920]

RCS Emerging Growth Fund; Application

January 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: RCS Emerging Growth Fund ("Applicant").

Relevant 1940 Action Sections: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c–1 thereunder.

Summary of Application: Applicant seeks an order to permit it to assess a contingent deferred sales load ("CDSL") on certain redemptions of its current and future series of shares and to permit it to waive the CDSL under certain circumstances.

Filing Dates: The application was filed on November 18, 1987 and amended on December 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by ceretificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington DC 20549. Applicant, 30 Tower Lane, Avon Park South, Avon, Connecticut 06001.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst, (202) 272–2847 or Brion R. Thompson, Special Counsel, (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Massachusetts business trust which was organized on May 11, 1987, and registered as an open-end, diversified management investment company under the 1940 Act. Such registration became effective on November 30, 1987. Commencing in June 1987, Applicant offered shares in a private placement only to "accredited investors", as such term is defined in Regulation D under the Securities Act of 1933 ("1933 Act"). Applicant was organized and sponsored by Robertson, Colman & Stephens ("Distributor") which acts as its distributor and Applicant's investment adviser is Avon Capital Management Corporation, a wholly-owned subsidiary of the Distributor.

2. Applicant currently issues one series of shares, but other series or classes of shares may be offered and issued in the future. Applicant requests that the exemptive order extend to all series of its shares which may be issued from time to time and to any successor fund or funds organized as part of a series in the form of a single business trust or one or more individual corporations or trusts.

3. Applicant now intends to offer its shares to the public without any initial sales charge. Applicant further proposes that a CDSL will be deducted from the proceeds of certain redemptions of its shares purchased in such public offering, if the shareholder redeems the shares within three years of purchase. The amount of the CDSL will vary depending upon the length of time the redeemed shares have been held, but will never exceed three percent of the aggregate purchase payments made by the shareholder. The proceeds of the CDSL will be paid to the Distributor to help defray the costs of selling Applicant's shares.

4. In determining the applicability of a CDSL to each redemption, shares will be deemed in a manner designed to result in the lowest possible charge for the redeeming shareholder. Thus, in determining the rate of any applicable CDSL, it will be assumed that a redemption is made first of shares from categories on which no CDSL is imposed.

5. Thus, no CDSL would be imposed to the extent that the net asset value of the shares redeemed by a shareholder does not exceed (i) the current net asset value of shares purchased more than three years prior to the redemption ("Old Shares Value"), plus (ii) the current net asset value of shares purchased through reinvestment of dividends or capital gains distributions ("Reinvestment Shares Value"), plus (iii) increases in the net asset value of the shares above purchased with payments made during the preceding three years ("Appreciaiton Value"). The amount by which a redemption exceeds the total of Appreciation Value, Reinvestment Shares Value and Old Shares Value would be subject to the CDSL. The amount of the CDSL would depend on the number of years that have elapsed since the shareholder made the purchase payment from which an amount is being redeemed. The CDSL would be 3% in the first year, 2% in the second year and 1% in the third year. The amount if the CDSL (if any) would be calculated by first determining the date on which the purchase payment that is the source of the redemption was made, and then applying the appropriate percentage to the amount of the redemption subject to the CDSL. In determining whether a CDSL is payable and, if so, the percentage rate that is applicable, Applicant will assume that the purchase payment for shares from which a redemption is made is the earliest purchase payment from which a full redemption has not already been effected.

6. Under Applicant's proposal, the CDSL would be waived on the following redemptions: (i) Redemptions of shares in connection with certain post-retirement distributions and withdrawals from retirement plans (which are permitted to be made without penalty under the Internal Revenue Code of 1986) or following the death or disability of a shareholder, (ii) redemptions by employee benefit plans maintained for or by the employees of the Distributor, (iii) involuntary redemptions, and (iv) redemptions of any shares which were issued by the Applicant as part of the private placement of shares by the Applicant. Applicant intends, when providing for waivers from the CDSL, to meet all of the conditions set out in Rule 22d–1, of the 1940 Act.

7. Applicant currently finances, in part, its distribution expenses pursuant to a plan adopted in accordance with Rule 12b–1 under the 1940 Act (the "Plan"). Under the Plan, Applicant pays a fee at an annual rate of 1% to the Distributor, which may be used by the Distributor to cover expenses primarily intended to result in the sale of Applicant's shares. Amounts of shares redeemed, including amounts upon which the proposed CDSL is waived, will be removed from the base upon which the fee Applicant pays the Distributor under the Plan is calculated. In connection with its annual review of the Plan, Applicants' Board of Trustees will also consider the Distributor's receipts from the CDSL.

Applicant's Legal Analysis

1. Applicant submits that the imposition and waiver of the proposed CDSL is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The amount, computation and timing of the CDSL are designed to permit fair treatment of all shareholders, while permitting the Applicant to offer shareholders the advantage of having their purchase payments fully invested on their behalf immediately.

2. In each situation in which the Applicant proposes to waive the CDSL, the redeeming shareholder is either a member of a class of shareholders which is favored under the tax laws or securities laws or, in the case of involuntary redemptions and redemptions of shares which were part of the intitial private placement of shares issued by the Applicant, the amounts potentially involved will likley not be sufficiently large to impose any inequitable burden on the Applicant's other shareholders. The proposed waiver to all shares which were issued as part of Applicant's private placement is also justified on basic considerations of fairness. In order to encourage funding in its initial private placement under the 1933 Act, Applicant disclosed in the Private Placement Memorandum that it would waive the CDSL on redemptions of shares which were part of the first $6,00,000 of such shares issued by the Applicant. While authorized to accept up to $20,000,000 in private placement investments, Applicant anticipated receiving only a maximum of $6,000,000. The initial offering exceeded this amount and in order to be fair to all private placement investors, Applicant proposes to waive the CDSL on redemptions of all shares which were issued as part of the private placement.

Applicant's Conditions

If the requested order is granted, Applicant expressly consents to the following conditions:

1. Applicant will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. Applicant will comply with the provisions of Rule 12b–1 (or any successor rule) under the 1940 Act, as such rules may be amended from time to time.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–2172 Filed 2–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24567]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Western Massachusetts Electric Co. et al.

January 28, 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 22, 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 or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Western Massachusetts Electric Company (70–7488)

The Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, an electric utility subsidiary of Northeast Utilities, a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) promulgated thereunder.

WMECO proposes to issue and sell up to $75 million principal amount of its first mortgage bonds ("Bonds"), in one or more series, for time to time through December 31, 1989, Each series of Bonds will have a maturity of five to thirty years. The interest rate and the price of the Bonds will be determined by the competitive bidding procedures of Rule 50 of the Act, as modified by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623). In addition WMECO may amend its application to seek an exception from the competitive bidding requirements of Rule 50 so that it may offer the Bonds through a negotiated public offering or private placement.

Middle South Utilities, Inc. (70–7489)

Middle South Utilities, Inc. ("Middle South"), P.O. Box 61005, New Orleans, Louisiana 70161, a registered holding company, has filed a declaration pursuant to sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 thereunder.

Middle South proposes to amend its Restated Articles of Incorporation ("Charter") to increase the authorized number of shares of Middle South's common stock ("Common Stock") from 250,000,000 shares to 500,000,000 shares, all of which will be Common Stock having a par value of $5 per share. Of the 250,000,000 shares of Common Stock which Middle South is presently authorized to issue, 204,581,092 shares are presently outstanding.

Middle South also seeks authority to amend its By-Laws to broaden the right to indemnification of Middle South's directors, officers, employees, agents and representatives, to the fullest extent from time to time permitted by Florida law. Middle South also proposes to adopt certain procedural amendments to its By-Laws. Such amendments would (1) permit the board of directors to fix a record date, at not in excess of 60 days (nor less than 10 days in the case of a meeting of stockholders) prior to the date of the particular action, for making a determination of Middle South's stockholders; and (2) establish advance notice procedures with respect to (i) the nomination of candidates for election as directors of Middle South by stockholders of record ("Nomination Amendment"), and (ii) certain business to be brought before an annual meeting of stockholders of Middle South by stockholders ("Business Amendment").

Middle South proposes to take appropriate steps to submit to the stockholders for approval, at the Annual Meeting of Stockholders to be held on May 20, 1988, the proposals to amend the Charter to increase authorized Common Stock and to amend the By-Laws to broaden rights to indemnification and to change the provisions regarding record dates. Middle South proposes to solicit proxies from its stockholders in connection with these amendments. The Nomination Amendment and the Business Amendment do not require stockholder approval and can be adopted by Middle South's Board of Directors, but will be included in the 1988 proxy solicitation materials for notification purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2170 Filed 2-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25290; File No. SR-NSCC-87-12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change on a Temporary Basis

I. Summary

On October 15, 1987, the National Securities Clearing Corporation ("NSCC") filed with the Commission, under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), a proposed rule change concerning the Mutual Fund Settlement, Entry and Registration Verification ("Fund/SERV") service. The proposed rule change would establish a new membership category for broker-dealer that only use Fund/SERV and new Fund/SERV clearing fund contribution requirements. The Commission published notice of the proposed rule change in the **Federal Register** on December 14, 1987, to solicit public comment.[1] No comments were received. This order approves the proposed rule change on a temporary basis for three months, through April 30, 1988.

II. Description

The proposed rule change would revise NSCC's rules to authorize a new category of broker-dealer membership, whose activities would be restricted exclusively to use of the Fund/SERV Service. The proposal also would add a questionnaire for broker-dealer applicants seeking Fund/SERV membership.

The proposed rule change also would revise NSCC's rules concerning Fund/SERV clearing fund contributions and allocating losses to that fund in the event of systems losses or member defaults. Those changes would affect all members using Fund/SERV, not just broker-dealers qualifying for Fund/SERV only services.

Under the proposed rule change, each NSCC member using Fund/SERV would be obligated to contribute $5,000 or $10,000 to the Fund maintained for the Fund/SERV system, if the member has daily Fund/SERV settlement debits of no more than $100,000, or $500,000, respectively. If the member's daily Fund/SERV debit items exceed $500,000, the member would be obligated to contribute $20,000 to the Fund/SERV Fund.

If NSCC suffers a loss or liability resulting from a member's default on obligations arising from Fund/SERV activity, NSCC would reverse debits and credits to the defaulting member to reduce its settlement obligations. NSCC would recover any remaining loss from the defaulting member's Fund/SERV deposit.[2] If that were insufficient to cover the loss, NSCC would follow its current loss recovery rules and procedures, *i.e.*, first use NSCC's retained earnings, then aggregate Fund/SERV deposits and, finally, the remainder of the Clearing Fund deposits allocated to other systems (*e.g.*, the continuous net settlement system). In that event, Fund/SERV members that used only Fund/SERV facilities would be liable for assessment only to the extent of their clearing fund requirement.

III. NSCC's Rationale

NSCC believes that the proposed Fund/SERV clearing fund requirements and the separate limited-use Fund/SERV broker-dealer membership category are consistent with the Act and will enhance the Fund/SERV service and encourage greater participation in a centralized settlement system for mutual fund transactions. Accordingly, NSCC believes the proposal will promote the prompt and accurate clearance and settlement of securities transactions and will not adversely affect NSCC's ability to safeguard securities and funds within its custody or control.

IV. Discussion

The Commission preliminarily believes that the proposed rule change is consistent with the Act and, accordingly, is approving the proposed rule change on a temporary basis, for a period of three months. During that time, it will be possible to measure the benefits accruing from lower Fund/SERV clearing fund contributions and limited member assessments.

NSCC does not guarantee member Fund/SERV activity. Thus, NSCC's proposal reflects its reliance on its ability to reverse debits and credits to a defaulting member's account to avoid potential losses.

NSCC's proposal would require Fund/SERV members to contribute $5,000–$20,000 to use this service. During the next three months, the Commission expects NSCC to monitor member Fund/SERV settlement activity, and report on the risk that Fund/SERV settlement debits and credits could not be reversed and fully-collected from other Fund/SERV system users.

V. Conclusion

On the basis of the foregoing, the Commission finds preliminarily that the proposed rule change is consistent with the Act and, in particular, with section 17A. The proposed rule changes would appear to increase the number of transactions that can be processed through central facilities in a safe and efficient manner.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NSCC-87-12) be, and hereby is, approved on a temporary basis through April 30, 1988.

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[1] *See* Securities Exchange Act Rel. No. 25175 (Dec. 4, 1987), 52 FR 47471.

[2] For a member who utilizes services other than Fund/SERV, NSCC, pursuant to the provisions of NSCC Rule 4, would look to the remainder of the defaulting member's Clearing Fund deposit to cover the loss after it exhausts the Fund/SERV deposit and before it took any other action.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 26, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2238 Filed 2-2-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 29, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Brush Wellman, Inc.
Common Stock, $1.00 Par Value (File No. 7-2036)

Ultimate Corporation
Common Stock, No Par Value (File No. 7-2037)

British Airways PLC
Definitive American Depositary Receipts (File No. 7-2038)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 22, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2239 Filed 2-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16242; (812-6550)]

The Germany Fund, Inc., Application

Date: January 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Germany Fund, Inc.

Relevant 1940 Act Sections: Exemption requested pursuant to section 10(f) from the provisons of section 10(f).

Summary of Application: Applicant seeks an order to permit it to purchase securities in underwritten public offerings in the Federal Republic of Germany ("Germany") in which affiliates of its investment adviser and manager participate as principal underwriters.

Filing Date: The application was filed December 4, 1986, and amended on October 16, 1987, and January 6, 1988. A third amendment will be filed during the notice period the substance of which is contained herein.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC. 20549; The Germany Fund, Inc., c/o Stephen K. West, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3033 or Brion Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant is registered under the 1940 Act as a diversified, closed-end management investment company. Applicant is designed for United States and non-German foreign investors wishing to participate in the German economy by means of a professionally managed diversified portfolio seeking long-term capital appreciation. To this end, Applicant pursues investments in equity and equity-linked securities of German companies which are either listed or approved for listing on one or more German stock exchanges, or admitted or approved for admission to regulated unlisted trading on such exchanges. Under normal market conditions, at least 65 percent of its total assets will be invested in such securities. In addition, Applicant may invest in Deutsche mark ("DM") denominated bonds issued by the Federal Republic of Germany, the German Federal Railways and Post Office, as well as in DM-denominated debt instruments issued by private and public entities, including multinational lending institutions and supranational institutions. For temporary defensive purposes, Applicant may also invest in U.S. dollar and DM-denominated money market instruments.

2. Applicant's investment adviser is Capital Management International GmbH of Deutsche Bank ("CMI"), an entity organized under the laws of Germany, and its manager is Deutsche Bank Capital Corporation ("DBCC"), a corporation organized under the laws of the State of New York. Both CMI and DBCC are wholly-owned subsidiaries of Deutsche Bank AG ("Deutsche Bank"), an entity organized under Germany law.

3. Pursuant to an Investment Advisory Agreement, CMI, in accordance with Applicant's stated investment objective, policies and restrictions, makes recommendations to DBCC with respect to Applicant's investments, and, upon instructions given by DBCC as to suitable securities for investment by Applicant, transmits purchase and sale orders and selects brokers and dealers to execute portfolio transactions on behalf of Applicant. Under a Management Agreement, DBCC acts as the corporate manager and administrator for Applicant and, subject to the supervision of Applicant's Board of Directors and pursuant to recommendations made by CMI, determines suitable securities for investment by Applicant.

4. Deutsche Bank is a member of all eight German stock exchanges and frequently acts as lead manager or co-

manager for underwritten public offerings of both debt and equity securities. Applicant has been advised that for the years 1984 through 1987, Deutsche Bank and its affiliates were lead manager or co-manager for 38 out of 77 initial public offerings of equity securities in Germany, representing approximately 71.6% of the approximately 10.13 billion DM raised in such offerings. Moreover, Deutsche Bank or its affiliates were members of virtually all underwriting syndicates for initial issues exceeding 3.5 million DM.

5. Regarding the disclosure available to prospective purchasers of German securities Applicant first notes that the German Commercial Code and Corporation Act require German corporations (whether or not listed on an exchange) to publish annual reports. The 1985 Law Regarding Financial Statements also calls for annual reports and, in the case of listed and certain other larger companies, interim earnings reports disclosing, among other things, all material facts and events occurring since the prior report. The disclosure contained in these reports for German companies approved for listing on an exchange or approved for regulated unlisted trading is similar to that provided by U.S. corporations in their filings under the Securities Exchange Act of 1934. Although public entities, such as the German Federal Government, Railways and Post Office, are not required to publish financial records under these laws, information of this type is available in the budgets and annual reports of such entities.

6. The German equity and equity-linked securities in which the Applicant's investment policy permits it to invest are listed or approved for listing on one or more of the eight German stock exchanges, or are admitted or approved for admission to regulated unlisted trading on such exchanges. In certain rare cases, Applicant may purchase securities which have been approved for listing or regulated unlisted trading but which have not been formally listed or admitted at the time of purchase. In such cases, the admissions committee of the relevant exchange will have approved the disclosure contained in the Listing Prospectus (or condensed memorandum, in the case of regulated unlisted trading) and such disclosure will have been completed and will be made available to investors. Generally, formal listing or admission will take place within two business days after purchase of the securities by Applicant.

7. The debt instruments in which Applicant may invest are listed on one or more of the German Stock Exchanges. For an official listing, the German Stock Exchange Law requires publication of a prospectus ("Listing Prospectus") which contains all information considered material to an evaluation of the securities to be listed. Those applying for listing on the German Stock Exchanges must provide latest annual financial statements with explanatory notes, including disclosure of any liabilities not shown therein and complete details of the issue to be listed.

8. Applications for admission of issues for regulated unlisted trading on German Stock Exchanges must contain essentially similar information as that required for official listing, but in a condensed form that may be submitted as a memorandum. Applications (to both listed and regulated unlisted trading) are reviewed by a committee of each stock exchange, which committee has the obligation under the German Stock Exchange Law to ensure that the public is provided with all information of a legal or factual nature which is legally required or otherwise considered necessary to make an informed judgment about the securities to be issued and not to admit the issue if the disclosure statement is incomplete.

9. If a Listing Prospectus pursuant to which securities have been admitted for official listing, or the memorandum pursuant to which securities are admitted for regulated unlisted trading on an exchange contains inaccurate statements which are material to the making of a judgment about the securities, the issuer and the exchange member sponsoring the issue (which, in the case of securities admitted for official listing, must be a bank) are jointly and severally liable to any buyer for damages resulting from the inclusion of such statements if such issuer or member knew or but for gross negligence should have known of the inaccuracy. The liability for damages cannot be avoided by stating that the information originated from third persons. Applicant represents that the degree of liability is the same for both listed and regulated unlisted securities in accordance with laws recently enacted in Germany.

Applicant's Legal Analysis

1. Because of the affiliations described above, CMI and DBCC are "affiliated persons" of Deutsche Bank within the meaning of section 2(a)(3) of the 1940 Act. Absent the requested exemption, section 10(f) of the 1940 Act prohibits Applicant from purchasing securities in primary offerings from any underwriting syndicate in which Deutsche Bank or its affiliates participate as principal underwriters because Deutsche Bank is an affiliated person of DMI and DBCC.

2. Applicant cannot satisfy one of the conditions of Rule 10f-3 under the 1940 Act, which would permit the purchase of securities in circumstances otherwise prohibited by Section 10(f) of the 1940 Act. Rule 10f-3(a)(1) provides that the securities to be purchased be part of an issue registered under the Securities Act of 1933 ("1933 Act"). The securities offerings in Germany in which Applicant will participate are not required to be and will not be registered under the 1933 Act.

According to the application, the price for German securities when initially offered through an underwriting syndicate is generally more favorable than that available if Applicant were to purchase such securities in the secondary market. Because Applicant is unable to satisfy all of the conditions of Rule 10f-3, unless the requested order is granted it will be precluded from purchasing German securities at the more favorable initial offering price in offerings where Deutsche Bank or its affiliates participate as principal underwriters.

3. In support of the requested relief, Applicant asserts that the disclosure required by the German Commercial Code, Corporation Act, Law Regarding Financial Statements and German Stock Exchange Law and regulations thereunder, although not as comprehensive in some respects as that required by U.S. laws, provide significant disclosure in connection with the issuance of securities, the level of such disclosure is the substantial equivalent to that required by the 1933 Act for the purpose of Rule 10f-3(a)(1). Applicant also asserts that the disclosure provided by German issuers is sufficient in order to provide CMI with the information necessary to make informed investment decisions, and that CMI is both familiar with and capable of evaluating this disclosure. Further, Applicant points out that its shareholders will be protected by the Underwriters' and issuers' liability prescribed by the German Stock Exchange Law for losses resulting from reliance on a misleading Listing Prospectus or memorandum in the case of regulated unlisted issues.

4. Applicant submits that, given the significant role of Deutsche Bank and its affiliates as principal underwriters of public offerings in Germany, Applicant's shareholders may be seriously prejudiced in the absence of the requested relief. In this regard it is submitted that Applicant might find it difficult to purchase the amount and

types of securities needed to achieve its investment objective of long-term capital appreciation unless it can purchase at the lower initial offering price. Accordingly, Applicant concludes that the granting of the requested exemptive order is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

Applicant expressly consents to the following conditions with respect to the requested order:

Applicant undertakes that it will purchase securities in underwritten public offerings in Germany in which Deutsche Bank or its affiliates participate as principal underwriters only if (i) the securities purchased are listed or approved for listing or, admitted or approved for admission to regulated unlisted trading on one or more of the German stock exchanges and (ii) with the exception of paragraph (a)(1) of Rule 10f-3, all other conditions of Rule 10f-3 are satisfied.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2240 Filed 2-2-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0189]

DGC Capital Co.; Surrender of License

Notice is hereby given that DGC Capital Company (DGC), 525 Lake Avenue South, Duluth, Minnesota 55802, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). DGC was licensed by the Small Business Administration on October 29, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on January 25, 1988, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 28, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-2246 Filed 2-2-88; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0209]

Raffensperger Hughes Venture Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, et seq.) has been filed by Raffensperger Hughes Venture Corp. (RHV), 20 North Meridian Street, Indianapolis, Indiana 46204 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
L. Gene Tanner, 6215 Old Orchard Road, Indianapolis, IN 46226.	Chairman	
Russell Breeden III, 7878 Eagle Creek, Overlook Drive, Indianapolis, IN 46254.	Director	
Robert H. Shortle, 11904 Eden Glen Drive, Carmel, IN 46032.	Director, President.	
Keith R. Faller, 530 East 58th Street, Indianapolis, IN 46220.	Director	
Samuel B. Sutphin II, 422 North College Ave., Indianapolis, IN 46202.	Director, Vice President.	
Richard Maurer, 12575 Town Road, Carmel, IN 46032.	Director, Vice President, Secretary, Treasurer.	
Raffensperger, Hughes & Co., Inc., 20 North Meridian St., Indianapolis, IN 46204.	Investment Advisor/ Manager.	100
Associated Group, Inc. d/b/a Regional Marketing, Inc. ("RMI"), 120 West Market St., Indianapolis, IN 46204.	Parent of Raffensperger.	
Associated Insurance Companies, Inc. ("Associated"), 120 West Market St., Indianapolis, IN 46204.	Parent of RMI	

The Applicant, RHV, and Indiana Corporation will begin operations with $1,000,000 paid in capital and paid in surplus. RHV will conduct its activities primarily in the State of Indiana but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416. A copy of this notice shall be published in a newspaper of general circulation in the Indianapolis, Indiana area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 28, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-2247 Filed 2-2-88; 8:45 am]

BILLING CODE 8025-01-M

Federal Aviation Administration

Grant Assurances and Agreement for Airport Improvement Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of grant assurances to be used in the Airport Improvement Program.

SUMMARY: This notice provides copies of the grant assurance and grant agreement which will be used in the Airport Improvement Program after December 30, 1987.

DATE: These grant assurances and agreement will be used on and after December 30, 1987.

Background: Under the provisions of *The Airport and Airway Improvement Act of 1982* as amended by *The Airport and Airway Safety and Capacity Expansion Act of 1987*, as a condition of approval of a grant application, the Secretary must receive certain assurances from the sponsor (applicant). These assurances are submitted as Part V of the application for Federal assistance. The FAA has reviewed the assurances currently being used and has

revised them to reflect the requirements of the 1987 Act.

Two sets of assurances are included in this notice. The first set appearing in grants as FAA Form 5100–100 (1–88) contains assurances to be made by airport sponsors in their applications requesting funds for airport development, airports planning and noise program implementation and by planning agencies in their applications requesting funds for integrated airport system planning. The second set appearing in grants as FAA Form 5100–100.1 (1–88) contains assurances to be made by sponsors in their application requesting funds for noise program implementation when the sponsor does not own or operate the airport.

The assurances, submitted with the application for assistance under the Airport Improvement Program, are incorporated into the grant agreement by reference. For this reason, the grant agreement appearing as FAA Form 5100–37 (1–88) is also included as part of this notice. As need dictates, the assurances published herein may be amended to reflect new Federal requirements, or to resolve problems arising in the grant program. Notice of any such changes proposed will be published in the Federal Register and opportunity will be provided for comment by the public.

FOR ADDITIONAL INFORMATION CONTACT: Mr. Benedict D. Castellano, APP–510, Office of Airport Planning and Programming (Room 618), Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, Telephone (202) 267–8822.

Issued in Washington, DC on January 22, 1988.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

Part V—Assurances—Airport and Planning Agency Sponsors

A. General

1. These assurances shall be complied with in the performance of the following grant agreements:

a. Airport development, airport planning, and noise program implementation grants to airport sponsors.

b. Integrated airport system planning grants to planning agencies.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or the Aviation Safety and Noise Abatement Act of 1979. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport, the term "private sponsor" means a private owner of a public-use airport and the term "sponsor" includes public agency sponsors and private sponsors.

3. These assurances also are required to be submitted as part of the project application by a sponsor which is both a public agency and a planning agency requesting funds for integrated airport system planning under the provisions of the Airport and Airway Improvement Act of 1982, as amended.

4. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability

1. *Airport Development or Noise Program Implementation Projects Undertaken by a Public Agency Sponsor.* The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise program implementation project, or throughout the useful life of the project items installed within a facility under a noise program implementation project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurance against exclusive rights or the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be as specified in the assurance.

2. *Airport Development or Noise Program Implementation Projects Undertaken by a Private Sponsor.* The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of facilities developed or equipment acquired under an airport development or noise program implementation project shall be no less than 10 years from the date of the acceptance of Federal aid for the project.

3. *Airport Planning Undertaken by a Sponsor.* Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. *Sponsor Certification.* The sponsor hereby assures and certifies, with respect to this grant that:

1. *General Federal Requirements.* It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Federal Aviation Act of 1958—49 U.S.C. 1301, *et seq.*

b. Davis-Bacon Act—40 U.S.C. 276(a), *et seq.*[1]

c. Federal Fair Labor Standards Act—29 U.S.C. 201, *et seq.*

d. Hatch Act—5 U.S.C. 1501, *et seq.*[2]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—42 U.S.C. 4601, *et seq.*[1] [2]

f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f). [1]

g. Archeological and Historic Preservation Act of 1974—16 U.S.C. 469 through 469C.

h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4012a.[1]

i. Rehabilitation Act of 1973—29 U.S.C. 794.

j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d through d–4.

k. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, *et seq.*

l. Age Discrimination Act of 1975—42 U.S.C. 6101, *et seq.*

m. Architectural Barriers Act of 1968—42 U.S.C. 4151, *et seq.*[1]

n. Airport and Airway Improvement Act of 1982, as amended 49 U.S.C. 2201, *et seq.*

o. Powerplant and Industrial Fuel Use Act of 1978—Section 403—42 U.S.C. 8373.[1]

p. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, *et seq.*[1]

q. Copeland Antikickback Act—18 U.S.C. 874.[1]

r. National Environmental Policy Act of 1969—42 U.S.C. 4231, *et seq.*[1]

s. Endangered Species Act—16 U.S.C. 668(a), *et seq.*[1]

t. Single Audit Act of 1984—31 U.S.C. 7501, *et seq.*[2]

u. Merchant Marine Act, 1936—42 U.S.C. 1241(b).[1]

Executive Orders

Executive Order 12372—Intergovernmental Review of Federal Programs.

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[1] These laws do not apply to planning projects.

[2] These laws do not apply to private sponsors.

Executive Order 11246—Equal Employment Opportunity.

Federal Regulations

a. 49 CFR Part 21—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs.

c. 49 CFR Part 25—Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Progams.

d. 49 CFR Part 27—Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

e. 49 CFR Part 29—Debarments, Suspensions, and Voluntary Exclusions.

f. 29 CFR Part 1—Procedures for Predetermination of Wage Rates.

g. 29 CFR Part 3—Contractors or Subcontractors on Public Buildings or Public Works Financed in Whole or Part by Loans or Grants from U.S.

h. 29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.

i. 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted Contracting Requirements).

j. 14 CFR Part 150—Airport Noise Compatibility Planning.

k. 46 CFR Part 381—Cargo Preference—U.S. Flag Vessels.

Office of Management and Budget Circulars

a. A–87—Cost Principles Applicable to Grants and Contracts with State and Local Governments.*

b. A–102— Uniform Requirements for Assistance to State and local Governments.*

c. A–128—Audits of State and Local Governments.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

2. *Responsibility and Authority of the Sponsor.*

a. *Public Agency Sponsor:* It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. *Private Sponsor:* It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative, and shall in writing direct and authorize that person of file this application, including all understandings and assurances contained therein; to act in connection with the application; and to provide such additional information as may be required.

3. *Sponsor Fund Availablity.* It has sufficient funds available for the portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. *Good Title.* It holds good title, satisfactory the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

For noise program implementation projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. *Preserving Rights and Powers.*

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify and outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise program implementation project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under the Airport and Airway Improvement Act of 1982 to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions and assurances contained in this grant agreement.

c. For all noise program implementation projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise program implementation project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise program implementation projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor of an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance with the Airport and Airway Improvement Act of 1982, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such

*OMB Circulars A–87 and A–102 contain requirements for state and local governments receiving Federal assistance. Any requirement levied upon state and local governments by those two circulars shall also be applicable to private sponsors receiving Federal Assistance under the Airport and Airway Improvement Act of 1982, as amended.

arrangement also requires compliance therewith.

6. *Consistency with Local Plans.* The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. For noise program implementation projects, other than land acquisition, to be carried out on property not owned by the airport and over which property another public agency has land use control or authority, the sponsor shall obtain from each such agency a written declaration that such agency supports that project and the project is reasonably consistent with the agency's plans regarding the property.

7. *Consideration of Local Interest.* It has given fair consideration to the interest of communities in or near which the project may be located.

8. *Consultation with Users.* In making a decision to undertake any airport development project under the Airport and Airway Improvement Act of 1982, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. *Public Hearings.* In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community. It shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary.

10. *Air and Water Quality Standards.* In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

11. *Local Approval.* In projects involving the construction or extension of any runway at any general aviation airport located astride a line separating two counties within a single state, it has received approval for the project from the governing body of all villages incorporated under the laws of that state which are located entirely within five miles of the nearest boundary of the airport.

12. *Terminal Development Prerequisities.* For projects which include terminal development at a public airport, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 612 of the Federal Aviation Act of 1958 and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning or deplaning area of such airport to passengers enplaning or deplaning from aircraft other than air carrier aircraft.

13. *Accounting System, Audit, and Recordkeeping Requirements.*

a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the U.S. General Accounting Office publication entitled *Guidelines for Financial and Compliance Audits of Federally Assisted Programs.*

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

14. *Minimum Wage Rates.* It shall include, in all contracts in excess of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. *Veterans Preference.* It shall include, in all contracts for work on any projects funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. *Conformity to Plans and Specifications.* It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval by the Secretary, shall be incorporated into this grant agreement. Any modifications to the approved plans, specifications, and schedules shall also be subject to approval by the Secretary and incorporation into the grant agreement.

17. *Construction Inspection and Approval.* It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms with the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. *Planning Projects.* In carrying out planning projects:

a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.

b. It will furnish the Secretary the with such periodic reports as required pertaining to the planning project and planning work activities.

c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. *Operation and Maintenance.*

a. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for nonaeronautical purposes must first be approved by the Secretary. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenace and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.

In furtherance of this assurance, the sponsor will have in effect at all times arrangements for—

(1) Operating the airport's aeronautical facilities whenever required;

(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitable operate and maintain noise program implementation items that it owns or controls upon which Federal funds have been expended.

20. *Hazard Removal and Mitigation.* It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. *Compatible Land Use.* It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. *Economic Nondiscrimination.*

a. It will make its airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical uses.

b. In any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor—

(1) To furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) To charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and which utilize similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory carriers and nonsignatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classifications or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.

g. In the event the sponsor itself exercise any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaries of the sponsor under these provisions.

h. The sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by

all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. *Exclusive Rights.* It will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply: (1) It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and (2) if allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982.

24. *Fee and Rental Structure.* It will maintain a fee and rental structure consistent with Assurance 22 and 23, for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate base in establishing fees, rates, and charges for users of that airport.

25. *Airport Revenue.* If the airport is under the control of a public agency, all revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982 by the owner or operator of the airport, or provisions enacted before September 3, 1982 in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

26. *Reports and Inspections.* It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request. For airport development projects, it will also make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request. For noise program implementation projects, it will also make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

27. *Use of Government Aircraft.* It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed by the sponsor and the using agency, substantial use of an airport by government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that—

a. Five (5) or more government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of government aircraft is 300 or more, or the gross accumulative weight of government aircraft using the airport (the total movements of government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. *Land for Federal Facilities.* It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. *Airport Layout Plan.*

a. It will keep up to data at all times an airport layout plan of the airport showing: (1) Boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plan and and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport

layout plan. The sponsor will not make or permit any changes or alterations in the airport or in any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport.

b. If a change or alteration in the airport or its facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested by the Secretary: (1) Eliminate such adverse effect in a manner approved by the Secretary, or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

30. *Civil Rights.* It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form or personal property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) The period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possession of the property.

31. *Disposal of Land.*

a. For land purchased under grant before, on, after December 30, 1987 for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.

b. For land purchased for airport purposes (other than noise compatibility) under grant before, on or after December 30, 1987, it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value. That portion of the proceeds of such disposition, which is proportionate to the United States share of the cost of acquisition of such land will be paid to the Secretary for deposit in the Trust Fund.

C. Disposition of such land under a. and b. above will be subject to the retention or reservation on any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport.

32. *Engineering and Design Services.* It will award each contract, or subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. *Foreign Market Restrictions.* It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. *Policies, Standards, and Specifications.* It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed below, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

Number	Subject
70/7460-1G	Obstruction Marking and Lighting.
150/5100-14	Architectural, Engineering and Planning Consultant Services for Airport Grant Projects.
150/5200-31	Airport Winter Safety and Operations.
150/5210-5B	Painting, Marking, and Lighing of Vehicles Used on an Airport.
150/5210-7B	Aircraft Fire and Rescue Communications.
150/5210-14	Airport Fire and Rescue Personnel Protective Clothing.
150/5210-15	Airport Rescue and Firefighting Station Building Design.
150/5220-4A	Water Supply Systems for Aircraft Fire and Rescue Protection.
150/5220-10	Guide Specification for Water/Foam Type Aircraft Fire and Rescue Trucks.
150/5220-11	Airport Snowblower Specification Guide.
150/5220-12	Airport Snowsweeper Specification Guide.
150/5220-13A	Runway Surface Condition Sensor—Specification Guide.
150/5220-14A	Airport Fire and Rescue Vehicle Specification Guide.
150/5220-15	Buildings For Storage and Maintenance of Airport Snow Removal and Ice Control Equipment: A Guide.
150/5220-16	Automated Weather Observing Systems (AWOS) for Non-Federal Applications.
150/5300-4B	Utility Airports—Air Access to National Transportation.
150/5300-12	Airport Design Standards—Transport Airports.
150/5320-5B	Airport Drainage.
150/5320-6C	Airport Pavement Design and Evaluation.
150/5320-12A	Methods for the Design, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces.
150/5320-14	Airport Landscaping for Noise Control Purposes.
150/5325-4	Runway Length Requirements for Airport Design.
150/5340-1E	Marking of Paved Areas on Airports.
150/5340-4C	Installation Details for Runway Centerline Touchdown Zone Lighting Systems.
150/5340-5B	Segmented Circle Airport Marker System.
150/5340-14B	Economy Approach Lighting Aids.
150/5340-17B	Standby Power for Non-FAA Airport Lighting Systems.
150/5340-18B	Standards for Airport Sign Systems.
150/5340-19	Taxiway Centerline Lighting Systems
150/5340-21	Airport Miscellaneous Lighting Visual Aids
150/5340-23A	Supplemental Wind Cones
150/5340-24	Runway and Taxiway Edge Lighting System.
150/5340-27A	Air-to-Ground Radio Control of Airport Lighting Systems.
150/5345-3D	Specification for L-821 Panels for Remote Control of Airport Lighting.
150/5345-5A	Circuit Selector Switch.
150/5345-7D	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits.
150/5345-10E	Specification for Constant Current Regulators and Regulator Monitors.
150/5345-12C	Specification for Airport and Heliport Beacon.

Number	Subject
150/5345-13A	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits.
150/5345-26B	Specification for L-823 Plug and Receptacle, Cable Connectors.
150/5345-27C	Specification for Wind Cone Assemblies.
150/5345-28D	Precision Approach Path Indicator (PAPI) Systems.
150/5345-39B	FAA Specification L-853, Runway and Taxiway Centerline Retroreflective Markers.
150/5345-42B	FAA Specification L-857, Airport Light Bases, Transformer Houses, and Junction Boxes.
150/5345-43C	Specification for Obstruction Lighting Equipment.
150/5345-44D	Specification for Taxiway and Runway Signs.
150/5345-45	Lightweight Approach Light Structure.
150/5345-46A	Specification for Runway and Taxiway Light Fixtures.
150/5345-47	Isolation Transformers for Airport Lighting Systems.
150/5345-49A	Specification L-854, Radio Control Equipment.
150/5345-50	Specification for Portable Runway Lights.
150/5345-51	Specification for Discharge-Type Flasher Equipment.
150/5370-6A	Construction Progress and Inspection Report—Federal-Aid Airport Program.
150/5370-10	Standards for Specifying Construction of Airports
150/5370-11	Use of Nondestructive Testing Devices in the Evaluation of Airport Pavements.
150/5370-12	Quality Control of Construction for Airport Grant Projects.
150/5390-1B	Heliport Design Guide.

Part V—Assurances—Noise Program Implementation Projects Undertaken by Non Airport Sponsors

A. *General*

1. These assurances shall be complied with in the performance of grant agreements for noise program implementation projects undertaken by sponsors that are not proprietors of the airport which is the subject of the noise compatibility program.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of the Airport and Airway Improvement Act of 1982 as amended and the Aviation Safety and Noise Abatement Act of 1979. Sponsors are units of local government in the areas around the airport which is the subject of the noise compatibility program.

3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. *Duration.* The terms, conditions, and assurances of the grant agreement shall remain in full force and effect throughout useful life of the facilities developed or equipment acquired or throughout the useful life of the items installed within a facility under this project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no time limit on the duration of the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be as specified in the assurance.

C. *Sponsor Certification.* The sponsor hereby assures and certifies, with respect to this grant that:

1. *General Federal Requirements.* It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Federal Aviation Act of 1958—49 U.S.C. 1301, *et seq.*

b. Davis-Bacon Act—40 U.S.C. 276(a), *et seq.*

c. Federal Fair Labor Standards Act—29 U.S.C. 201, *et seq.*

d. Hatch Act—5 U.S.C. 1501, *et seq.*

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—42 U.S.C. 4601, *et seq.*

f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f).

g. Archeological and Historic Preservation Act of 1974—16 U.S.C. 469 thorugh 469C.

h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4012a.

i. Rehabilitation Act of 1973—29 U.S.C. 794.

j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d through d-4.

k. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, *et seq.*

l. Age Discrimination Act of 1975—42 U.S.C. 6101, *et seq.*

m. Architectural Barriers Act of 1968—42 U.S.C. 4151, *et seq.*

n. Airport and Airway Improvement Act of 1982, as amended 49 U.S.C. 2201, *et seq.*

o. Powerplant and Industrial Fuel Use Act of 1978—Section 403—42 U.S.C. 8373.

p. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, *et seq.*

q. Copeland Antikickback Act—18 U.S.C. 874.

r. National Environmental Policy Act of 1969—42 U.S.C. 4321, *et seq.*

s. Endangered Species Act of 1973—16 U.S.C. 668(a), *et seq.*

t. Single Audit Act of 1984—31 U.S.C. 7501, *et seq.*

u. Merchant Marine Act, 1936—42 U.S.C. 1241(b).

Executive Orders

Executive Order 12372—Intergovernmental Review of Federal Programs

Executive Order 11246—Equal Employment Opportunity

Federal Regulations

a. 49 CFR Part 21—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs.

c. 49 CFR Part 25—Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs.

d. 49 CFR Part 27—Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance.

e. 49 CFR Part 29—Debarments, Suspensions and Voluntary Exclusions.

f. 29 CFR Part 1—Procedures for Predetermination of Wage Rates.

g. 29 CFR Part 3—Contractors or Subcontractors on Public Buildings or Public Works Financed in Whole or Part by Loans or Grants from U.S.

h. 29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.

i. 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted Contracting Requirements).

j. 46 CFR Part 381—Cargo Preference—U.S. Flag Vessels.

k. 14 CFR Part 150—Airport Noise Compatibility Planning.

Office of Management and Budget Circulars

a. A-87—Cost Principles Applicable to Grants and Contracts with State and Local Governments.

b. A-102—Uniform Requirements for Assistance to State and Local Governments.

c. A-128—Audits of State and Local Governments.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars

are incorporated by reference in the grant agreement.

2. *Responsibility and Authority of the Sponsor.* It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

3. *Sponsor Fund Availability*

a. It has sufficient funds available for that portion of the project costs which are not to be paid by the United States.

b. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. *Good Title.* For projects to be carried out on the property of the sponsors, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. *Preserving Rights and Powers.*

a. It will not enter into any transaction, or change thereto, or take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under the Airport and Airway Improvement Act of 1982 to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions and assurances contained in this grant agreement.

c. For all noise program implementation projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise program implementation project. That agreement and changes thereto must be approved in advance by the Secretary.

d. For noise program implementation projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary.

6. *Consistency with Local Plans.* The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. For noise program implementation projects to be carried out on property which is not owned by the sponsor and which is under the land use control or authority of a public agency other than the sponsor, the sponsor shall obtain from each agency a written declaration that such agency supports the project and the project is reasonably consistent with the agency's plans regarding the property.

7. *Consideration of Local Interest.* It has given fair consideration to the interest of communities in or near which the project may be located.

8. *Accounting System, Audit, and Recordkeeping Requirements.*

a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the U.S. General Accounting Office publication entitled *Guidelines for Financial and Compliance Audits of Federally Assisted Programs.*

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by the recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

9. *Minimum Wage Rates.* It shall include, in all contracts in excess of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

10. *Veterans Preference.* It shall include, in all contracts for work on any projects funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in section 515(c) (1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

11. *Conformity to Plans and Specifications.* It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval by the Secretary, shall be incorporated into this grant agreement. Any modifications to the approved plans, specifications, and schedules shall also be subject to approval by the Secretary and incorporation into the grant agreement.

12. *Construction Inspection and Approval.* It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms with

the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

13. *Operation and Maintenance.* It will suitably operate and maintain noise program implementation items that it owns or controls upon which Federal funds have been expended.

14. *Hazard Prevention.* It will protect such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) by preventing the establishment or creation of future airport hazards on property owned or controlled by it or over which it has land use jurisdiction.

15. *Compatible Land Use.* It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, it will not cause or permit any change in land use, within its jurisdiction that will reduce the compatibility, with respect to the airport, of the noise program implementation measures upon which Federal funds have been expended.

16. *Reports and Inspections.* It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request. It will also make records and documents relating to the project, and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

17. *Land for Federal Facilities.* It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land purchased under this grant agreement as the Secretary considers necessary or desirable for construction, operation and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

18. *Civil Rights.* It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) The period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possession of the property.

19. *Engineering and Design Services.* It will award each contract or subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

20. *Foreign Market Restrictions.* It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

21. *Disposal of Land.*

a. For land purchased under grant before, on, after December 30, 1987 for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.

b. Disposition of such land will be subject to the retention or reservation on any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport.

Department of Transportation, Federal Aviation Administration—Grant Agreement

Part 1—Offer

Date of Offer

Airport/Planning Area

Project No.

Contract No.

To: (herein called the "Sponsor")

From: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

Whereas, the Sponsor has submitted to the FAA a Project Application dated ———, for a grant of Federal funds for a project at or associated with the Airport/Planning Area which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

Whereas, the FAA has approved a project for the Airport or Planning Area (herein called the "Project") consisting of the following:

all as more particularly described in the Project Application.

Now therefore, pursuant to and for the purpose of carrying out the provisions of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, herein called the "Act," and/or the Aviation Safety and Noise Abatement Act of 1979, and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project.

The Offer is made on and subject to the following terms and conditions:

Conditions

1. The maximum obligation of the United States payable under this offer shall be $———. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of Section 512(b) of the Act, the following amounts are being specified for this purpose:

$——— for planning
$——— for airport development or noise program implementation.

2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the Act.

3. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

4. The sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurances which were made part of the project application.

5. The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the sponsor.

6. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the sponsor on or before ———, or such subsequent date as may be prescribed in writing by the FAA.

7. The sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or disbursed by the sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.

8. The United States shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION
(Name) ———
(Title) ———

Part II—Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this ——— day of ———, 19 .

———
(Name of Sponsor)
By ———
(SEAL) (Sponsor's Designated Official Representative)
Title ———
Attest: ———
Title: ———

CERTIFICATE OF SPONSOR'S ATTORNEY

I, ———, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of ———. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at ——— this —— day of ———, 19 .

———
Signature of Sponsor's Attorney

[FR Doc. 88-2193 Filed 2-2-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 28, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau or Alcohol, Tobacco and Firearms

OMB Number: 1512-0131
Form Number: ATF F 5400.14/5400.15, Part III
Type of Review: Extension
Title: Renewal of Explosives License or Permit
Description: This form is used for the renewal of explosives licenses and permits. It requires the repsonse to ten questions which establish the eligibility of the applicant to receive an explosives license or permit.
Respondents: Business or other for-profit, Small Businesses or organizations
Estimated Burden: 825 hours
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.

[FR Doc. 88-2229 Filed 2-2-88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 28, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0224
Form Number: 6248
Type of Review: Extension
Title: Annual Information Return of Windfall Profit Tax
Description: Form 6248 is used by purchasers of domestic crude oil to inform the producers of crude oil the amount of windfall tax that was paid with respect to the producer's interest. The IRS uses Form 6248 to determine if the correct amount of windfall profit tax was paid with respect to the producer's interest.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 1,337,950 hours

OMB Number: 1545–0387
Form Number: 4419
Type of Review: Revision
Title: Application to Report Information Returns on Magnetic Media
Description: 26 U.S.C. 6041 and 6042 require that all persons engaged in a trade or business and making payments of taxable income must file reports of this income with IRS. Payers wishing to file these returns on magnetic media must complete Form 4419 to receive authorization to file.
Respondents: State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Burden: 1,332 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88–2230 Filed 2–2–88; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 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 DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:08 p.m. on Thursday, January 28, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Matters relating to the possible failure of an insured bank; and (2) a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 29, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-2245 Filed 1-29-88; 4:45 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:08 a.m. on Friday, January 29, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4) and (c)(9)(B)).

Dated: January 29, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-2324 Filed 2-1-88; 3:45 pm]

BILLING CODE 6714-01-M

NATIONAL COUNCIL ON THE HANDICAPPED

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on the Handicapped. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Pub. L. 94-409).

DATES:

Feb. 8, 1988, 9:00 a.m. to 5:00 p.m.
Feb. 9, 1988, 8:00 a.m. to 4:00 p.m.
Feb. 10, 1988, 9:00 a.m. to 12:00 noon

LOCATION: Sheraton Grand Hotel, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrea Farbman, National Council on the Handicapped, 800 Independence Avenue, SW., Suite 814, Washington, DC 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on the Handicapped is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Pub. L. 95-602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. 98-221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Reports from Chairperson and Executive Director
Report on the Council's Personal Assistance Policy
Working Conference on the Council's Equal Opportunity Initiative (Tuesday, February 9th 8:00 a.m.-4:00 p.m.)
Presentation of "On the Threshold of Independence"
Reports from the Research, Adult Services, Children Services, and Public Affairs Committees
Discussion of unfinished and new business

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on the Handicapped.

Signed at Washington, DC, on January 27, 1988.

Lex Frieden,

Executive Director.

[FR Doc. 88-2263 Filed 2-1-88; 10:20 am]

BILLING CODE 6820-BS-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 1, 8, 15, and 22, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 1

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

Friday, February 12

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 15—Tentative

Thursday, February 18

2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 22—Tentative

Monday, February 22

2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting)

Tuesday, February 23

9:00 a.m.
Discussion/Possible Vote on Rancho Seco Restart (Public Meeting)

Wednesday, February 24

9:30 a.m.
Briefing on Sequoyah Restart (Public Meeting)
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: William Hill (202) 634–1410.

William M. Hill, Jr.,

Office of the Secretary.

January 28, 1988.

[FR Doc. 88–2244 Filed 1–29–88; 4:44 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 88-1]

Compulsory License for Cable Systems; Reporting of Gross Receipts

Correction

In rule document 88-1765 beginning on page 2493 in the issue of Thursday, January 28, 1988, make the following correction:

On page 2494, in the third column, in the second complete paragraph, in the ninth line, after "period" insert "prior to 1986-1".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8171]

Income Taxes; Treatment of Salvage and Reinsurance Under Section 832(b)

Correction

In rule document 87-30193 beginning on page 117 in the issue of Tuesday, January 5, 1988, make the following corrections:

1. On page 118, in the first column, in the first complete paragraph, in the last line "C1." should read "Cl.".

2. On the same page, in the second column, in the third complete paragraph, in the eighth line, "C1." should read "Cl."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-65-87]

Income Taxes; Treatment of Salvage and Reinsurance Under Section 832(b)

Correction

In proposed rule document 87-30194 appearing on page 153 in the issue of Tuesday, January 5, 1988, make the following correction:

In the first column, under **FOR FURTHER INFORMATION CONTACT**, the telephone number should read "(202) 566-3238".

BILLING CODE 1505-01-D

Federal Register

Wednesday
February 3, 1988

Part II

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Parts 230 and 325

Environmental Quality; Procedures for Implementing the National Environmental Policy Act (NEPA); Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 230 and 325

Environmental Quality; Procedures for Implementing the National Environmental Policy Act (NEPA)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: This final rule replaces the regulation (ER 200-2-2) issued by the U.S. Army Corps of Engineers on August 25, 1980, as amended on March 2, 1981, which has served as the Corps implementing regulation for NEPA (42 U.S.C. 4321 et seq.). This action is taken to comply more fully with the Council on Environmental Quality's (CEQ) Regulations for Implementing; the Procedural Provisions of NEPA (40 CFR Parts 1500-1508). Proposed revisions to the Corps regulation were published for public comment on January 11, 1984 (49 FR 1387-1399).

The purpose of this final rule is to clarify and streamline the Corps NEPA requirements on activities for Federal water resource development projects and related lands. In addition, the Corps NEPA regulation governing the Department of the Army's regulatory activities (33 CFR Part 325, Appendix B) has been modified to reflect judicial rulings subsequent to our previous regulation and to reduce unnecessary delays and paperwork consistent with the CEQ-NEPA regulations, recommendations of the Presidential Task Force on Regulatory Relief, and recommendations of CEQ.

EFFECTIVE DATE: March 4, 1988.

ADDRESS: Office of the Chief of Engineers, ATTN: CECW-RE, 20 Massachusetts Avenue NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Makinen, (202) 272-0166 for Part 230 and Ms. Janet O'Neill, (202) 272-0201 for Part 325, Appendix B.

SUPPLEMENTARY INFORMATION:

Classification

The Secretary of the Army has determined that this revision is not a "major" rule within the meaning of Executive Order (E.O.) 12291. This is because the revision will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governmental agencies; or (3) have significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprise in domestic or export markets.

The purpose and intended effect of this revision is to streamline the Corps NEPA procedures consistent with improved management techniques to reduce unnecessary delays and paperwork. This rule is also intended to make the regulation consistent with judicial rulings. No increased paperwork burden is imposed by the revision.

This revision was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Regulatory Analysis

Under E.O. 12291, the Department of the Army must determine if a regulation is "major" and, therefore, subject to a Regulatory Impact Analysis. Because the Department of the Army believes that this revision is not "major", it is not subject to such an analysis.

Background

On 11 January 1984, a notice of proposed rule 33 CFR Part 230, Environmental Quality, Procedures for Implementing the National Environmental Policy Act (NEPA), was published in the **Federal Register** (49 FR 1387-1399). A 60-day period for public review was provided. During this period, 44 letters of comment were received from a broad spectrum of interests including individuals, corporations, environmental groups, local and national associations, State, local and Federal agencies.

Overall response to the proposed rules varied widely with perceptions being divided clearly between natural resource conservation interests and the resource users and developers. Six commenters expressed unreserved approval of the regulation and twenty-three indicated strong support for streamlining NEPA procedures but recommended additional actions which would further streamline and simplify procedures. Nine respondents, while recognizing the stated purpose to streamline and reduce paperwork, questioned whether such streamlining and paperwork reduction would be achieved at the expense of other more important NEPA and CEQ mandates. Two such respondents stated that the proposal would undermine NEPA and another suggested that it would be counter productive with respect to delays, confusion and litigation.

It should be noted that many comments supported the proposed regulations. However, that support was not repeated on a paragraph-by-paragraph basis and is not repeated herein on that basis. The Army has considered and evaluated each of the comments received and has developed responses. Many comments resulted in corresponding changes to the rules. Conversely, some did not. Keeping in mind both points of view, the Corps has endeavored to further clarify and streamline the procedures where possible but also to reaffirm the environmental, action-forcing purposes of NEPA and the CEQ regulations. Additionally, the Environmental Protection Agency determined that the proposed regulation would have unsatisfactory impacts on the quality of the environment and referred the matter to CEQ on February 25, 1985. The major issues of the referral concerned the scope of the Corps NEPA review of regulatory actions, clarification of the purpose and need, elimination of the requirement to discuss alternatives for non-water dependent activities in an EA for a non-controversial regulatory action, and the proposed 50-page limit for the text of an EIS. CEQ published its findings and recommendations on the referral in the **Federal Register** on June 12, 1987 (52 FR 22517-22523). We have revised the final regulation to incorporate CEQ's recommendations and have adopted their suggested language on the scope of analysis issue that addresses the determination of the extent of cumulative Federal control and responsibility.

The following discusses the comments and Army's responses to the general and specific concerns expressed on the proposed rules. Copies of all written comments received have been provided to CEQ and are available for public inspection at the Office of the Chief of Engineers, Room 7119C, 20 Massachusetts Avenue, NW., Washington, DC. Copies of the final rule are also available upon request.

General Comments Main Text

One of the most frequent issues noted in the comments was that the regulation is difficult to use because excessive amounts of information have been deleted from the existing regulation and replaced with references to CEQ regulations and other Corps internal guidance. A review of the Corps existing regulations on NEPA procedures indicated that a complete revision was necessary because it contained too much material not directly pertinent to implementing NEPA requirements, was

too long, redundant in some cases, paraphrased or duplicated CEQ regulations, and contained agency informational guidance which is contained elsewhere in internal directives. This final rule reflects Army's efforts to reduce the length of the regulation by the use of appropriate references to CEQ regulations for implementing procedures, and to eliminate needless repetition. By the use of references the guidance in the CEQ regulation stands, and this final rule is intended to be used in conjunction with the CEQ regulation as a supplement. It does not modify the intent of CEQ regulations. The Corps will continue to develop and implement environmental protection procedures consistent with applicable laws and statutes while maintaining the environmental review responsibilities under NEPA. 40 CFR 1507.3 specifically prohibits agency regulations from paraphrasing CEQ–NEPA regulations or restating environmental policy. They are required to be procedural in nature only.

In addition, we have moved those portions of the regulation pertaining to regulatory actions (i.e. "Appendix B") to the regulations governing that program. Appendix B is now published at 33 CFR Part 325, Appendix B. We have reserved Appendix B at Part 230.

A number of commenters felt that the regulation is overly broad and open to varied interpretations with wide discretion given to district commanders. Specific examples cited as potential problem areas include actions normally requiring an EIS, emergency actions, inappropriate categorical exclusions, and determination of procedural requirements. We believe that these issues are adequately discussed in the specific comments section of the preamble which follows. In general, we have revised the specificity of several sections of the final regulation to be as responsive as possible to the concerns expressed. In addition, a provision has been added to require a periodic review of the Corps experience in the use of categorical exclusions to determine if modification of these exclusions is needed. The regulation reflects Army's policy to allow the district commander as much discretion as possible in carrying out the Civil Works mission consistent with statutory responsibilities and other essential considerations of national policy.

General Comments (Appendix B)

The majority of comments received on Appendix B focused on categorical exclusions, scope of analysis for NEPA documents, and the discussion of alternatives. The addition of a categorical exclusion paragraph is based on a review of the Corps regulatory experience over the past four years which has shown that considerable time and resources have been expended on preparing environmental assessments for proposed permit actions which do not individually or cumulatively cause significant environmental effects. The proposed rule lists the actions which fit this category. In the final rule we have modified the language covering these exclusions in response to comments to achieve more compatibility between the categorical exclusions for permit applicants and those for Corps projects and activities. In addition, we have deleted the categorical exclusion covering concrete structures and headwalls for intake and outfall pipes because the environmental sensitivity and potential impacts related to these types of actions should be evaluated through the EA process. Also, the procedures which would allow district commanders to authorize additional categorical exclusions has been deleted and replaced by a procedure which calls for a headquarters approval of proposed modifications to the list of categorical exclusions to achieve Corps-wide consistency. We believe that the Corps public interest review, section 404(b)(1) guidelines, and the existing coordination and certification requirements with concerned Federal, State and local governmental agencies provide adequate environmental safeguards for these types of minor actions. A requirement to prepare and process an EA for these types of actions would not, in and of itself, increase the consideration and evaluation of the significance of environmental effects and would only increase cost and time without any commensurate benefit to the decisionmaking process.

Because the "scope of analysis" issue has generated considerable interest and some confusion, it might be helpful to review the concepts involved. The Corps of Engineers inquiry begins with a permit application which is evaluated, usually resulting in the issuance of a permit, often with special conditions that modify the project, or permit denial. The Corps evaluation of an eventual action on the permit application is, by definition, the "Federal action" for NEPA purposes (see 40 CFR 1508.18(b)(4)). The "scope of analysis" issue arises when the application for a Corps permit covers only a part of a larger project (e.g., the application for a Corps permit for a pier which is part of a larger, upland oil refinery project). In such a case, the Corps must determine the "scope of analysis" which will guide all of our inquiries under NEPA; that is, what portion of the total project will the Corps cover in its EA describing the work, the range of environmental effects of that work, alternatives to the proposed work, etc. Based on the scope of analysis adopted, the Corps determines whether the proposed work would constitute a "major Federal action significantly affecting the quality of the human environment", i.e. whether an EIS must be prepared. As explained in the regulation, the scope of analysis the Corps will use for permit cases normally will cover the regulated activity (e.g., the pier) plus whatever other portions of the project the Corps determines to be within Federal control and responsibility for the particular case in question.

It is our intention to follow the judicial rulings clarifying the limits of Federal action for NEPA purposes when Federal agencies issue permits for private actions. NEPA requires Federal agencies to consider the direct and indirect consequences of Federal actions, not State or private actions. When the Federal action is the issuance of a 404 permit, then the activity which would be authorized by the permit is the subject of the NEPA document.

The Corps authorizes the discharge of dredged or fill material in 404 permits. Therefore, the activity the Corps studies in its NEPA document is the discharge of dredged or fill material. Similarly, under its Rivers and Harbors Act Section 10 authority, the Corps regulates work and structures in navigable waters of the United States. Therefore, the activities evaluated in the NEPA document are those subject to section 10 of the Rivers and Harbors Act. The same principle applies to Corps authorities under section 103 of the Ocean Dumping Act.

Although it specifies a broad range of impacts which must be considered, NEPA does not expand the authority of the Corps to either approve or disapprove activities outside waters of the United States. In other words, construction of the upland facility may proceed without a Corps permit. The only activity legally dependent on Corps action is the permitted activity. The Corps NEPA document should address all aspects of the activity within its jurisdiction.

We recognize, however, that in appropriate circumstances, the scope of analysis should be expanded to include portions of the project outside Corps jurisdiction. The circumstances under which the scope should be expanded beyond the limits of jurisdiction involve those cases where the Corps has sufficient control and responsibility for

the activities undertaken by the non-Federal parties so that the environmental impacts are essentially a product of Federal action.

The phrase "control and responsibility" is taken from judicial language but has proven difficult to articulate in regulations. As we gain case-specific field experience with the interpretation of the phrase "control and responsibility", it is our intention to further develop factors to be used as guidance to field officials in specific cases. Four factors have been developed from existing case law and are included in the regulation as examples of what typical factors might be.

Generally, in order to prevent the unwarranted situation where "the Federal tail wags the non-Federal dog", the scope of analysis would be confined to the environmental effects of only the activity requiring a Corps permit. One specific application of the rule adopted at paragraph 7b(2) of Appendix B of this regulation on scope of analysis arises when a pipeline or electric utility line requires a Corps permit to cross a navigable water of the United States. In that situation, only the specific activity requiring a Corps permit (i.e., the crossing) including the structures in the immediate vicinity which affect the location and configuration of the crossing, would be analyzed to determine whether the crossing would result in a significant environmental impact. The entire length of the pipeline or utility line should not be analyzed unless, in the judgment of the district commander, there is sufficient control and responsibility of the Corps of Engineers over the entire project to warrant an expanded analysis.

This example is taken from the Eighth Circuit's *Winnebago Tribes of Nebraska v. Ray* 621 F. 2d 269 (8th Cir., 1980), cert. denied, 449 U.S. 836 (1980), decision which addressed a situation where a power transmission line crossed a waterway. It was ruled that the Corps did not have control over the entire route of the power line so it was reasonable to limit its environmental review to the immediate vicinity of the crossing. As another example, in the Fifth circuit decision, *Save the Bay v. Corps of Engineers* 610 F. 2d 322 (5th Cir., 1980), the Corps did not review the environmental effects of an entire chemical plant even though the outfall structure from the plant needed a Corps permit. This was because the Corps deemed the outfall to be a minor feature of the overall project and not sufficient to "Federalize" the project; the Fifth Circuit upheld this determination. Also, there were alternatives available to the chemical company that would not require a Corps permit.

Because of the wide variety of Corps regulatory situations, the degree of Federal responsibility or interest varies. We have not attempted to define at what point there is sufficient Federal control or responsibility over the entire project to "Federalize" it for NEPA purposes. We have entrusted this decision to the district commander to be based on a reasonable evaluation of the case-specific factual situation. In response to comments from the public and governmental agencies, we have reworded this provision to state more clearly our intentions, and to ensure flexibility and discretion for the district commander.

The language of this section reflects the reduction of paperwork and unnecessary regulations consistent with the policy goals of the Administration and decisions of the Federal courts. This language also reflects the judgment of Army regarding certain examples to be considered by Corps project managers in determining the scope of analysis for NEPA documents prepared in connection with the regulatory program. Whatever portion of the project we choose to cover in the scope of analysis, that analysis will include all direct, indirect, and cumulative impacts.

The final rule on the "scope of analysis" issue adds another important requirement: whatever scope of analysis the Corps adopts for NEPA purposes for evaluation of impacts and alternatives must also serve as the scope of analysis for purposes of analyzing the expected benefits of a proposal. This rule is derived from the decision in *Sierra Club v. Siegler* 695 F. 2d. 957 (5th Cir., 1983).

The alternatives paragraph also generated numerous comments. The central point at issue was that the language in the proposed rule was read by some as limiting the Corps review of alternatives to those favorable to the applicant rather than requiring a review of a broad range of alternatives from a public interest perspective. The Corps position in developing the language in this paragraph was to consider alternatives which are practicable and feasible in light of the underlying purpose and need for the proposal which, on occasion, is limited to the applicant's purpose and need. It is our clear intent to examine all reasonable alternatives, including all public alternatives, if appropriate, but at the same time to not require costly and time-consuming evaluation of conjectural alternatives, the implementation of which would be remote and speculative.

We believe that we have interpreted correctly NEPA and CEQ regulations consistent with recent decisions of the Federal courts, while maintaining environmental responsibilities mandated by Congress. Once again, in response to public and agency comments, we have reworded this provision to clarify its intent and to insure that only reasonable (and that all reasonable) alternatives may be considered by the district commander.

We also received one general comment expressing concern about integration of the NEPA review, other environmental reviews, and permit requirements. Our intent in this regulation and those governing the Corps regulatory program (33 CFR Parts 320 through 330) is to emphasize the need for timely action by doing all environmental reviews concurrently with the processing and evaluation of the permit application. Step by step procedures are not specified because of the variation in types of reviews and regulatory actions.

Comments on Specific Sections

Section 230.3 References.

Comment: The listing of Corps regulations should include a title, other identifying information and the means of accessing each of the references cited. The 18 references listed are of little assistance to persons unfamiliar with the content or availability of internal Corps regulations.

Response: We recognize that the extensive list, without identification, would not mean much to an outside reviewer and have limited the list to those cited and have identified the references by title. The list of references should only be considered as an informational guide to useful documents with which a user may wish to be familiar and is not intended to be all-inclusive or incorporated by reference as part of the regulation.

Section 230.5 Responsible officials.

Comment: Three commenters suggested that the section in the existing regulation dealing with policy should not be deleted. They felt that it should be reinstated in the final regulation to establish a policy and guidance framework needed to interpret specific implementation procedures such as those dealing with alternatives and wetlands.

Response: 40 CFR 1507.3 requires that implementing regulations be confined to the development of implementing procedures and may not paraphrase CEQ–NEPA regulations. The Corps

regulation is so structured. The policies in NEPA and CEQ regulations continue to be this agency's policies. New § 230.5 notes the officials responsible for various environmental actions.

Section 230.6 Actions normally requiring an EIS.

Comment: Eight commenters noted that this section is confusing and may contradict the intent of NEPA. They noted that the degree of impact should determine whether an EIS is prepared, not some ill-defined geographic area, legislative status, judgmental standards or potential for litigation. In general, the terms used (major, significant) should be defined and specific criteria applicable to Corps projects and permit cases should be provided for district commander guidance.

Response: In drafting the January 1984, proposal, we attempted to classify typical Corps projects by degree of impact. However, we found that the impacts of specific types of projects vary so widely that such classifications would have too many exceptions to be meaningful. For example, a levee in a certain location or of a particular size may or may not have significant impacts depending upon many variables. The descriptions of such categorical exclusions would contain so many caveats as to be ineffective in providing useful guidance.

The most reasonable and concise manner in which to describe actions which normally do and do not require an EIS turned out to be general categories of legislative authority. These are broad categories which fit the generality and are intended to signal the public and the district commander what may be anticipated in normal circumstances.

Definitions of terms are those used in the CEQ–NEPA regulations. They are not further defined by this regulation in order to avoid unintended modifications to the CEQ–NEPA meanings.

Section 230.7 Actions normally requiring an EA but not necessarily an EIS.

Comment: Seven commenters provided similar or related comments on § 230.6.

Response: We believe that the response prepared for § 230.6 on actions normally requiring an EIS would apply generally to the comments raised concerning the use of EAs.

Section 230.8 Emergency actions.

Comment: The general concern expressed by four commenters was that the proposed regulation does not conform to the intent stated in the preamble to clarify that the district commanders are not excused from their environmental responsibilities in emergency situations.

Response: The final regulation has been revised to clarify the district commanders' requirements.

Section 230.9 Categorical Exclusions

Comment: The issue most frequently addressed in the comments was the addition of certain minor actions to be categorically excluded. There was concern for the need for a clearer restrictive definition of when a categorical exclusion would be used. Nearly every categorical exclusion was cited or questioned. Several commenters noted that certain categorically excluded actions could result in serious environmental effects. Also, several commenters suggested that the list of categorical exclusions be expanded. A common theme among the letters was that the categorical exclusions for the Corps projects and activities were more generous than for permit applicants, as reflected in 33 CFR Part 325, Appendix B.

Response: In developing the proposed regulation, Corps field offices furnished data based on four years of field experience showing minor actions that were addressed by EA/FONSI and never resulted in preparation of an EIS. We screened the incoming data and prepared the proposed list for Corps-wide consistency. Based on the comments received in response to the proposed rules and our continuing internal review, we have decided to delete or modify certain categorical exclusions.

We have revised the maintenance dredging exclusion to cover only minor actions using existing disposal sites. These recurring actions over the years have had an insignificant effect on the environment. Moreover, environmental safeguards are also provided by compliance requirements with the Clean Water Act, Coastal Zone Management, etc. The proposed exclusion covering the disposal of less than 50,000 cubic yards of uncontaminated dredged material at an upland site has been deleted because of objections to the difficulty in applying specific or limiting Corps-wide criteria for this type of placement. We agree that upland disposal site impacts may involve a broad spectrum of environmental or other factors which are not readily discernable and should not be approved without review.

We have deleted the exclusion for facilities at Corps projects such as hydropower facilities, which are subject to other Federal agency authority and are categorically excluded by that agency. Commentors point out that some of these actions could possibly have serious environmental and operational impacts which might be overlooked because review would be limited. We concur that a case by case environmental review of the proposed action would ensure that the integrity of the affected Corps project would not be compromised by the addition of these facilities.

We have consolidated the proposed lists of activities authorized by grants at Corps projects. Such activities, in order to be categorically excluded, must have been addressed in earlier Corps documentation.

Based on the comments we have also consolidated and modified the language concerning real estate grants for rights-of-way to categorically exclude only minor utility distribution and collection lines, including irrigation. Grants of leases or easements for other than minor electric transmission lines, oil and gas transmission lines, road and highway rights-of-way, lands fills, and sewage and water treatment facilities, have been added to the list of actions normally requiring an EA (§ 230.7(e) of the regulation). Grants for canals, ditches, dikes, retarding structures, etc. used in connection with fish and wildlife conservation and development programs have been deleted as a categorical exclusion.

We concur with comments that appropriate NEPA documentation should be accomplished for emergency projects constructed under section 14 and section 3 authority if time constraints render this practicable and have relocated these projects for procedural compliance under § 230.8 of the regulation. (Emergency Actions).

Some of the commenters suggested that many of the proposed categorical exclusions may have the potential to be environmentally damaging. We believe that the introductory paragraph to this section clearly puts the district commander on alert for circumstances which may dictate the need to prepare an EA or an EIS, and further, that categorical exclusion does not exempt an action from compliance with other Federal laws. While the possibility exists that under certain conditions an activity could cause a significant impact, we believe that such circumstances would be extremely rare, would be recognized and would be treated as exceptions to the categorical exclusion. Individual judgment on a case-by-case basis, as a result of the continuing environmental review process, is still necessary when deciding whether an individual activity in a categorical

exclusion grouping should have explicit environmental documentation. In addition, we have added a review requirement to assess the categorical exclusions and modify or delete them if future assessment indicates a need to do so.

Section 230.10 Environmental Assessment (EA)

Comment: One commenter noted that the statement of purpose of an EA is too narrowly defined, that part (b) requires corrective wording to better correspond to 40 CFR 1508.9, and that certain agency procedures have been deleted without explanation.

Response: Part (a) of this section has been revised to describe accurately the purpose of an EA. Also, part (b) has been modified to correspond to the wording in 40 CFR 1508.9.

We have deleted requirements beyond those in 40 CFR 1508.9. The EA will reflect the results of necessary environmental studies and analyses and required coordination or consultation activities in connection with a proposed action to provide the basis for determining whether to prepare an EIS or a finding of no significant impact (FONSI).

It is important that the reader understand that the term "environmental assessment" describes not only a document, but is also considered a process by which impacts or effects of a proposed action are identified and evaluated. This process is started at the outset of the consideration of a proposed action, continues with other technical studies (informal coordination, literature searches, site visits, etc.), and culminates in a determination whether an EIS or EA is required. Additional information on combining or integrating the EA into various Corps reports has been added.

Section 230.11 Finding of No Significant Impact (FONSI).

Comment: Several commenters noted inconsistencies between the preamble which states that the FONSI is the decision document of the responsible official and as such is not subject to review and comment through the coordination process, while the proposed rule calls for circulation and review of the EA and FONSI for certain Corps planning reports. Also, the Environmental Protection Agency (EPA) commented that the EA and FONSI for *all* Corps actions should be sent to EPA to allow that agency to carry out its authorities under sections 176(c) and 309 of the Clean Air Act, as amended.

Response: To eliminate the confusion over the circulation of the FONSI, we have modified the regulation by including certain specific procedural details covering various types of actions for which the 30-day review of the EA and draft FONSI applies, minor or routine actions which only require circulation of the notice of availability of the FONSI and operation and maintenance activities involving the discharge of dredged or fill material where the widely circulated public notice will note the FONSI determination.

Corps reports meeting the criteria set forth in 40 CFR 1501.4(e)(2) are always sent to EPA for a required 30-day review. We have deleted the requirement to provide EPA a 15-working day comment period for minor Corps actions falling below the criteria of 40 CFR 1501.4(e)(2) since the 15-day review is not required by regulations or statute and was merely the Corps own internal mechanism to double-check itself. Over the past four years, we have routinely provided these documents on minor actions to EPA for the 15-day review. Rarely, if ever, did EPA submit comments which would have altered the Corps final decision. Since EPA gets notice of availability of all these EA/FONSI documents and can request copies in appropriate instances, they will retain full review opportunity with significantly reduced paperwork flow. We recognize that EPA's review authority contained in section 309 of the Clean Air Act applies to those Federal agency actions specified in section 309 and we will comply with that statute.

Section 230.12 Notice of intent and scoping.

Sections 230.15 and 230.16 from the proposed regulation are combined in this paragraph for clarification and renumbered. Proposed § 230.12 is renumbered § 230.13.

Comment: Five commenters felt that the Corps should describe how it will implement the scoping requirements rather than referencing the CEQ regulations. They suggested that the language in the previous regulation be retained.

Response: A review of the language in the previous regulation indicated that much of the material duplicated existing guidance on integrating the EIS scoping process into the Corps public involvement program and, in some instances, paraphrased CEQ regulations. For this reason we believe that a reference to CEQ regulations which provides a complete discussion on agency scoping requirements should be sufficient. However, based on a review of the comments, we have expanded this paragraph to include additional guidance on how scoping will be implemented. CEQ's Information Memorandum of July 28, 1983, provides additional guidance and has been added as a reference. We have further modified this paragraph by incorporating the notice of intent requirements, as required by CEQ regulations (§ 1508.22), to consolidate Corps scoping guidance.

Comment: A few commenters questioned the use and availability of ER 200–2–1, an internal Corps regulation on preparing and processing notices of intent for publication in the **Federal Register**.

Response: We have rescinded ER 200–2–1 and incorporated it into this final rule as Appendix C for program continuity.

Section 230.13 Environmental Impact Statement (EIS).

This paragraph has been renumbered from § 230.12 in the proposal.

Comment: A number of commenters felt that restricting an EIS to 50 pages may be unrealistic and fail to comply with the requirements of NEPA, and that setting an arbitrary page limit could become an excuse for not providing adequate information needed for a meaningful review and adversely impact decisionmaking. Two commenters also noted that the requirement to circulate only summaries if the document exceeds 50 pages appears to conflict with the public disclosure intent of NEPA and the CEQ regulations. The commenters suggested adherence to the language contained in the CEQ regulations covering page limits and circulation of EIS summaries.

Response: The Corps does not intend to limit arbitrarily the amount of information available to the public or to circumvent the legal and technical requirements for an EIS. Rather, our intent is to provide the public with a clear and concise text of an EIS that does not contain unnecessarily lengthy or repetitive material, and that is therefore easily read and understood (the content of the "text" of an EIS is described at 40 CFR 1502.10 (d) through (g). In this light, the regulation has been rewritten to rely on the general page length recommendations provided by the CEQ regulations at 40 CFR 1502.07 with the provision that district commanders should strive for an EIS text that succinctly discusses the relevant NEPA issues in a legally and technically adequate manner. The new provision might, in some cases, result in NEPA documents that are substantially shorter than the CEQ's recommended lengths. The goal is to prepare NEPA

documents which better inform the decisionmakers and the public.

The Corps believes that concise documents, when carefully written, will enhance rather than detract from the public's ability to participate in the NEPA process. Circulation of EIS summaries is included within the Availability § 230.18.

Section 230.14 Record of decision and implementation.

This paragraph has been revised to shorten and clarify it, renamed, and renumbered from § 230.13.

Comment: A number of commenters noted that the monitoring and mitigation section found in earlier versions has been deleted from the proposed rules with the statement in the preamble that those subjects are appropriately discussed in CEQ regulations at 40 CFR Part 1505. These commenters felt that the agency should include their specific procedures for monitoring and mitigation as a necessary supplement to the CEQ regulations and recommended that the previous paragraph be retained in its entirety.

Response: In concurring with the commenters, we have reinserted mitigation and monitoring procedures into the final regulation at § 230.15 to eliminate any misconceptions that the Corps is decreasing the importance of mitigation. This paragraph appropriately references the CEQ regulations at §§ 1505.2(c) and 1505.3 as applicable agency guidance and has been reworded to clarify the term monitoring as that action necessary to insure adopted mitigation measures are implemented. An evaluation of the effectiveness of mitigation measures may be authorized or established as a project feature or a permit condition. This definition is provided to prevent the interpretation that for *each* and *every* mitigation measure there must be follow-on studies or evaluation to assess the effectiveness of the mitigation. Mitigation is an integral part of the Corps planning and regulatory programs. It is included in a project or as a permit condition in accordance with existing laws, current Federal regulations, and internal guidance. Mitigation measures developed for viable project alternatives, including the recommended plan or in the case of a regulatory permit action the "applicant's preferred alternative," are discussed in the EIS and summarized as part of the record of decision as required by 40 CFR Part 1505. The revised paragraph *Record of Decision and Implementation* has been rewritten to eliminate the paraphrasing of the CEQ regulations on the content of a Record of Decision and appropriately references the CEQ regulation as agency guidance (40 CFR 1505.2). The repetitious instructions on which Corps official should sign the Record of Decision for the various types of Corps projects has also been eliminated since it is appropriately discussed in the processing instruction in Appendix A and 33 CFR Part 325, Appendix B. The example included in the new regulation is intended only to illustrate the record of decision for a typical Corps action.

Section 230.16 Lead and Cooperating Agencies

This paragraph has been renumbered from 230.14.

Section 230.17 Filing Requirements

Paragraph (b) has been rewritten for clarification.

Section 230.18 Availability

This paragraph has been revised to allow fees to be charged in unusual circumstances for reproduction of NEPA documents in accordance with CEQ–NEPA regulations 40 CFR 1506.6(f).

Comment: One Federal agency noted that the preamble stated that this section would be modified to require preparation and circulation of an EIS summary in certain cases whereas the discussion actually appeared in 33 CFR 230.12. One reviewer suggested that the discussion on the EIS summary should appear in this section rather than 33 CFR 230.12.

Response: The incorrect citation in the preamble was noted. Circulation of the EIS summary in accordance with 40 CFR 1502.19 is included within the Availability paragraph.

Section 230.19 Comments

Comment: Three commenters noted that the effects of allowing agency discretion to respond to comments on a final EIS may result in the loss of opportunity for comments and positions to be known about the preferred alternative when the preferred alternative was not identified in the draft EIS. Also, the section on public involvement was deleted without explanation.

Response: In concurring with the comments, we are requiring that responses be made to comments received on the final EIS when substantive issues are raised which have not been addressed in either the EIS or in response to comments on the draft EIS. We have also modified 33 CFR Part 325, Appendix B of the regulation to indicate that the "preferred alternative" means the "Applicant's preferred alternative", since the Corps is not a proponent or opponent of any proposed regulatory action. In the case of other than regulatory actions the Corps preferred or tentatively selected alternative is identified in the draft and final EIS. The separate public involvement section was deleted since it duplicates the information contained elsewhere in the text of the EIS or accompanying report and is not required by CEQ–NEPA regulations.

We have added those areas of special Corps expertise, also listed in § 230.15, upon which the Corps should provide comments when responding to other agency EISs.

Section 230.25 Environmental Review and Consultation Requirements

This paragraph was clarified to allow filing of an EIS where ongoing studies would not materially affect the decision.

Section 230.26 General Considerations in Preparing Corps EISs

This paragraph was modified slightly to allow more discretion in the use of footnotes and to clarify the interaction in contractual relationships.

Appendix A

No substantive comments were received on this Appendix. Minor editorial changes have been made to reflect current planning and engineering procedures. The procedure to be followed in a draft EIS after consultation with CEBRH has also been clarified.

Comments on Specific Sections of Appendix B, Regulatory Actions

B–2 General

Comment: One commenter expressed concern that this paragraph refers to the basic regulation (ER 200–2–2) or the CEQ regulations (40 CFR Parts 1500 through 1508) which in turn refer to the agencies' regulations for implementing procedures.

Response: We agree that the proposed language could be interpreted as leading the reader around a closed loop. The paragraph has been rewritten to state that these are implementation procedures. For additional information the reader should see 33 CFR Part 230 and, for policy see 40 CFR Parts 1500 through 1508.

B–3 Development of Information and Data

Comment: One commenter requested that the Corps ask for additional information from the applicant as early as possible and should discourage additional or repetitive requests.

Response: We concur with this comment. The intent of this regulation

and of the regulation governing the regulatory program (33 CFR Parts 320 through 330) is to encourage timely review of applications including obtaining the information needed as early as is practicable in the review process.

Comment: Another comment expressed concern that key concepts of the Corps procedures regarding information to fully describe reasonable alternatives were deleted.

Response: That is not the case. See the discussion on alternatives in paragraph 9.

B–6 Categorical Exclusions

Comment: Numerous comments were received on this paragraph. Some were general, such as: Strongly supporting the concept; the categorical exclusions should be drawn as narrowly as possible; actions listed for Corps activities should also apply to private applicants; and, activities considered are far too limited in scope to help spur economic development. Other comments were very narrowly focused, suggesting changes to the specific activities such as: changing fixed docks to open fixed pile; defining small or upland sites with important wildlife values; stating no fill in special aquatic sites; and, adding "except during construction" to indicate some temporary interference with navigation is acceptable. Several suggested regional and nationwide general permits should be added to the list. One commenter felt the extraordinary circumstances language was too vague and could lead to a broad range of interpretation and little accountability for district commanders' decisions on what qualified as a categorical exclusion. There was a request for a return to the 90-day comment period for public notices for activities proposed for categorical exclusion. Some commenters requested adding erosion control authorities to the list of categorical exclusions. There was also confusion regarding activities categorically excluded from NEPA documentation, the need for environmental assessments and the relationship between general and nationwide permits, letters of permissions, individual permits and other required State and local approvals. One State requested advance notification of activities categorically excluded. Finally a few comments opposed having district and division commanders develop "local" categorical exclusions as this could lead to a patchwork of different exclusions across the Nation and was counter to the CEQ regulations and supplemental guidance.

Response: We concur that, in general, the categorical exclusions for Corps activities and private permit applicants should be of the same general magnitude. Therefore, we have modified the language concerning maintenance dredging to limit disposal to existing sites and utility line crossings to minor distribution and collection lines. We believe that a fixed pier is generally understood to be either a concrete or wooden pier on piling. The language of categorical exclusion of 6a(1) and 6a(2) has been changed to delete redundant references to interference with navigation. Navigation is always considered during the evaluation process and permits are conditioned or denied as necessary to reflect this interest. The request for adding erosion control activities to the list of categorical exclusions was considered, but we believe that the nationwide permits found in 33 CFR 330.5 (a)(2) and (a)(13) would apply to most erosion control activities. Concrete structures and headwalls for intake and outfall pipes have been deleted from the list. We have also removed the narrowly restrictive qualifying language in 6a(5) concerning boat launching ramps.

The regional and nationwide general permits are permits for certain types of activities for which there has already been a NEPA review and NEPA documents have already been prepared on a generic basis. Therefore, it is not necessary to add them to the list of actions categorically excluded from NEPA documentation.

The actions listed as categorically excluded in paragraph 6 of Appendix B are not excluded from the requirement to obtain the proper Army permit and/or any other required State permits and certifications or local approvals. The listing simply means that the activities will usually not need a separate NEPA document. Therefore, activities listed as categorically excluded should not be interpreted as being authorized.

We have decided not to provide district commanders with more specific guidance on where and what types of categorically excluded activities might require additional NEPA review. We believe that the laws and regulations with which the Corps and other Federal agencies must comply (e.g., Endangered Species Act, Clean Water Act, National Historical Preservation Act) provide sufficient safeguards to ensure categorical exclusions will be properly applied. Subparagraph (a) has been expanded to include specific discussion of this point.

In addition, a provision has been added to require the district commander to review periodically the type and number of categorically excluded actions which, because of case-specific circumstances, require individual NEPA documentation. This review would determine if modification of the categorical exclusions is needed. This provision replaces the proposed procedures for the district commander to develop additional "local" categorical exclusions discussed in 6C. These new procedures require higher authority for approval of changes to the list of categorically excluded activities in order to achieve Corps-wide consistency on a national basis prior to undertaking rulemaking changes.

B–7 EA/FONSI Document

Comment: This paragraph generated the largest number of comments on Appendix B. Several commenters expressed concerns regarding the EA not having to address alternatives in those cases in which there were no unresolved conflicts as to resource use. These commenters also pointed out that 404(b)(1) guidelines require alternative analysis. Comments on the scope of analysis included: Commending the Corps; expressing concerns about expansion of the NEPA review based on the district commander's "sole discretionary authority"; to concerns for limiting the NEPA review to the specific activity requiring a Corps permit. Some thought the examples were good, others thought they were confusing or should be eliminated. Some thought the scope of the NEPA review should be based on the overall control and responsibility the Corps has over the entire project. There was confusion on just what triggers the decision to "federalize" the total project. One person commented on the need to consider cumulative impacts. Another suggested that the implied need to prepare an EA prior to preparing an EIS); where the activity proposed clearly required an EIS, was an unnecessary additional step. Finally, several commenters requested that the EA be provided during the public notice period for public and agency review.

Response: We concur that where it is obvious an EIS is required there is no need to prepare an EA. The regulation has been revised to reflect this.

The section concerning the alternatives to be considered reflects the language and intent of section 102(2)(E) of NEPA and is consistent with policies to reduce unnecessary paperwork and streamline NEPA requirements. We have revised paragraph 7a to state that, if the impacts of the applicant's proposal would not be significant (i.e. would require only an EA, not an EIS); and if

there are no unresolved conflicts (i.e., no unresolved objections regarding alternative uses of available resources from Federal and State resource agencies and members of the public commenting on the public notice or none discerned by the district commander); and, if the activity is "water dependent" in the meaning of 40 CFR 230.10(a)(3) (for discharges requiring a section 404 permit) the EA need not include a discussion on alternatives. However, there is nothing in this regulation which would preclude the district commander from considering other alternatives in the public interest review for a permit application if it is appropriate to do so. This has been noted in the regulation.

The change in the scope of analysis is not an attempt to relieve the Corps of responsibilities. Rather, it is to use good judgment in the extent of analysis and to incorporate the holdings of certain Federal court decisions to better determine when the need to trigger an overall review or "Federalization" should occur. The overall review takes place when there is a significant Federal interest, not just because of the need for an Army permit for a minor part of the overall project. Therefore, the district commander must have the discretion to determine the significance of the Federal interest to justify the overall review. This section has been rewritten to clarify these concepts, and the term "sole discretionary authority" was deleted to avoid any misunderstanding that the district engineer must comply with appropriate NEPA requirements.

The EA is prepared after all comments are received on the public notice and the district commander has had an opportunity to evaluate those comments. Hence, it is not possible to provide the EA for review during the public notice period. Concerned Federal and State resource agencies and the public in response to the public notice provide the necessary input to the Corps staff in preparing the EA and form the basis for the district commander's findings on the case.

B–8 Environmental Impact Statement

Comment: A comment was received suggesting that the district commander account in writing for time delays in processing an EIS.

Response: District commanders presently are reporting on a quarterly basis on permits over 120 days old and providing an estimated date when final action will be taken. This report includes actions requiring an EIS.

Several word changes were made for clarification.

B–9 Organization and Content of Draft EIS

Comment: Numerous comments were received on this paragraph. The majority concentrated on the scope of review of alternatives required in an EIS for a Department of the Army permit. Many felt that the scope of review as written could require a review of alternatives beyond those the applicant could reasonably accomplish, while others believed the scope too narrow and inadequate. Several suggested that a preferred alternative be identified as the "applicant's preferred alternative". Comments on mitigation ranged from those who think it should be limited to those who believe it is being improperly de-emphasized. One commenter requested clarification of the type of mitigation and monitoring programs legally required.

Response: Our intent in this paragraph is to have reasonable alternatives considered in the EIS which could be implemented by the applicant. Where necessary for an informed decision on the public interest, alternatives beyond those that could be implemented by the applicant should also be considered. The district commander's final decision, whether to grant or not grant the authorization, or to grant it with modifications and conditions, which could require mitigation, is dependent on the result of the public interest review required by the Corps regulation at 33 CFR 320.4. That decision is documented in the record of decision. Since the Corps is neither a proponent nor an opponent of any proposal, the final EIS will recognize the applicants proposal as the "applicant's preferred alternative," and the regulation has been changed accordingly. In accordance with CEQ regulations (40 CFR 1505.2(b)), the environmentally preferred alternative will also be identified in the record of decision. Paragraph 9b(5)(e) has been rewritten to clarify the mitigation considerations.

List of Subjects

33 CFR Part 230

Administrative practice and procedure, Environmental impact statements, Environmental protection, Flood control, Flood plains, Navigation, Water resources, Water supply, Waterways, Wetlands.

33 CFR Part 325

Administrative practice and procedure, Intergovernmental relations, Environmental protection, Navigation, Water pollution control, Waterways.

Dated: January 26, 1988.

Approved

John S. Doyle, Jr.,

Principal Deputy Assistant Secretary of the Army (Civil Works).

PART 230—[AMENDED]

1. The authority citation for Part 230 is revised to read as follows:

Authority: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*); E.O. 1514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

2. Part 230 is revised in its entirety to read as follows:

PART 230—PROCEDURES FOR IMPLEMENTING NEPA

Sec.

230.1 Purpose.
230.2 Applicability.
230.3 References.
230.4 Definitions.
230.5 Responsible officials.
230.6 Actions normally requiring an EIS.
230.7 Actions normally requiring an Environmental Assessment (EA) but not necessarily an EIS.
230.8 Emergency actions.
230.9 Categorical exclusions.
230.10 Environmental assessments (EA).
230.11 Findings of No Significant Impact (FONSI).
230.12 Notice of intent and scoping.
230.13 Environmental Impact Statement (EIS).
230.14 Record of decision and implementation.
230.15 Mitigation and monitoring.
230.16 Lead and cooperating agencies.
230.17 Filing requirements.
230.18 Availability.
230.19 Comments.
230.20 Integration with State and local procedures.
230.21 Adoption.
230.22 Limitations on actions during the NEPA process.
230.23 Predecision referrals.
230.24 Agency decision points.
230.25 Environmental review and consultation requirements.
230.26 General considerations in preparing Corps EISs.

Appendix A—Processing Corps NEPA Documents

Appendix B—Reserved

Appendix C—Notice of Intent to Prepare a Draft EIS

Authority: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*); E.O. 1514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

§ 230.1 Purpose.

This regulation provides guidance for implementation of the procedural provisions of the National Environmental Policy Act (NEPA) for the Civil Works Program of the U.S. Army Corps of Engineers. It supplements Council on Environmental Quality (CEQ) regulations 40 CFR Parts 1500 through 1508, November 29, 1978, in accordance with 40 CFR 1507.3, and is intended to be used only in conjunction with the CEQ regulations. Whenever the guidance in this regulation is unclear or not specific the reader is referred to the CEQ regulations. Appendix A provides guidance on processing NEPA documents except for those concerning regulatory actions. Appendix C (formally ER 200–2–1) has been added to provide guidance on preparing and processing a notice of intent to prepare an EIS for publication in the **Federal Register** for all types of Corps actions. 33 CFR Part 325, Appendix B provides procedural guidance for preparing and processing NEPA documents for regulatory actions.

§ 230.2 Applicability.

This regulation is applicable to all HQUSACE elements and all Field Operating Activities (FOAs) having responsibility for preparing and processing environmental documents in support of Civil Works functions.

§ 230.3 References.

(a) Executive Order 12291, Federal Regulation, February 17, 1981 (46 FR 13193, February 19, 1981).

(b) Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979 (44 FR 1957, January 9, 1979).

(c) Clean Water Act (formerly known as the Federal Water Pollution Control Act) 33 U.S.C. 1344 (hereinafter referred to as section 404).

(d) Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(e) Environmental Effects Abroad of Major Department of Defense Actions; Policies and Procedures 32 CFR Part 197 (44 FR 21786–92, April 12, 1979).

(f) Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*

(g) National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*

(h) National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

(i) "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969," (40 CFR Parts 1500 through 1508, November 29, 1978), Council on Environmental Quality.

(j) Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies (48 CFR Parts 10249 through 10258, March 10, 1983).

(k) Regulatory Programs of the Corps of Engineers 33 CFR Parts 320 through 330, and 334.

(l) CEQ Information Memorandum to Agencies Containing Answers to 40 Most Asked Questions on NEPA Regulations (46 FR 34263–68, July 28, 1983).

(m) ER 310–1–5. Federal Register Act Requisitioning.

(n) ER 1105–2–10 thru 60. Planning Regulations.

§ 230.4 Definitions.

Refer to 40 CFR Part 1508; other definitions may be found in the references given above.

§ 230.5 Responsible officials.

The district commander is the Corps NEPA official responsible for compliance with NEPA for actions within district boundaries. The district commander also provides agency views on other agencies' environmental impact statements (EIS). The Office of Environmental Policy HQUSACE (CECW–RE) WASH DC 20314–1000 (phone number 202–272–0166) is the point of contact for information on Corps NEPA documents, NEPA oversight activities, review of other agencies' EISs and NEPA documents about legislation, regulations, national program proposals or other major policy issues. The Assistant Chief Counsel for Environmental Law and Regulatory Programs, HQUSACE (CECC–E) WASH DC 20314–1000, is the point of contact for legal questions involving environmental matters. Requests for information on regulatory permit actions should be directed to HQUSACE (CECW–OR) WASH DC 20314–1000.

§ 230.6 Actions normally requiring an EIS.

Actions normally requiring an EIS are:

(a) Feasibility reports for authorization and construction of major projects;

(b) Proposed changes in projects which increase size substantially or add additional purposes; and

(c) Proposed major changes in the operation and/or maintenance of completed projects.

District commanders may consider the use of an environmental assessment (EA) on these types of actions if early studies and coordination show that a particular action is not likely to have a significant impact on the quality of the human environment.

§ 230.7 Actions normally requiring an Environmental Assessment (EA) but not necessarily an EIS.

Actions normally requiring an EA, but not an EIS, are listed below:

(a) *Regulatory Actions.* Most permits will normally require only an EA.

(b) *Authorized Projects and Projects Under Construction.* Changes which may be approved under the discretionary authority of the Secretary of the Army.

(c) *Continuing Authorities Program.* Projects recommended for approval of the Chief of Engineers under the following authorities:

(1) Section 205, Small Flood Control Authority;

(2) Section 208, Snagging and Clearing for Flood Control Authority;

(3) Section 107, Small Navigation Project Authority;

(4) Section 103, Small Beach Erosion Control Project Authority; and

(5) Section 111, Mitigation of Shore Damages Attributable to Navigation Projects.

(d) *Construction and Operations and Maintenance.* Changes in environmental impacts which were not considered in the project EIS or EA. Examples are changes in pool level operations, use of new disposal areas, location of bank protection works, etc.

(e) *Real Estate Management and Disposal Actions.* (1) Disposal of a Civil Works project or portions of project properties not reported as excess to the General Services Administration.

(2) Disposal of real property for public port and industrial purposes.

(3) Grants of leases or easements for other than minor oil and gas transmission lines, electric power transmission lines, road and highway rights-of-way, and sewage or water treatment facilities and land fills.

§ 230.8 Emergency Actions.

In responding to emergency situations to prevent or reduce imminent risk of life, health, property, or severe economic losses, district commanders may proceed without the specific documentation and procedural requirements of other sections of this regulation. District commanders shall consider the probable environmental consequences in determining appropriate emergency actions and when requesting approval to proceed on emergency actions, will describe proposed NEPA documentation or reasons for exclusion from documentation. NEPA documentation should be accomplished prior to initiation of emergency work if time constraints render this practicable. Such

documentation may also be accomplished after the completion of emergency work, if appropriate. Emergency actions include Flood Control and Coastal Emergencies Activities pursuant to Pub. L. 84–99, as amended, and projects constructed under sections 3 of the River and Harbor Act of 1945 or 14 of the Flood Control Act of 1946 of the Continuing Authorities Program. When possible, emergency actions considered major in scope with potentially significant environmental impacts shall be referred through the division commanders to HQUSACE (CECW–RE) for consultation with CEQ about NEPA arrangements.

§ 230.9 Categorical exclusions.

Actions listed below when considered individually and cumulatively do not have significant effects on the quality of the human environment and are categorically excluded from NEPA documentation. However, district commanders should be alert for extraordinary circumstances which may dictate the need to prepare an EA or an EIS. Even though an EA or EIS is not indicated for a Federal action because of a "categorical exclusion", that fact does not exempt the action from compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS.

(a) For a period of one year from the effective date of these regulations, district commanders should maintain an information list on the type and number of categorical exclusion actions which due to extraordinary circumstances triggered the need for an EA and finding of no significant impact (FONSI) or an EIS. If a district commander determines that a categorical exclusion should be modified, the information will be furnished to the division commander, who will review and analyze the actions and circumstances to determine if there is a basis for recommending a modification to the list of categorical exclusions. HQUSACE (CECW–RE) will review recommended changes for Corps-wide consistency and revise the list accordingly. See 33 CFR Part 325, Appendix B for categorical exclusions for regulatory actions.

(b) Activities at completed Corps projects which carry out the authorized project purposes. Examples include routine operation and maintenance actions, general administration, equipment purchases, custodial actions, erosion control, painting, repair, rehabilitation, replacement of existing structures and facilities such as buildings, roads, levees, groins and utilities, and installation of new buildings utilities, or roadways in developed areas.

(c) Minor maintenance dredging using existing disposal sites.

(d) Planning and technical studies which do not contain recommendations for authorization or funding for construction, but may recommend further study. This does not exclude consideration of environmental matters in the studies.

(e) All Operations and Maintenance grants, general plans, agreements, etc., necessary to carry out land use, development and other measures proposed in project authorization documents, project design memoranda, master plans, or reflected in the project NEPA documents.

(f) Real estate grants for use of excess or surplus real property.

(g) Real estate grants for Government-owned housing.

(h) Exchanges of excess real property and interests therein for property required for project purposes.

(i) Real estate grants for rights-of-way which involve only minor disturbances to earth, air, or water:

(1) Minor access roads, streets and boat ramps.

(2) Minor utility distribution and collection lines, including irrigation.

(3) Removal of sand, gravel, rock, and other material from existing borrow areas.

(4) Oil and gas seismic and gravity meter survey for exploration purposes.

(j) Real estate grants of consent to use Government-owned easement areas.

(k) Real estate grants for archeological and historical investigations compatible with the Corps Historic Preservation Act responsibilities.

(l) Renewal and minor amendments of existing real estate grants evidencing authority to use Government-owned real property.

(m) Reporting excess real property to the General Services Administration for disposal.

(n) Boundary line agreements and disposal of lands or release of deed restrictions to cure encroachments.

(o) Disposal of excess easement interest to the underlying fee owner.

(p) Disposal of existing buildings and improvements for off-site removal.

(q) Sale of existing cottage site areas.

(r) Return of public domain lands to the Department of the Interior.

(s) Transfer and grants of lands to other Federal agencies.

§ 230.10 Environmental Assessments (EA).

(a) *Purpose.* An EA is a brief document which provides sufficient information to the district commander on potential environmental effects of the proposed action and, if appropriate, its alternatives, for determining whether to prepare an EIS or a FONSI (40 CFR 1508.9). The district commander is responsible for making this determination and for keeping the public informed of the availability of the EA and FONSI.

(b) *Format.* While no special format is required, the EA should include a brief discussion of the need for the proposed action, or appropriate alternatives if there are unresolved conflicts concerning alternative uses of available resources, of the environmental impacts of the proposed action and alternatives and a list of the agencies, interested groups and the public consulted. The document is to be concise for meaningful review and decision.

(c) *Integration with Corps Reports.* In the case of planning and/or engineering reports not requiring an EIS, the EA may be combined with or integrated into the report. The same guidance on combining or integrating an EIS within the report shall apply equally to an EA. Where the EA is combined with a Corps report or prepared as a separate document in the case of construction, operating projects and real estate actions requiring an EA, the EA normally should not exceed 15 pages.

§ 230.11 Finding of No Significant Impact (FONSI).

A FONSI shall be prepared for a proposed action, not categorically excluded, for which an EIS will not be prepared. The FONSI will be a brief summary document as noted in 40 CFR 1508.13. In the case of feasibility, continuing authority, or special planning reports and certain planning/engineering reports, the draft FONSI and EA should be included within the draft report and circulated for a minimum 30-day review to concerned agencies, organizations and the interested public (40 CFR 1501.4(e)(2)). In the case of operation and maintenance activities involving the discharge of dredged or fill material requiring a public notice, the notice will indicate the availability of the EA/FONSI. For all other Corps project actions a notice of availability of the FONSI will be sent to concerned agencies, organizations and the interested public (40 CFR 1501.4(e)(1)).

§ 230.12 Notice of intent and scoping.

As soon as practicable after a decision is made to prepare an EIS or supplement, the scoping process for the draft EIS or supplement will be announced in a notice of intent. Guidance on preparing a notice of intent to prepare an EIS for publication in the Federal Register is discussed in Appendix C. Also, a public notice will be widely distributed inviting public participation in the scoping process. As described in 40 CFR 1501.7 and reference 3(m), this process is the key to preparing a concise EIS and clarifying the significant issues to be analyzed in depth. Public concerns on issues, studies needed, alternatives to be examined, procedures and other related matters will be addressed during scoping.

§ 230.13 Environmental Impact Statement (EIS).

An EIS for feasibility or continuing authority reports and certain planning/engineering reports may be combined with or integrated into the report in accordance with 40 CFR 1500.4(o) and 1506.4. An EIS combined with the report shall follow the format in 40 CFR 1502.10, follow the main report, use colored paper and not be an attachment or appendix. An EIS integrated within the report may follow the instructions in the last paragraph of 40 CFR 1502.10. Additional guidance on combining and integrating EISs is located in ER 1105–2–60. Where the EIS is not combined with or integrated into the project document, the EIS shall be a separate document and follow the format in 40 CFR 1502.10. CEQ regulations suggest maximum lengths for the text of an EIS at 40 CFR 1502.07. An effort should be exerted to cover the substantive topics simply and concisely to the extent practicable, and consistent with producing a legally and technically adequate EIS. Normally, the CEQ page limits should be met.

(a) *Draft and Final EISs.* Guidance on EISs prepared for planning and certain planning/engineering studies is contained in ER 1105–2–10 thru 60. 33 CFR Part 325, Appendix B contains guidance for regulatory actions. For final EISs which are not combined with or integrated into the report, the final EIS may take the form of an "abbreviated" document described in 40 CFR 1503.4(c). An abbreviated final EIS should consist of a new title page, summary, errata or correction sheet(s) and comments and responses. In filing the abbreviated final EIS with EPA (Washington Office), five copies of the draft EIS shall be included in the transmittal. District commanders shall be responsible for determining the type of final EIS to prepare.

(b) *Supplements.* A supplement to the draft or final EIS should be prepared whenever required as discussed in 40 CFR 1502.09(c). A supplement to a draft EIS should be prepared and filed in the same manner as a draft EIS and should be titled "Supplement I", "Supplement II", etc. The final EIS should address the changes noted in the supplement and substantive comments received as a result of circulation of the document. A supplement to a final EIS should be prepared and filed first as a *draft* supplement and then as a final supplement. Supplements will be filed and circulated in the same manner as a draft and final EIS (including the abbreviated procedure discussed in 13a. above). Supplements to a draft or final EIS filed before 30 July 1979 may follow the format of the previously filed EIS. Supplements to a draft EIS filed after this date will follow the format outlined in 40 CFR 1502.10. References to the draft or final EIS being supplemented should be used to eliminate repetitive discussions in order to focus on the important issues and impacts. The transmittal letter to EPA as well as the cover sheet should clearly identify the title and purpose of the document as well as the title and filing date of the previous EIS being supplemented and how copies can be obtained. The decision may be made on the proposed action by the appropriate Corps official no sooner than 30 days after the final supplement has been on file. A record of decision will be signed when the decision is made.

(c) *Tiering.* Tiering is discussed in 40 CFR 1502.20 and 1508.28 and should be used in appropriate cases. The initial broad or programmatic EIS must present sufficient information regarding overall impacts of the proposed action so that the decision-makers can make a reasoned judgment on the merits of the action at the present stage of planning or development and exclude from consideration issues already decided or not ready for decision. The initial broad EIS should also identify data gaps and discuss future plans to supplement the data and prepare and circulate site specific EISs or EAs as appropriate.

(d) *Other Reports.* District commanders may also publish periodic fact sheets and/or other supplemental information documents on long-term or complex EISs to keep the public informed on the status of the proposed action. These documents will not be filed officially with EPA.

§ 230.14 Record of decision and implementation.

A record of decision shall be prepared by the district commander, in accordance with 40 CFR 1505.2, for the signature of the final decisionmaker as prescribed by applicable Corps regulations. Procedures implementing the decision are discussed in 40 CFR 1505.3. Incoming letters of comment on the final EIS will be furnished for review by the decisionmaker who signs the record of decision. For example, the record of decision for feasibility reports will be signed by the ASA(CW) at the time the report is transmitted to Congress for authorization.

§ 230.15 Mitigation and monitoring.

See 40 CFR 1505.2(c) and 1505.3. District commanders shall, upon request from interested agencies or the public, provide reports on the progress and status of required mitigation and other provisions of their decisions on Corps projects. The term monitoring will be interpreted as that oversight activity necessary to ensure that the decision, including required mitigation measures, is implemented.

§ 230.16 Lead and cooperating agencies.

Lead agency, joint lead agency, and cooperating agency designation and responsibilities are covered in 40 CFR 1501.5 and 1501.6. The district commander is authorized to enter into agreements with regional offices of other agencies as required by 40 CFR 1501.5(c). District or division commanders will consult with HQUSACE (CECW–RE), WASH DC 20314–1000 prior to requesting resolution by CEQ as outlined by 40 CFR 1501.5 (e) and (f).

(a) *Lead Agency.* The Corps will normally be lead agency for Corps civil works projects and will normally avoid joint lead agency arrangements. Lead agency status for regulatory actions will be determined on the basis of 40 CFR 1501.5(c).

(b) *Corps as a Cooperating Agency.* For cooperating agency designation the Corps area of expertise or jurisdiction by law is generally flood control, navigation, hydropower and Corps regulatory responsibilities. See Appendix II of CEQ regulations (49 FR 49750, December 21, 1984).

§ 230.17 Filing requirements.

Five copies of draft, final and supplement EISs should be sent to: Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. District commanders should file draft EISs and draft supplements directly with EPA. Final EISs and final supplements should be filed by appropriate elements within HQUSACE

for feasibility and reevaluation reports requiring Congressional authorization. Division commanders should file final EISs and final supplements for all other Corps actions except for final EISs or final supplements for permit actions which should be filed by the district commander after appropriate reviews by division and the incorporation of division's comments in the EIS. HQUSACE and/or division will notify field office counterparts when to circulate the final EIS or final supplement and will file the final document with EPA after notified that distribution of the document has been accomplished.

(a) *Timing Requirements.* Specific timing requirements regarding the filing of EISs with EPA are discussed in 40 CFR 1506.10. District commanders will forward any expedited filing requests with appropriate supporting information through channels to CECW–RE. Once a decision is reached to prepare an EIS or supplement, district commanders will establish a time schedule for each step of the process based upon considerations listed in 40 CFR 1501.8 and upon other management considerations. The time required from the decision to prepare an EIS to filing the final EIS normally should not exceed one year (46 FR 18037, March 23, 1981). For feasibility, continuing authority, or reevaluation studies, where the project's study time is expected to exceed 12 months, the timing of the EIS should be commensurate with the study time. In appropriate circumstances where the costs of completing studies or acquiring information for an EIS (i.e., cost in terms of money, time, or other resources) would be exorbitant, the district commander should consider using the mechanism described in 40 CFR 1502.22, as amended. In all cases, however, it is the district commander's responsibility to assure that the time-limit established for the preparation of an EIS or supplement is consistent with the purposes of NEPA.

(b) *Timing Requirements on Supplements.* Minimum review periods will be observed for draft and final supplements covering actions not having a bearing on the overall project for which a final EIS has been filed. Such supplements should not curtail other ongoing or scheduled actions on the overall project which have already complied with the procedural requirements of NEPA.

§ 230.18 Availability.

Draft and final EISs and supplements will be available to the public as provided in 40 CFR 1502.19 and 1506.6. A summary may be circulated in lieu of the EIS, as provided in 40 CFR 1502.19, if the statement is unusually long. These documents will normally be made available without charge except that, in unusual circumstances, reproduction costs may be recovered in accordance with 40 CFR 1506.6(f) from recipients other than those required by CEQ to receive the complete EIS.

§ 230.19 Comments.

District commanders shall request comments as set forth in 40 CFR 1503 and 1506.6. A lack of response may be presumed to indicate that the party has no comment to make.

(a) *Time Extensions.* District commanders will consider and act on requests for time extensions to review and comment on an EIS based on timeliness of distribution of the document, prior agency involvement in the proposed action, and the action's scope and complexity.

(b) *Public Meetings and Hearings.* See 40 CFR 1506.6(c). Refer to paragraph 12, 33 CFR Part 325, Appendix B for regulatory actions.

(c) *Comments Received on the Draft EIS.* See 40 CFR 1503.4. District commanders will pay particular attention to the display in the final EIS of comments received on the draft EIS. In the case of abbreviated final EISs, follow 40 CFR 1503.4(c). For all other final EISs, comments and agency responses thereto will be placed in an appendix in a format most efficient for users of the final EIS to understand the nature of public input and the district commander's consideration thereof. District commanders will avoid lengthy or repetitive verbatim reporting of comments and will keep responses clear and concise.

(d) *Comments Received on the Final EIS.* Responses to comments received on the final EIS are required only when substantive issues are raised which have not been addressed in the EIS. In the case of feasibility reports where the final report and EIS, Board of Engineers for Rivers and Harbors (CEBRH) or Mississippi River Commission (CEMRC) report, and the proposed Chief's report are circulated for review, incoming comment letters will normally be answered, if appropriate, by CECW–P. After the review period is over, CECW–P will provide copies of all incoming comments received in HQUSACE to the district commander for use in preparing the draft record of decision. For all other Corps actions except regulatory actions (See 33 CFR Part 325, Appendix B), two copies of all incoming comment letters (even if the letters do not require an agency response) together with the district commander's responses (if appropriate) and the draft record of decision will be submitted through channels to the appropriate decision authority. In the case of a letter recommending a referral under 40 FR Part 1504, reporting officers will notify CECW–RE and request further guidance. The record of decision will not be signed nor any action taken on the proposal until the referral case is resolved.

(e) *Commenting on Other Agencies' EISs.* See 40 CFR 1503.2 and 1503.3. District commanders will provide comments directly to the requesting agency. CECW–RE will provide comments about legislation, national program proposals, regulations or other major policy issues to the requesting agency. See Appendix III of CEQ regulations. When the Corps is a cooperating agency, the Corps will provide comments on another Federal agency's draft EIS even if the response is no comment. Comments should be specific and restricted to areas of Corps jurisdiction by law and special expertise as defined in 40 CFR 1508.15 and 1508.26, generally including flood control, navigation, hydropower, and regulatory responsibilities. See Appendix II of CEQ regulations.

§ 230.20 Integration with State and local procedures.

See 40 CFR 1506.2.

§ 230.21 Adoption.

See 40 CFR 1506.3. A district commander will normally adopt another Federal agency's EIS and consider it to be adequate unless the district commander finds substantial doubt as to technical or procedural adequacy or omission of factors important to the Corps decision. In such cases, the district commander will prepare a draft and final supplement noting in the draft supplement why the EIS was considered inadequate. In all cases, except where the document is not recirculated as provided in 40 CFR 1506.3 (b) or (c), the adopted EIS with the supplement, if any, will be processed in accordance with this regulation. A district commander may also adopt another agency's EA/FONSI.

§ 230.22 Limitations on actions during the NEPA process.

See 40 CFR 1506.1.

§ 230.23 Predecision referrals.

See 40 CFR Part 1504. If the district commander determines that a predecision referral is appropriate, the case will be sent through division to reach CECW–RE not later than 15 days after the final EIS was filed with EPA. Corps actions referred to CEQ by

another Federal agency shall be transmitted to CECW–RE for further guidance. See paragraph 19, 33 CFR Part 325, Appendix B, for guidance on predecision referrals affecting regulatory permit actions.

§ 230.24 Agency decision points.

The timing and processing of NEPA documents in relation to major decision points are addressed in paragraphs 11 and 14 and Appendix A for studies and projects and 33 CFR Part 320 through 330 for regulatory actions.

§ 230.25 Environmental review and consultation requirements.

See 40 CFR 1502.25.

(a) For Federal projects, NEPA documents shall be prepared concurrently with and utilize data from analyses required by other environmental laws and executive orders. A listing of environmental laws and orders is contained in table 3.4.3 of Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies. Reviews and consultation requirements, analyses, and status of coordination associated with applicable laws, executive orders and memoranda will be summarized in the draft document. The results of the coordination completed or underway pursuant to these authorities will be summarized in the final document. Where the results of the ongoing studies are not expected to materially affect the decision on the proposed action, the filing of the final EIS need not be delayed.

(b) *Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 4 January 1979.* For general policy guidance, see **Federal Register** of April 12, 1979, 32 CFR Part 197. Procedural requirements for Civil Works studies and projects are discussed below.

(1) The district commander through the division commander will notify CECW–PE, PN, PS or PW as appropriate, of an impending action which may impact on another country and for which environmental studies may be necessary to determine the extent and significance of the impact. The district commander will inform CECW–P whether entry into the country is necessary to study the base condition.

(2) CECW–P will notify the State Department, Office of Environment and Health (OES/ENH) of the district commander's concern, and whether a need exists at this point to notify officially the foreign nation of our intent to study potential impacts. Depending on expected extent and severity of impacts, or if entry is deemed necessary, the matter will be referred to the appropriate foreign desk for action.

(3) As soon as it becomes evident that the impacts of the proposed actions are considered significant, CECW–P will notify the State Department. The State Department will determine whether the foreign embassy needs to be notified, and will do so if deemed appropriate, requesting formal discussions on the matter. When the International Joint Commission (IJC) or the International Boundary and Water Commission, United States and Mexico (IBWC) is involved in a study, the State Department should be consulted to determine the foreign policy implications of any action and the proper course of action for formal consultations.

(4) Prior to public dissemination, press releases or reports dealing with impact assessments in foreign nations should be made available to the appropriate foreign desk at the State Department for clearance and coordination with the foreign embassy.

§ 230.26 General considerations in preparing corps EISs.

(a) *Interdisciplinary Preparation.* See (40 CFR 1502.6).

(b) *Incorporation by Reference.* To the maximum extent practicable, the EIS should incorporate material by reference in accordance with 40 CFR 1502.21. Footnotes should be used only where their use greatly aids the reader's understanding of the point discussed. Citation in the EIS of material incorporated by reference should be made by indicating an author's last name and date of the reference in parentheses at the appropriate location in the EIS. The list of references will be placed at the end of the EIS. Only information sources actually cited in the text should appear in the reference list. The reference list should include the author's name, the date and title of the publication, personal communications and type of communication (e.g., letter, telephone, interview, etc.).

Appendix A—Processing Corps NEPA Documents

NEFA documents for Civil Works activities other than permits will be processed in accordance with the instructions contained in this appendix and applicable paragraphs in the regulation.

Table of Contents

Title

1. Feasibility Studies
2. Continuing Authorities Program Studies
3. Projects in Preconstruction Engineering, and Design, Construction, and Completed Projects in an Operations and Maintenance Category
4. Other Corps Projects

1. Feasibility Studies

a. *Preparation and Draft Review.* During the reconnaissance phase, the district commander should undertake environmental studies along with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the feasibility report. This environmental evaluation should be continued in the feasibility phase, and if the need for an EIS develops the district commander will issue a notice of intent as early in the feasibility phase as possible. Following the guidance in ER 1105–2–10 through 60, the district commander will prepare a draft feasibility report combining or integrating the draft EIS or EA and draft FONSI (as appropriate), or a separate NEPA document and circulate it to agencies, organizations and members of the public known to have an interest in the study. Five copies of the draft EIS and report will be mailed to Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 for filing after distribution has been accomplished. After receipt and evaluation of comments received, the district commander will prepare the final report and EIS or EA and FONSI and submit it to the division commander for review.

b. *Division Review.* After review, the division commander will issue a public notice of report issuance and transmit the report to the CEBRH. On Mississippi River and Tributaries projects, the district commander will issue a public notice and submit the report to the CEMRC. For the purpose of this regulation, only the acronym CEBRH will be used since the review functions of CEMRC and CEBRH are similar. The notice will provide a 30-day period for comments to be submitted to CEBRH on the report and EIS. Although the EIS in the report is identified as "final" at this stage of processing, it should be made clear to all those requesting a copy that it is an "Interim Document under Agency Review—Subject to Revision" and will become the agency's final EIS when it is filed after CEBRH review.

c. *CEBRH Review.* CEBRH will review the EIS at the same time it reviews the final feasibility report. The report and EIS should be compatible. If the CEBRH review requires minor revisions (with insignificant impacts) to the plan as recommended by the division and district commanders, these changes and impacts shall be noted in the CEBRH report. If the CEBRH action results in major revisions to the recommended plan and revisions are variants of the plan or are within the range of alternatives considered and discussed in the draft EIS, an addendum to the final EIS will be prepared by CEBRH (with assistance from the district commander, as required). This addendum "package" will be identified as an "Addendum to the Final EIS—Environmental Consequences of the Modifications Recommended by the Board of Engineers for Rivers and Harbors—project name." The format shall include an abstract on the cover page; recommended changes to the division/district commander's proposed plan; rationale for the recommended changes;

environmental consequences of the recommended changes; and the name, expertise/discipline, experience, and role of the principal preparer(s) of the addendum. Letters received during CEBRH review which provide new pertinent information having a bearing on the modifications recommended by CEBRH will be attached to the addendum. If CEBRH proposes to recommend a major revision or a new alternative to the plan recommended by the division and district commanders with significant impacts which were not discussed in the draft EIS, a supplement to the draft EIS will be required. After consultation with CEBRH and the division commander, the district commander will prepare and circulate the supplement to the draft EIS in accordance with paragraph 13(b). The supplement together with incoming letters of comment and Corps responses to substantive issues shall be incorporated into the existing final report and EIS with a minimum of page changes or revisions to reflect the modified or new proposed plan. CEBRH will review its proposed action in light of the comments received prior to taking final action on the report and EIS.

d. *Departmental Review.* The report and final EIS, together with the proposed report of the Chief of Engineers and the CEBRH report, will be filed with EPA at about the same time as it is circulated for the 90-day departmental review by Federal agencies at the Washington level and the concerned state(s). District commanders will circulate the proposed Chief's report, CEBRH report, and the report and final EIS to parties on the project mailing list not contacted by HQUSACE (groups and individuals known to have an interest in the study or who provided comments on the draft EIS) allowing the normal 30-day period of review. HQUSACE will provide a standard letter for the district to use to transmit these documents which explains the current status of the report and EIS and directs all comments to be sent to HQUSACE (CECW–P). Copies of the report appendices circulated with the draft need not be circulated with the report and final EIS. All letters of comment received on the report and final EIS together with HQUSACE responses and the draft record of decision (to be provided by the district commander) will be included with other papers furnished at the time the final Chief's report is transmitted to ASA(CW) for further review and processing.

e. *Executive Reviews.* After completion of review, the Chief of Engineers will sign his final report and transmit the report and accompanying documents to ASA(CW). After review ASA(CW) will transmit the report to OMB requesting its views in relation to the programs of the President. After OMB provides its views, ASA(CW) will sign the record of decision (ROD) and transmit the report to Congress. In situations where Congress has acted to authorize construction of a project prior to receiving ASA(CW) recommendations, the Director of Civil Works is the designated official to sign the ROD. In this case the ROD should only address the project as authorized by the Congress and not attempt to provide any additional justification of the Congressional action.

2. Continuing Authorities Program Studies

a. *Preparation and Draft Review.* During the reconnaissance phase, the district commander should undertake environmental studies along with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the detailed project report (DPR). If the results of the reconnaissance phase warrant preparation of an EIS, the district commander will issue a notice of intent early in the ensuing feasibility study. Following the guidance in ER 1105–2–10 through 60 the district commander will prepare the draft DPR incorporating the EA and draft FONSI or draft EIS (as appropriate), and circulate it to agencies, organizations and members of the public known to have an interest in the study. If an EIS is prepared, five copies of the draft EIS and report will be mailed to Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 for filing after distribution has been accomplished.

b. *Agency Review.* After receipt and evaluation of comments the district commander will prepare the final DPR and EA/FONSI or final EIS and submit eight (8) copies to the division commander for review and approval. After review, the division commander will file five (5) copies of the final DPR and EIS with the Washington office of EPA. The division commander will not file the final EIS until notified by the district commander that distribution has been accomplished.

c. *Final Review.* Letters of comment on the final DPR including the final EIS will be answered by the district commander on an individual basis if appropriate. Two (2) copies of all incoming letters and the district commander's reply together with five copies of the final DPR and EIS and a draft of the record of decision will be submitted through division to the appropriate element within CECW–P. After review of the DPR and NEPA documents, the Director of Civil Works or Chief, Planning Division will approve the project and sign the record of decision if an EIS was prepared for the DPR.

3. Projects in Preconstruction Engineering and Design, Construction, and Completed Projects in an Operations and Maintenance Category

a. *General.* District commanders will review the existing NEPA document(s) to determine if there are new circumstances or significant impacts which warrant the preparation of a draft and final supplement to the EIS. If the proposed changes and new impacts are not significant an EA and FONSI may be used.

b. *Preparation and Draft Review.* As soon as practicable after the district commander makes a determination to prepare an EIS or supplement for the proposed project, a notice of intent will be issued. The district commander will, in accordance with 40 CFR 1506.6, prepare and circulate the draft EIS or supplement for review and comment to agencies, groups and individuals known who may be interested or affected. Five (5) copies will be sent to Director, Office of Federal activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 for filing after distribution has been accomplished.

c. *Agency Review.* The district commander will prepare the final EIS or supplement after receipt and evaluation of comments. Eight (8) copies will be transmitted to the division commander for review. After review the division commander will file five (5) copies with the Washington office of EPA. A copy of the final EIS or supplement and transmittal letter to EPA will be provided to the appropriate counterpart office within HQUSACE. The division commander will file the final EIS when the district commander has made distribution.

d. *Final Review.* Letters of comment on the final EIS or supplement will be answered by the district commander on an individual basis as appropriate. Two (2) copies of the incoming letters and the district commander's reply together with two copies of the final EIS or supplement and a draft of the record of decision will be submitted to the appropriate Corps official having approval authority. After review of the NEPA documents and letters, the appropriate approving official will sign the record of decision.

4. *Other Corps Projects.* Draft and final EISs for other Civil Works projects or activities having significant environmental impacts which may be authorized by Congress without an EIS having been previously filed and for certain real estate management and disposal actions which may require an EIS should be processed in a manner similar to that discussed in paragraph 3 of this appendix except that CERE–MC will be the coordinating office within HQUSACE for real estate actions.

Appendix B—[Reserved]

Appendix C—Notice of Intent to Prepare a Draft EIS

1. *Purpose.* This appendix provides guidance on the preparation and processing of a notice of intent to prepare a draft EIS for publication in the **Federal Register**. A notice of intent to prepare a draft EIS or a draft supplement is discussed in 40 CFR 1508.22.

2. *Procedure.* District commanders shall publish a notice of intent in the **Federal Register** as soon as practicable after a decision is made to prepare a draft EIS or draft supplement. See 40 CFR 1507.3(e) for timing of notice of intent for Corps feasibility studies. Guidance on the format and content of the notice in the form of a sample notice of intent is contained in paragraph 4 of this appendix. District commanders shall also follow this guidance when publishing a notice of intent to withdraw a notice of intent when a decision has been made to terminate the EIS process.

3. *Publishing Documents in the Federal Register.* The following information is furnished for preparation and publication of notices of intent in the **Federal Register**:

a. A brief transmittal letter inclosing three (3) signed copies of the notice of intent should be processed through local Chief, Information Management channels to: HQDA, SFIS–APP, ATTN: Department of the Army Liaison

Officer with the Office of the Federal Register, Alexandria, VA 22331–0302. This office will review and correct (if needed) all documents prior to publication in the **Federal Register**.

b. The notice must be signed by the official issuing the document along with the signer's typed name, rank and position title for military officials or name and position title for civilian officials. A signer cannot sign "as acting" or "for" if another name is shown in the signature block. All three copies sent forward must be signed in ink. A xerox copy of the signature is not allowed.

c. A six-digit billing code number must be typed or handwritten in ink at the top of the first page on all three copies of a notice. This billing code number can be found on GPO bills, GPO Form 400, in the upper left corner opposite the address. The billing code number will be indicated as 3710–XX. FOAs must submit an open-end printing and binding requisition, Standard Form 1, each fiscal year to cover **Federal Register** printing costs (reference 3(n)). Completed requisitions (SF–1) must be forwarded to reach HQUSACE (CEIM–SP) WASH DC 20314–1000 by 1 June of each year. Consult the local chief, Information Management for Assistance.

4. *Sample Notice of Intent.* The following is a sample notice of intent to be used by district commanders:

Department of Defense
Corps of Engineer, Department of the Army, 3710–XX (Use Local Billing Code Number)
Intent To Prepare A Draft Environment Impact Statement (DEIS) For a Proposed (*Name and location of project, permit or activity*).
Agency: U.S. Army Corps of Engineers, DoD.
Action: Notice of Intent.
Summary: The summary should briefly state in simple language what action is being taken, why the action is necessary, and the intended effect of the action. Extensive discussion belongs under the Supplementary Information caption.
For Further Information Contact: Questions about the proposed action and DEIS can be answered by: (Provide name, telephone number, and address of the person in the district or division who can answer questions about the proposed action and the DEIS).
Supplementary Information: The Supplementary Information should contain the remainder of the necessary information of the document. It should contain any authority citation, **Federal Register** citation to a previously published document, or CFR citation when appropriate and include a discussion of the following topics:
1. Briefly describe the proposed action.
2. Briefly describe reasonable alternatives.
3. Briefly describe the Corps' scoping process which is reasonably foreseeable for the DEIS under consideration. The description:
a. Shall discuss the proposed public involvement program and invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.
b. Shall identify significant issues to be analyzed in depth in the DEIS.
c. May discuss possible assignments for input into the EIS under consideration among the lead and cooperating agencies.
d. Shall identify other environmental review and consultation requirements.
4. Indicate whether or not a scoping meeting will be held. Indicate time, date and location if a meeting is scheduled.
5. Provide an estimated date when the DEIS will be made available to the public.
(Provide date)

(Signature)

See par. 3.b. for instructions on signature

Note

- Text to be double-spaced. Use block format.
- Place local billing code number at the top of the first page on all three copies.
- Margins—one inch on top, bottom and right side; and one and one-half inches on the left side.
- Pages must be numbered consecutively.
- Text should be typed on one side only.
- Use 8½ by 11 inch bond paper or photocopy paper.

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

3. The authority citation for Part 325 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

4. Part 325, Appendix B is added to read as follows:

* * * * *

Appendix B—NEPA Implementation Procedures for the Regulatory Program

1. Introduction
2. General
3. Development of Information and Data
4. Elimination of Duplication with State and Local Procedures
5. Public Involvement
6. Categorical Exclusions
7. EA/FONSI Document
8. Environmental Impact Statement—General
9. Organization and Content of Draft EISs
10. Notice of Intent
11. Public Hearing
12. Organization and Content of Final EIS
13. Comments Received on the Final EIS
14. EIS Supplement
15. Filing Requirement
16. Timing
17. Expedited Filing
18. Record of Decision
19. Predecision Referrals by Other Agencies
20. Review of Other Agencies' EISs
21. Monitoring

1. *Introduction.* In keeping with Executive Order 12291 and 40 CFR 1500.2, where interpretive problems arise in implementing this regulation, and consideration of all other factors do not give a clear indication of a reasonable interpretation, the interpretation (consistent with the spirit and intent of NEPA) which results in the least paperwork and delay will be used. Specific examples of ways to reduce paperwork in the NEPA process are found at 40 CFR 1500.4. Maximum advantage of these recommendations should be taken.

2. *General.* This Appendix sets forth implementing procedures for the Corps regulatory program. For additional guidance, see the Corps NEPA regulation 33 CFR Part 230 and for general policy guidance, see the CEQ regulations 40 CFR 1500–1508.

3. *Development of Information and Data.* See 40 CFR 1506.5. The district engineer may require the applicant to furnish appropriate information that the district engineer considers necessary for the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). See also 40 CFR 1502.22 regarding incomplete or unavailable information.

4. *Elimination of Duplication with State and Local Procedures.* See 40 CFR 1506.2.

5. *Public Involvement.* Several paragraphs of this appendix (paragraphs 7, 8, 11, 13, and 19) provide information on the requirements for district engineers to make available to the public certain environmental documents in accordance with 40 CFR 1506.6.

6. Categorical Exclusions—a. *General.* Even though an EA or EIS is not legally mandated for any Federal action falling within one of the "categorical exclusions," that fact does not exempt any Federal action from procedural or substantive compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS. The following activities are not considered to be major Federal actions significantly affecting the quality of the human environment and are therefore categorically excluded from NEPA documentation:

(1) Fixed or floating small private piers, small docks, boat hoists and boathouses.

(2) Minor utility distribution and collection lines including irrigation;

(3) Minor maintenance dredging using existing disposal sites;

(4) Boat launching ramps;

(5) All applications which qualify as letters of permission (as described at 33 CFR 325.5(b)(2)).

b. *Extraordinary Circumstances.* District engineers should be alert for extraordinary circumstances where normally excluded actions could have substantial environmental effects and thus require an EA or EIS. For a period of one year from the effective data of these regulations, district engineers should maintain an information list on the type and number of categorical exclusion actions which, due to extraordinary circumstances, triggered the need for an EA/FONSI or EIS. If a district engineer determines that a categorical exclusion should be modified, the information will be furnished to the division engineer who will review and analyze the actions and circumstances to determine if there is a basis for recommending a modification to the list of categorical exclusions. HQUSACE (CECW–OR) will review recommended changes for Corps-wide consistency and revise the list accordingly.

7. *EA/FONSI Document.* (See 40 CFR 1508.9 and 1508.13 for definitions)—a. *Environmental Assessment (EA) and Findings of No Significant Impact (FONSI).* The EA should normally be combined with other required documents (EA/404(b)(1)/SOF/FONSI). "EA" as used throughout this Appendix normally refers to this combined document. The district engineer should complete an EA as soon as practicable after all relevant information is available (i.e., after the comment period for the public notice of the permit application has expired) and when the EA is a separate document it must be completed prior to completion of the statement of finding (SOF). When the EA confirms that the impact of the applicant's proposal is not significant and there are no "unresolved conflicts concerning alternative uses of available resources * * *" (section 102(2)(E) of NEPA), and the proposed activity is a "water dependent" activity as defined in 40 CFR 230.10(a)(3), the EA need not include a discussion on alternatives. In all other cases where the district engineer determines that there are unresolved conflicts concerning alternative uses of available resources, the EA shall include a discussion of the reasonable alternatives which are to be considered by the ultimate decision-maker. The decision options available to the Corps, which embrace all of the applicant's alternatives, are issue the permit, issue with modifications or deny the permit. Modifications are limited to those project modifications within the scope of established permit conditioning policy (See 33 CFR 325.4). The decision option to deny the permit results in the "no action" alternative (i.e. no activity requiring a Corps permit). The combined document normally should not exceed 15 pages and shall conclude with a FONSI (See 40 CFR 1508.13) or a determination that an EIS is required. The district engineer may delegate the signing of the NEPA document. Should the EA demonstrate that an EIS is necessary, the district engineer shall follow the procedures outlined in paragraph 8 of this Appendix. In those cases where it is obvious an EIS is required, an EA is not required. However, the district engineer should document his reasons for requiring an EIS.

b. *Scope of Analysis.* (1) In some situations, a permit applicant may propose to conduct a specific activity requiring a Department of the Army (DA) permit (e.g., construction of a pier in a navigable water of the United States) which is merely one component of a larger project (e.g., construction of an oil refinery on an upland area). The district engineer should establish the scope of the NEPA document (e.g., the EA or EIS) to address the impacts of the specific activity requiring a DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review.

(2) The district engineer is considered to have control and responsibility for portions of the project beyond the limits of Corps jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a Federal action. These are cases where the environmental consequences of the larger project are essentially products of the Corps permit action.

Typical factors to be considered in determining whether sufficient "control and responsibility" exists include:

(i) Whether or not the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project).

(ii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity.

(iii) The extent to which the entire project will be within Corps jurisdiction.

(iv) The extent of cumulative Federal control and responsibility.

A. Federal control and responsibility will include the portions of the project beyond the limits of Corps jurisdiction where the cumulative Federal involvement of the Corps and other Federal agencies is sufficient to grant legal control over such additional portions of the project. These are cases where the environmental consequences of the additional portions of the projects are essentially products of Federal financing, assistance, direction, regulation, or approval (not including funding assistance solely in the form of general revenue sharing funds, with no Federal agency control over the subsequent use of such funds, and not including judicial or administrative civil or criminal enforcement actions).

B. In determining whether sufficient cumulative Federal involvement exists to expand the scope of Federal action the district engineer should consider whether other Federal agencies are required to take Federal action under the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Executive Order 11990, Protection of Wetlands, (42 U.S.C. 4321 91977), and other environmental review laws and executive orders.

C. The district engineer should also refer to paragraphs 8(b) and 8(c) of this appendix for guidance on determining whether it should be the lead or a cooperating agency in these situations.

These factors will be added to or modified through guidance as additional field experience develops.

(3) *Examples:* If a non-Federal oil refinery, electric generating plant, or industrial facility is proposed to be built on an upland site and the only DA permit requirement relates to a connecting pipeline, supply loading terminal or fill road, that pipeline, terminal or fill road permit, in and of itself, normally would not constitute sufficient overall Federal involvement with the project to justify expanding the scope of a Corps NEPA document to cover upland portions of the facility beyond the structures in the immediate vicinity of the regulated activity that would effect the location and configuration of the regulated activity.

Similarly, if an applicant seeks a DA permit to fill waters or wetlands on which other construction or work is proposed, the control and responsibility of the Corps, as well as its overall Federal involvement would extend to the portions of the project to be located on the permitted fill. However, the NEPA review would be extended to the entire project, including portions outside waters of the United States, only if sufficient Federal control and responsibility over the entire project is determined to exist; that is, if the regulated activities, and those activities involving regulation, funding, etc. by other Federal agencies, comprise a substantial portion of the overall project. In any case, once the scope of analysis has been defined, the NEPA analysis for that action should include direct, indirect and cumulative impacts on all Federal interests within the purview of the NEPA statute. The district engineer should, whenever practicable, incorporate by reference and rely upon the reviews of other Federal and State agencies.

For those regulated activities that comprise merely a link in a transportation or utility transmission project, the scope of analysis should address the Federal action, i.e., the specific activity requiring a DA permit and any other portion of the project that is within the control or responsibility of the Corps of Engineers (or other Federal agencies).

For example, a 50-mile electrical transmission cable crossing a 1 1/4 mile wide river that is a navigable water of the United States requires a DA permit. Neither the origin and destination of the cable nor its route to and from the navigable water, except as the route applies to the location and configuration of the crossing, are within the control or responsibility of the Corps of Engineers. Those matters would not be included in the scope of analysis which, in this case, would address the impacts of the specific cable crossing.

Conversely, for those activities that require a DA permit for a major portion of a transportation or utility transmission project, so that the Corps permit bears upon the origin and destination as well as the route of the project outside the Corps regulatory boundaries, the scope of analysis should include those portions of the project outside the boundaries of the Corps section 10/404 regulatory jurisdiction. To use the same example, if 30 miles of the 50-mile transmission line crossed wetlands or other "waters of the United States," the scope of analysis should reflect impacts of the whole 50-mile transmission line.

For those activities that require a DA permit for a major portion of a shoreside facility, the scope of analysis should extend to upland portions of the facility. For example, a shipping terminal normally requires dredging, wharves, bulkheads, berthing areas and disposal of dredged material in order to function. Permits for such activities are normally considered sufficient Federal control and responsibility to warrant extending the scope of analysis to include the upland portions of the facility.

In all cases, the scope of analysis used for analyzing both impacts and alternatives should be the same scope of analysis used for analyzing the benefits of a proposal.

8. *Environmental Impact Statement—General*—a. *Determination of Lead and Cooperating Agencies.* When the district engineer determines that an EIS is required, he will contact all appropriate Federal agencies to determine their respective role(s),

i.e., that of lead agency or cooperating agency.

b. *Corps as Lead Agency.* When the Corps is lead agency, it will be responsible for managing the EIS process, including those portions which come under the jurisdiction of other Federal agencies. The district engineer is authorized to require the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix. It is permissable for the Corps to reimburse, under agreement, staff support from other Federal agencies beyond the immediate jurisdiction of those agencies.

c. *Corps as Cooperating Agency.* If another agency is the lead agency as set forth by the CEQ regulations (40 CFR 1501.5 and 1501.6(a) and 1508.16), the district engineer will coordinate with that agency as a cooperating agency under 40 CFR 1501.6(b) and 1508.5 to insure that agency's resulting EIS may be adopted by the Corps for purposes of exercising its regulatory authority. As a cooperating agency the Corps will be responsible to the lead agency for providing environmental information which is directly related to the regulatory matter involved and which is required for the preparation of an EIS. This in no way shall be construed as lessening the district engineer's ability to request the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix.

When the Corps is a cooperating agency because of a regulatory responsibility, the district engineer should, in accordance with 40 CFR 1501.6(b)(4), "make available staff support at the lead agency's request" to enhance the latter's interdisciplinary capability provided the request pertains to the Corps regulatory action covered by the EIS, to the extent this is practicable. Beyond this, Corps staff support will generally be made available to the lead agency to the extent practicable within its own responsibility and available resources. Any assistance to a lead agency beyond this will normally be by written agreement with the lead agency providing for the Corps expenses on a cost reimbursable basis. If the district engineer believes a public hearing should be held and another agency is lead agency, the district engineer should request such a hearing and provide his reasoning for the request. The district engineer should suggest a joint hearing and offer to take an active part in the hearing and ensure coverage of the Corps concerns.

d. *Scope of Analysis.* See paragraph 7b.

e. *Scoping Process.* Refer to 40 CFR 1501.7 and 33 CFR 230.12.

f. *Contracting.* See 40 CFR 1506.5.

(1) The district engineer may prepare an EIS, or may obtain information needed to prepare an EIS, either with his own staff or by contract. In choosing a contractor who reports directly to the district engineer, the procedures of 40 CFR 1506.5(c) will be followed.

(2) Information required for an EIS also may be furnished by the applicant or a consultant employed by the applicant. Where this approach is followed, the district engineer will (i) advise the applicant and/or his consultant of the Corps information requirements, and (ii) meet with the applicant and/or his consultant from time to time and provide him with the district engineer's views regarding adequacy of the data that are being developed (including how the district engineer will view such data in light of any possible conflicts of interest).

The applicant and/or his consultant may accept or reject the district engineer's guidance. The district engineer, however, may after specifying the information in contention, require the applicant to resubmit any previously submitted data which the district engineer considers inadequate or inaccurate. In all cases, the district engineer should document in the record the Corps independent evaluation of the information and its accuracy, as required by 40 CFR 1506.5(a).

g. *Change in EIS Determination.* If it is determined that an EIS is not required after a notice of intent has been published, the district engineer shall terminate the EIS preparation and withdraw the notice of intent. The district engineer shall notify in writing the appropriate division engineer; HQUSACE (CECW–OR); the appropriate EPA regional administrator, the Director, Office of Federal Activities (A–104), EPA, 401 M Street SW., Washington, DC 20460 and the public of the determination.

h. *Time Limits.* For regulatory actions, the district engineer will follow 33 CFR 230.17(a) unless unusual delays caused by applicant inaction or compliance with other statutes require longer time frames for EIS preparation. At the outset of the EIS effort, schedule milestones will be developed and made available to the applicant and the public. If the milestone dates are not met the district engineer will notify the applicant and explain the reason for delay.

9. *Organization and Content of Draft EISs*—a. *General.* This section gives detailed information for preparing draft EISs. When the Corps is the lead agency, this draft EIS format and these procedures will be followed. When the Corps is one of the joint lead agencies, the joint lead agencies will mutually decide which agency's format and procedures will be followed.

b. *Format*—(1) *Cover Sheet.* (a) Ref. 40 CFR 1502.11.

(b) The "person at the agency who can supply further information" (40 CFR 1502.11(c) is the project manager handling that permit application.

(c) The cover sheet should identify the EIS as a Corps permit action and state the authorities (sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction.

(2) *Summary.* In addition to the requirements of 40 CFR 1502.12, this section should identify the proposed action as a Corps permit action stating the authorities (sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction. It shall also summarize the purpose and need for the proposed action and shall briefly state the beneficial/adverse impacts of the proposed action.

(3) *Table of Contents.*

(4) *Purpose and Need.* See 40 CFR 1502.13. If the scope of analysis for the NEPA document (see paragraph 7b) covers only the proposed specific activity requiring a Department of the Army permit, then the underlying purpose and need for that specific activity should be stated. (For example, "The purpose and need for the pipe is to obtain cooling water from the river for the electric generating plant.") If the scope of analysis covers a more extensive project, only part of which may require a DA permit, then the underlying purpose and need for the entire project should be stated. (For example, "The purpose and need for the electric generating plant is to provide increased supplies of electricity to the (named) geographic area.") Normally, the applicant should be encouraged to provide a statement of his proposed activity's purpose and need from his perspective (for example, "to construct an electric generating plant"). However, whenever the NEPA document's scope of analysis renders it appropriate, the Corps also should consider and express that activity's underlying purpose and need from a public interest perspective (to use that same example, "to meet the public's need for electric energy"). Also, while generally focusing on the applicant's statement, the Corps, will in all cases, exercise independent judgment in defining the purpose and need for the project from both the applicant's and the public's perspective.

(5) *Alternatives.* See 40 CFR 1502.14. The Corps is neither an opponent nor a proponent of the applicant's proposal; therefore, the applicant's final proposal will be identified as the "applicant's preferred alternative" in the final EIS. Decision options available to the district engineer, which embrace all of the applicant's alternatives, are issue the permit, issue with modifications or conditions or deny the permit.

(a) Only reasonable alternatives need be considered in detail, as specified in 40 CFR 1502.14(a). Reasonable alternatives must be those that are feasible and such feasibility must focus on the accomplishment of the underlying purpose and need (of the applicant or the public) that would be satisfied by the proposed Federal action (permit issuance). The alternatives analysis should be thorough enough to use for both the public interest review and the 404(b)(1) guidelines (40 CFR Part 230) where applicable. Those alternatives that are unavailable to the applicant, whether or not they require Federal action (permits), should normally be included in the analysis of the no-Federal-action (denial) alternative. Such alternatives should be evaluated only to the extent necessary to allow a complete and objective evaluation of the public interest and a fully informed decision regarding the permit application.

(b) The "no-action" alternative is one which results in no construction requiring a Corps permit. It may be brought by (1) the applicant electing to modify his proposal to eliminate work under the jurisdiction of the Corps or (2) by the denial of the permit. District engineers, when evaluating this alternative, should discuss, when appropriate, the consequences of other likely uses of a project site, should the permit be denied.

(c) The EIS should discuss geographic alternatives, e.g., changes in location and

other site specific variables, and functional alternatives, e.g., project substitutes and design modifications.

(d) The Corps shall not prepare a cost-benefit analysis for projects requiring a Corps permit. 40 CFR 1502.23 states that the weighing of the various alternatives need not be displayed in a cost-benefit analysis and "* * * should not be when there are important qualitative considerations." The EIS should, however, indicate any cost considerations that are likely to be relevant to a decision.

(e) Mitigation is defined in 40 CFR 1508.20, and Federal action agencies are directed in 40 CFR 1502.14 to include appropriate mitigation measures. Guidance on the conditioning of permits to require mitigation is in 33 CFR 320.4(r) and 325.4. The nature and extent of mitigation conditions are dependent on the results of the public interest review in 33 CFR 320.4.

(6) *Affected Environment.* See Ref. 40 CFR 1502.15.

(7) *Environmental Consequences.* See Ref. 40 CFR 1502.16.

(8) *List of Preparers.* See Ref. 40 CFR 1502.17.

(9) *Public Involvement.* This section should list the dates and nature of all public notices, scoping meetings and public hearings and include a list of all parties notified.

(10) *Appendices.* See 40 CFR 1502.18. Appendices should be used to the maximum extent practicable to minimize the length of the main text of the EIS. Appendices normally should not be circulated with every copy of the EIS, but appropriate appendices should be provided routinely to parties with special interest and expertise in the particular subject.

(11) *Index.* The Index of an EIS, at the end of the document, should be designed to provide for easy reference to items discussed in the main text of the EIS.

10. *Notice of Intent.* The district engineer shall follow the guidance in 33 CFR Part 230, Appendix C in preparing a notice of intent to prepare a draft EIS for publication in the **Federal Register.**

11. *Public Hearing.* If a public hearing is to be held pursuant to 33 CFR Part 327 for a permit application requiring an EIS, the actions analyzed by the draft EIS should be considered at the public hearing. The district engineer should make the draft EIS available to the public at least 15 days in advance of the hearing. If a hearing request is received from another agency having jurisdiction as provided in 40 CFR 1506.6(c)(2), the district engineer should coordinate a joint hearing with that agency whenever appropriate.

12. *Organization and Content of Final EIS.* The organization and content of the final EIS including the abbreviated final EIS procedures shall follow the guidance in 33 CFR 230.14(a).

13. *Comments Received on the Final EIS.* For permit cases to be decided at the district level, the district engineer should consider all incoming comments and provide responses when substantive issues are raised which have not been addressed in the final EIS. For permit cases decided at higher authority, the district engineer shall forward the final EIS comment letters together with appropriate responses to higher authority along with the case. In the case of a letter recommending a referral under 40 CFR Part 1504, the district engineer will follow the guidance in paragraph 19 of this appendix.

14. *EIS Supplement.* See 33 CFR 230.13(b).

15. *Filing Requirements.* See 40 CFR 1506.9. Five (5) copies of EISs shall be sent to Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The official review periods commence with EPA's publication of a notice of availability of the draft or final EISs in the **Federal Register.** Generally, this notice appears on Friday of each week. At the same time they are mailed to EPA for filing, one copy of each draft or final EIS, or EIS supplement should be mailed to HQUSACE (CECW–OR) WASH DC 20314–1000.

16. *Timing.* 40 CFR 1506.10 describes the timing of an agency action when an EIS is involved.

17. *Expedited Filing.* 40 CFR 1506.10 provides information on allowable time reductions and time extensions associated with the EIS process. The district engineer will provide the necessary information and facts to HQUSACE (CECW–RE) WASH DC 20314–1000 (with copy to CECW–OR) for consultation with EPA for a reduction in the prescribed review periods.

18. *Record of Decision.* In those cases involving an EIS, the statement of findings will be called the record of decision and shall incorporate the requirements of 40 CFR 1505.2. The record of decision is not to be included when filing a final EIS and may not be signed until 30 days after the notice of availability of the final EIS is published in the **Federal Register.** To avoid duplication, the record of decision may reference the EIS.

19. *Predecision Referrals by Other Agencies.* See 40 CFR Part 1504. The decisionmaker should notify any potential referring Federal agency and CEQ of a final decision if it is contrary to the announced position of a potential referring agency. (This pertains to a NEPA referral, not a 404(q) referral under the Clean Water Act. The procedures for a 404(q) referral are outlined in the 404(q) Memoranda of Agreement. The potential referring agency will then have 25 calendar days to refer the case to CEQ under 40 CFR Part 1504. Referrals will be transmitted through division to CECW–RE for further guidance with an information copy to CECW–OR.

20. *Review of Other Agencies' EISs.* District engineers should provide comments directly to the requesting agency specifically related to the Corps jurisdiction by law or special expertise as defined in 40 CFR 1508.15 and 1508.26 and identified in Appendix II of CEQ regulations (49 FR 49750, December 21, 1984). If the district engineer determines that another agency's draft EIS which involves a Corps permit action is inadequate with respect to the Corps permit action, the district engineer should attempt to resolve the differences concerning the Corps permit action prior to the filing of the final EIS by the other agency. If the district engineer finds that the final EIS is inadequate with respect to the Corps permit action, the district engineer should incorporate the other agency's final EIS or a portion thereof and prepare an appropriate and adequate NEPA document to address the Corps involvement with the proposed action. See 33 CFR 230.21 for guidance. The agency which prepared the original EIS should be given the opportunity to provide additional information to that contained in the EIS in order for the Corps to have all relevant information available for a sound decision on the permit.

21. *Monitoring.* Monitoring compliance with permit requirements should be carried out in accordance with 33 CFR 230.15 and with 33 CFR Part 325.

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February 3, 1988

Part III

Office of Management and Budget

Office of Federal Procurement Policy

Final Issuance of OMB Circular A-131; Value Engineering; Notice

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Issuance of Circular A-131; Value Engineering

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Final issuance of OMB Circular No. A-131.

SUMMARY: This OMB Circular provides policy guidance to Federal agencies regarding the use of value engineering as a means of identifying and reducing nonessential program and procurement costs. The Circular requires agencies to establish value engineering programs.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, Office of Federal Procurement Policy, Office of Management and Budget, Washington, DC 20503, (202) 395-6803.

SUPPLEMENTARY INFORMATION: A draft of the Value Engineering Circular was published in the **Federal Register** for review and public comment on August 27, 1987 (52 FR 32520). Comments were received in response to the **Federal Register** notice from 14 agencies and 18 private organizations. All comments were reviewed and, where warranted, changes have been made in the final Circular. A summary of the main issues and concerns raised by the comments follows:

1. Organizational Placement of the Value Engineering Function

The Circular requires agency heads to assign officials within their agencies to manage and monitor value engineering programs. Several commentors suggested that the person heading the value engineering effort should report directly to the agency head. The Circular does not direct the organizational placement or reporting hierarchy for agency value engineering officials. The Circular, instead, requires that the person responsible for the value engineering function receive appropriate training and that the performance of the function be consistent with achieving full compliance with the Circular. Organizational placement remains within the discretion of individual agency managers.

2. Functions of Agency Value Engineering Organizations

Several suggestions were made that the Circular should specifically identify and prescribe the role, size, grade levels and functions of the respective agency value engineering officials and activities to be established or appointed to implement the Circular. Details regarding staffing and grade levels and specific functions are not prescribed in the Circular. The Circular directs agencies to institute a value engineering effort but leaves the details of how the effort will be performed up to the individual agencies. This permits agencies to tailor value engineering efforts to their specific programs.

3. OMB's Oversight Role

Several private organizations recommended that OMB maintain active oversight over agencies' value engineering programs by requiring agencies and departments to prepare and submit annual savings goals and plans to OMB for review and approval. They believed that the requirement for submitting annual goals and plans would encourage agencies to more aggressively implement value engineering programs. The requirement for submitting annual goals and plans was not included in the Circular. Instead, agencies and departments will be required to provide OMB with annual, summary information about their value engineering programs. The exact data elements to be reported to OMB will be developed after consultation with the agencies. Figure 1, Sample Format for Annual Value Engineering Report, illustrates the type of summary information being considered for collection.

Figure 1—Sample Format For Annual Value Engineering Report

(Name)

Agency/Department

A. Estimated total amount of funds invested in value engineering in FY 1988

$ _____

B. Total value engineering savings achieved in FY 1988

$ _____

a. Savings achieved by in-house staff

$ _____

b. Savings generated by contractors

$ _____

C. Total employees assigned to value engineering

_____

a. Number of full-time employees

_____

b. Number of FTE's

_____

D. Number of agency/department employees receiving 8 hours or more of value engineering training in FY 1988

_____

E. Number of value engineering proposals received in FY 1988

_____

F. Number of value engineering proposals approved in FY 1988

_____

4. Funding Concerns

Concern about sufficient funds to establish and maintain value engineering programs was expressed by both agencies and private industry. Agency officials noted that funds for staffing management improvement efforts are difficult to obtain. Private industry noted that agencies need to make certain that funds are available to pay for both collateral and future contract savings, as appropriate, on accepted value engineering proposals. Suggestions were made that agencies should be required to fund value engineering programs on a line item basis and that agency heads should be authorized to retain and reprogram all value engineering savings. Agency budgeting practices and reprogramming authorities are often dictated by specific authorization, appropriation, and other statutory and administrative controls. Such practices and policies, therefore, must be tailored to fit the statutory and regulatory requirements of individual agencies. Requiring or specifying Government-wide funding practices in the Circular was not considered to be appropriate or practical.

5. Performance Evaluations

A provision in the draft Circular stated that supervisors would consider the number of value engineering change proposals and the manner in which the proposals were processed in evaluating the perfomance of program and project managers and contracting officers. Comments from value engineers supported this provision enthusiastically. Comments from the Federal agencies were, in contrast, almost unanimously opposed to the provision. The agencies noted that a scorekeeping approach to the evaluation and processing of value engineering proposals could be counterproductive. Value engineering change proposals differ in complexity and dollar effect. Furthermore, the quality of the proposals is more important than the quality received and the rapidity of processing. The agencies also stated that the processing of value engineering change proposals is often an interdependent effort among the engineering, program and contracting offices. It would be difficult, therefore, to establish and consistently apply meaningful performance evaluation standards for tasks having such divided responsibility. In view of these objections made by the agencies, the

requirement was deleted to consider the receipt and processing of value engineering change proposals as a specific factor in performance evaluations. The Circular does, however, still require that contract files list all change proposals requiring more than 45 days to accept or reject and that the rationale for rejecting any change proposal also be reflected in the file.

6. Definition of Value Engineering

Several comments stated that the definition of value engineering provided in the draft Circular should be changed to comply with the definition used by the Department of Defense. These suggestions were not accepted. The definition in the Circular is considered more appropriate for Government-wide use than the DOD definition. The primary difference between the definition in the Circular and the DOD definition is not large, The DOD definition specifically references "maintainability" and "interchangeability". These characteristics are essentially part of a product's performance requirements and it was not considered necessary to specifically add them to the definition used in the Circular.

7. Definitions of Value Engineering Change Proposal and Value Engineering Proposal

Various suggestions were made to clarify the definition of Value Engineering Change Proposals and Value Engineering Proposals. The suggestions were widely disparate and could not be adopted, in whole. The definitions now in the Circular, however, comply to the extent warranted with the suggested changes.

8. Changes to the Federal Acquisition Regulation

Comments were received that the Circular should address several value engineering issues now being considered by the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council. These issues pertain, in part, to the allowability (as indirect costs) of expenses incurred by contractors in developing value engineering change proposals that are ultimately rejected by the Government. Other commentors requested that the value engineering clauses at FAR 52.248 (1), (2), and (3) be changed to specifically provide that collateral savings resulting from change proposals that decrease life cycle cost be shared even if immediate contract costs are increased. The respective FAR Councils have a deliberate, standard approach for considering FAR changes. The Circular was not intended to interfere with the Council's deliberations of these issues. Accordingly, suggestions to have the Circular specify these regulatory changes were not accepted. The Circular does require the amendment of the FAR to prohibit "agency heads from making one time agency-wide exemptions to using value engineering provisions in their contracts."

9. Applicability to Grants

Suggestions were made that the Circular should be expanded to require the use of value engineering in grant programs. These suggestions were not adopted. The Circular is limited to Government contracts. It neither prohibits nor requires the use of value engineering by grant receiving activities. However, the Government-wide common rule now being developed to replace OMB Circular A–102 (Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments) is expected to encourage (but not require) Federal grantees to use value engineering on contracts where there is reasonable opportunity for cost reductions.

10. Value Analysis vs. Value Engineering

It was suggested that the term "value engineering" is misleading and that the terms "value management" or "value analysis" would be more appropriate and less offensive to "design professionals". The rationale for this suggestion was, in part, that the term "engineering" should be reserved for functions that require performance by registered professional engineers. Value engineering is often performed by both registered engineers and by unregistered "nonengineers". This suggestion was not adopted, as "value engineering" appears to have a wider acceptance than the proposed terms.

11. Certified Training

The Circular requires that value engineering training be provided to agency personnel responsible for performing value engineering functions. Suggestions were received that the Circular should specify the minimum training requirements and that the personnel responsible for value engineering be required to complete courses "certified" by value engineering organizations. These suggestions were not accepted. The level of training to be provided to value engineering personnel will be determined by agency management. While "certified courses" may be appropriate in some instances, there are a number of "non-certified" value engineering courses. Several are offered by the Department of Defense and may generally be attended by civilian agency personnel on a space available basis.

12. Timing

Many suggestions were made that the Circular should emphasize that the sooner value engineering is introduced into a project or program the greater the potential for savings. These recommendations were accepted and the Circular now specifies that the criteria and guidelines to be established by agencies for screening programs and projects should recognize that the potential savings are "generally greatest during the planning, design, and other early phases of project/program development."

13. Commercial Products and Services

Suggestions were made by several agencies and Departments that value engineering has very limited applicability or potential within their respective programs. Specifically, several procurement officials stated that the Circular could not be applied in their agency as their contracts were largely for commercial products and services. These suggestions were not adopted. The application and implementation of value engineering is not dependent on the procurement process. Value engineering can and should be applied to internal program delivery systems. Organizations and missions can also benefit, in some instances, by value engineering reviews. While contracts for commercial products frequently result in the delivery of standard off-the-shelf items, the requirements specified in the RFP's or IFB's for the items can be subjected to a value engineering review. These reviews, obviously, should be made before the issuance of the RFP or the IFB. The Circular is not intended to cause agencies to "value engineer" commercial products but to value engineer the Government's requirements and specifications for such products.

14. Research and Development Contracts

One agency suggested that value engineering provisions should not be required for research and development contracts. The same agency suggested that the use of various incentive fee type contracts negated the potential of value engineering. While there is merit to the agency's observations and suggestions, VE can be productively applied to some R&D contracts and to contracts using incentive fee provisions. VE can be used in helping to develop functional/performance specifications where these

types of specifications are used and it, in turn, can be used by the contractor to make suggested changes either to the specifications or work statement specified in a contract. There is always the potential for a better idea with regard to the tasks or functions to be performed within a particular contract. Incentive type contracts motivate contractors to perform better within specified parameters. Value engineering can remove the parameters and provide additional incentives for high performance. Accordingly, while value engineering may not be applicable to all R&D contracts, and to some contracts containing incentive fee arrangements, it is a tool that can provide benefits in certain instances. Therefore, the Circular does not exempt contracts for specific types of services such as R&D nor does it exempt specific types of contracts such as incentive fee contracts. Exemptions, where merited, may be granted by agency heads.

EFFECTIVE DATE: The Circular is effective February 3, 1988.

Circular No. A–131

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Value Engineering

1. *Purpose.* The purpose of this Circular is to require the use of value engineering, as appropriate, by Federal Departments and agencies to identify and reduce nonessential procurement and program costs. The Circular requires agency heads to establish and improve their use of value engineering programs.

2. *Background.* Value engineering in the Federal Government is a means for some Federal contractors and Government entities to change the plans, designs and specifications for Federal programs and projects. These changes are intended to lower the Government's costs for goods and services and maintain necessary quality levels.

a. *Prior Reports.* Over the last several years, reports issued by the General Accounting Office (GAO) and many Inspectors General (IGs) have consistently concluded that greater use of value engineering would result in substantial savings to the Government. While some Federal agencies have value engineering programs, other agencies have not utilized value engineering fully. Even for agencies with established programs, the GAO and IG reports conclude that much more can and should be done to realize the benefits of value engineering.

b. *Identified Impediments.* The impediments that are frequently noted in these reports and that have prevented a greater use of value engineering include:

(1) Failure of senior management to allocate the necessary resources, both in effort and in funds, to establish and run value engineering programs;

(2) Absence of good criteria for selecting projects and programs for value engineering studies;

(3) Failure to properly perform value engineering studies;

(4) Inadequate attention by agency management to reviewing and implementing the recommendations made in value engineering studies.

c. *Other Problems.* Many of the problems noted in the GAO and IG reports are attitudinal. A common observation in many of the reports is that there are few incentives to use value engineering or other cost cutting techniques to save money on fully funded Federal programs and projects. Obviously, programs should be developed, critically reviewed and administered in the most cost effective manner possible. Value engineering and other management techniques must ensure realistic project budgets and identify and remove nonessential capital and operating costs.

3. *Definitions.*

a. *Agency.* As used in this Circular, the term "agency" means any executive department, military department, government corporation, government controlled corporation or other establishment of the executive branch of the Federal government.

b. *Value Engineering.* An organized effort directed by a person trained in value engineering techniques to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality and safety.

c. *Value Engineering Change Proposal (VECP).* A change proposal that is submitted by a contractor under a value engineering incentive or program requirement clause included in a Federal contract.

d. *Value Engineering Proposal.* A change proposal developed by employees of the Federal Government or contractor value engineering personnel employed by the agency to provide value engineering services for the contract or program.

4. *Policy.* Agencies shall establish value engineering programs and use value engineering, where appropriate, to reduce nonessential costs and improve productivity. Value engineering programs of agencies shall, at a minimum, provide for the following management and procurement practices.

a. *Management Practices.* Value engineering programs must be tailored to the mission and organizational structure of each agency. For example, the cost and program/project size usually indicate the potential for value engineering. In most agencies, a relatively few programs or projects comprise the majority of costs and value engineering efforts should be concentrated on these programs and projects. Therefore, agencies shall:

(1) Emphasize, through training, evaluation and other programs, the potential of value engineering to reduce unnecessary costs.

(2) Establish a single entity within the agency to manage and monitor value engineering efforts, encourage the use of value engineering and maintain data on the program. This function shall achieve the purposes of this circular. Value engineering training shall be provided to the person responsible for the value engineering function and to other personnel responsible for developing, reviewing and analyzing value engineering actions.

(3) Report and update the name, address and telephone number of the person responsible for each agency's value engineering program to the Office of Federal Procurement Policy, Office of Management and Budget.

(4) Ensure that funds necessary for operating agency value engineering programs are included in annual budget requests, and provide annual summary value engineering program information to the Office of Management and Budget as requested.

(5) Establish criteria and guidelines to identify those programs and projects that are most appropriate for value engineering studies. The criteria and guidelines should recognize that the potential savings are generally greatest during the planning, design, and other early phases of project/program development.

(6) Require that files be documented to explain why value engineering studies were not performed or required for any programs/projects meeting the agency criteria.

(7) Establish guidelines to evaluate and process value engineering proposals.

b. *Procurement Practices.* Present procurement policies and practices for the use of value engineering are set forth in Parts 48 and 52 of the Federal Acquisition Regulation (FAR). Part 48 provides two basic incentive approaches for using value engineering. The first approach uses a Value

Engineering Incentive (VEI) clause. In this approach the contractor's participation is voluntary and the contractor uses its resources to develop and submit VECPs. A contract clause provides that when a VECP is accepted any resulting savings are shared with the contractor or a preestablished—usually a percentage—basis set forth in the contract.

The second approach, uses a Value Engineering Program Requirement (VEPR) clause and requires the contractor to conduct a specific value engineering effort within the contract, i.e., an effort to identify and submit to the Government methods for performing more economically. In this second approach, the contractor also shares in any savings resulting from the VECP, but at a lower percentage rate than under the voluntary approach. This effort generally is directed at the major cost items of a system or project.

The FAR presently permits agency heads to exempt their agencies from using value engineering provisions in contracts. The authority to totally exempt agencies from using value engineering provisions will be rescinded and the FAR will be modified to require that contracting activities include value engineering provisions in contracts except where exemptions are granted on a case-by-case basis or for specific classes of contracts. One time agency-wide exemptions will no longer be permitted. In addition, agency contracting activities will:

(1) Actively elicit VECPs from contractors.

(2) Promote value engineering through contractor meetings and the dissemination of promotional and informational literature regarding the value engineering provisions of contracts.

(3) Establish guidelines for processing value engineering change proposals and require that contract files list all change proposals requiring more than 45 days to accept or reject.

(4) Document all contract files to explain the rationale for accepting or rejecting value engineering change proposals.

(5) Use the value engineering clauses provided in the FAR for appropriate supply, service, architect-engineer and construction contracts.

(6) Use the value engineering program requirement clause (FAR 52.248–1 alternatives I or II) in initial production contracts for major systems programs and for contracts for research and development except where the controlling program officer determines and documents the file to reflect that such use is not appropriate (see Section 4 of Public Law 93–400, as amended (41 U.S.C. 403) for definitions of major systems).

5. *Sunset Review.* The policies contained in this Circular will be reviewed by the Office of Management and Budget three years from the date of issuance.

6. *Inquiries.* Further information about this Circular may be obtained by contacting the Office of Federal Procurement Policy, 726 Jackson Place NW., Washington, DC 20503, Telephone (202) 395–6803.

James C. Miller III,

Director.

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federal register

Wednesday
February 3, 1988

Part IV

Department of Agriculture

Animal and Plant Health Inspection Service
Food Safety and Inspection Service

9 CFR Part 71 et al.
Swine Identification; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Food Safety and Inspection Service

9 CFR Parts 71, 78, 85, 309, 310, and 320

[Docket No. 87-103]

Swine Identification

AGENCY: Animal and Plant Health Inspection Service, USDA, and Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (the Department) is proposing to add to its existing identification and recordkeeping requirements for swine, to require that all swine in interstate commerce be identified and that records concerning the swine identification be maintained. Expanding existing requirements, so that all swine in interstate commerce are identified and records of their identification maintained, would allow the Animal and Plant Health Inspection Service (APHIS) of the Department to trace a swine disease to its source much more efficiently than is now possible. APHIS needs to be able to locate the source of infection in order to eradicate certain diseases and stop them from spreading. Expanding existing identification and recordkeeping requirements for swine in interstate commerce would also allow the Food Safety and Inspection Service (FSIS) of the Department to determine more easily the source of meat that is adulterated with drugs and other chemical residue at levels higher than the allowed tolerance. FSIS needs to be able to locate these sources of adulteration in order to better keep the United States meat supply free of meat that could harm the health of the American public.

DATE: Consideration will be given to all comments postmarked or received on or before April 4, 1988.

ADDRESS: Send an original and 2 copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments are in response to Docket Number 87-103. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. W.E. Ketter, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5863; or Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, FSIS, USDA, Room 4444, P.O. Box 96464, Washington, DC 20090-6464, 202-447-3219.

SUPPLEMENTARY INFORMATION:

Background

This background material is presented in five sections: (1) History of Industry Action Concerning Swine Identification; (2) Packers and Stockyards Administration: Responsibilities and Current Regulations; (3) Animal and Plant Health Inspection Service (APHIS): Responsibilities and Current Regulations; (4) Food Safety and Inspection Service (FSIS): Responsibilities and Current Regulations; and (5) Proposed Regulations.

The first section is historical material concerning identification of swine and pork from the point of view of the various industries concerned with producing meat for the American public, including livestock producers (especially hog producers), feedlot owners, sale barn operators, and slaughtering plant operators. The second, third, and fourth sections summarize the current USDA regulations concerning swine identification and records required to be maintained on swine in interstate commerce. The fifth section details proposed regulations to expand requirements for swine identification and to require certain records of swine identification to be kept.

History of Industry Action Concerning Swine Identification

For many years, representatives of the swine industry have urged the United States Department of Agriculture (the Department) to promulgate regulations requiring the identification of swine in the United States. In 1970, the U.S. Animal Health Association (USAHA), a national organization of state and federal animal health officials and industry representatives, adopted a resolution demanding that all livestock and poultry containing biological residues or harboring zoonotic diseases injurious to human health be quarantined and disposed of in an appropriate manner. In 1982, the Livestock Conservation Institute (LCI), a nonprofit research and education organization of the livestock and meat industry and other professional groups, approved a resolution supporting mandatory identification of all swine to the farm of origin at all points of concentration and slaughter. Virtually all segments of the pork industry concurred in the resolution. In 1984, the National Pork Producer's Council (NPPC), which represents swine producers, appointed a task force to develop a national identification program for swine.

At their respective 1984 meetings, the identification committees of both the USAHA and the LCI reported that "there is general agreement on the need for identification." Both organizations resolved "to continue to pursue a national, uniform means to identify swine back to the farm or ranch." An NPPC identification task force has also recommended the development of a system "to allow for the potential for product improvement that will enhance the product image and increase consumer confidence in the product. To accomplish this, hogs must be identified for control of disease and residues as well as composition and quality."

Packers and processors, as represented by the American Meat Institute (AMI), advocate animal identification to help prevent and eliminate diseases and control residues. Many slaughtering establishments independently require identification for the animals they purchase.

On March 28, 1984, the AMI submitted a petition to USDA requesting adoption of regulations requiring identification of all swine moved or sold for the purpose of slaughter, so that they could be traced back through marketing channels to their respective sources. The purpose of the identification would have been "to facilitate the prevention, eradication, and elimination of swine diseases and for other public health-related reasons." FSIS denied this petition on August 22, 1984, stating that USDA does not have authority to require a mandatory swine identification program for all swine moved or sold for purposes of slaughter, as requested by the AMI.

On July 9, 1985, the AMI submitted a second petition, asking that regulations be adopted requiring, with certain exceptions, that swine moved or sold in interstate commerce for the purpose of slaughter be identified to their places of origin by a means approved by USDA. The petition referred to a "Notice of Intent to Institute Proposed Rulemaking," published by FSIS on May 20, 1985 (50 FR 20796). The notice stated that FSIS would consider evidence from producers that animals offered for ante-mortem inspection had been properly withdrawn from sulfonamide and other drugs. (If animals are not properly

withdrawn from these drugs before slaughter, their meat will be adulterated by residues.) According to the AMI, adequate evidence cannot be provided, and therefore the sulfa residue problem can only be dealt with effectively with a swine identification system that allows swine to be traced back to their premises or herd of origin.

The AMI petition was supported by the LCI, the National Association of Meat Purveyors, an organization representing meat wholesalers, and the American Feed Industry Association, an organization representing manufacturers of livestock and poultry feed.

In addition, Dr. R.H. Wasserman of the New York State College of Veterinary Medicine, Cornell University, endorsed the AMI petition. Dr. Wasserman had chaired the National Academy of Sciences/National Research Council (NAS/NRC) Committee on the Scientific Basis of the Nation's Meat and Poultry Inspection Program. In July 1985, the Committee published a report, "Meat and Poultry Inspection: the Scientific Basis of the Nation's Program." In this report, the Committee recommended (pp. 77–78) that an animal identification system "be created to allow diseased or contaminated animals to be raced to their source, to increase the farmer's share of responsibility for contamination, and to facilitate epidemiological studies of specific disease outbreaks." The identification system would be used in conjunction with an integrated USDA animal health monitoring program using data from meat and poultry inspection to ensure the routine tracing of disease and contamination back to their respective sources (p. 78). In addition, as pointed out in the report, an identification and traceback system would also be useful in controlling use of contaminating chemicals at the farm (p. 60).

The FSIS responded to the NAS report in its "FSIS Future Agenda," issued June, 1986. In preparing the response, the FSIS established eight committees, including a committee on animal identification and traceback. That committee recommended establishing a mandatory, national system for tracing swine back to their points of origin (p. VI–5). USDA was urged to begin at once to develop a program requiring identification of swine and maintenance of identification records by slaughter plants (p. VI–6). The committee found the persistence of the residue problem in swine to be a compelling reason to initiate an identification and traceback program. "In the case of residue screening, product which has been sampled [in FSIS's monitoring program] and found by the laboratory to be positive for chemical contamination will have moved into commerce before the [laboratory] results are returned to the point of origin. However, these results can be used to develop trend data and to alert inspectors to potential problem producers, *provided the source of the contamination is known*" (p. VI–3). The committee assessed the option of requiring slaughter plants to maintain records on the ownership of all swine during the 30-day period immediately preceding slaughter. It found this option "* * * could be put into operation with little difficulty and may be generally acceptable to producers and slaughter plants. It would provide an excellent, low-cost, and highly effective start-up program for a nationwide system for tracing animal ownership."

The primary value of these regulations, in the view of the committee, would be in establishing the means for tracing animals with violative levels of residues to their previous owners (p. VI–5). But the committee also noted other possible benefits from the regulations. "Part of [FSIS's] future agenda," observed the committee,

> "* * * is to move into more productive forms of inspection. FSIS is planning to direct more intensive efforts to the control of microbiological and chemical contaminants in meat and poultry. These efforts would include the generation of epidemiological data that could be fed back into the animal production chain to improve the condition of animals presented for inspection. An animal identification and traceback system would be needed to carry out this kind of inspection activity * * *. Federal and state animal health authorities would be able to trace animals to their source when appropriate action is needed to be taken to prevent epizootic infections or chemical residues or other contaminations. Benefits would also accure to producers in the form of reduced herd morbidity and mortality and as a tool in the development of better animal husbandry. By monitoring the results of breeding improvements from the farm to the slaughterhouse, producers, consumers, and food companies could all be expected to benefit from the enhanced livestock quality that animal identification and traceback could bring. In addition, effective animal identification can deter theft and thereby reduce losses to producers and insurers." (p. VI–3.)

In its deliberations, the committee agreed that one aspect of animal disease control that deserves particular attention is that of exotic diseases. Contagions of foreign origin, such as African swine fever, could have devastating effects on domestic herds. Losses would be caused by disruption to the marketing system, and by morbidity and mortality among animals. A good identification and traceback system would enable the industry and animal health authorities to locate the sources of exotic infections quickly and efficiently.

On January 12, 1987, officials of the AMI, the Livestock Marketing Association, an organization representing operations of livestock markets, and the NPPC sent a letter to the Assistant Secretary of Agriculture for Marketing and Inspection Services. The letter outlined the basic features of a suggested swine identification system. Among other things, the letter stated that a workable swine identification system would "provide an effective, economical method of enhancing the Department's public health capabilities." The system outlined in the letter would require packers, marketing agents, and other buyers to maintain records regarding the sources of animals.

In addition to this industry support for a swine identification system, there has been much recent congressional interest in the subject. The Processed Products Inspection Improvement Act of 1986 (Title IV of the Futures Trading Act of 1986 (Pub. L. 99–641)) expresses the sense of Congress that the Secretary of Agriculture should evaluate the feasibility of, and develop, a program that would enable the Secretary to trace livestock subject to federal inspection in order to identify the producer (section 405(2)). The Secretary is to report to congressional committees on any action proposed or taken with respect to such a program by November 1987 (see 406(3)).

Packers and Stockyards Administration: Responsibilities and Current Regulations

The Packers and Stockyards Administration (PSA) of the Department, under the Packers and Stockyards Act, 1921 (7 U.S.C. 181, *et seq.*), regulates the packers and stockyards industry to assure fair trade practices. Most PSA regulations concern financial practices of the industry. However, as part of this regulation, PSA requires market agencies to maintain certain records concerning livestock. The regulations do not require that these records show the identification, if any, of the livestock. Records may include this information, but most swine are identified only by lot.

APHIS: Responsibilities and Current Regulations

APHIS is responsible, in part, for protecting the health of United States livestock and poultry. In order to fulfill this responsibility, APHIS has promulgated regulations requiring

animals moving in interstate commerce to be tested for disease and inspected for pests, requiring certain animals moving in interstate commerce to be identified, and otherwise governing the interstate movement or commerce of livestock and poultry in the United States.

Millions of livestock are slaughtered every year in the United States. Many of these animals are moved interstate to get to slaughter. When these animals are slaughtered, blood and tissue samples are taken from some, and all the carcasses are inspected. If any of them are found to be infected with certain diseases, APHIS attempts to trace the route the animals took through marketing channels to arrive at slaughter. In that way, APHIS can find out where diseased animals were located, when they were there, and what other animals they came in contact with. Each animal that a diseased animal came in contact with is exposed and may itself become infected, and may in turn have the capability of infecting other animals. Therefore, if APHIS is to successfully control and eradicate certain livestock diseases in this country, it must be able to trace individual animals.

APHIS has some regulations requiring identification of swine moved in interstate commerce. However, not all swine are covered, and when identification is required, it is often optional whether it is applied before or after the swine move interstate. The regulations concerning swine identification are contained in Title 9, Code of Federal Regulations, Parts 78 and 85.

Part 78 contains APHIS's regulatory program to control and eradicate brucellosis. These regulations include requirements for movements in interstate commerce of: reactor swine, exposed swine, sows and boars moving for slaughter or for sale for slaughter, and sows and boars moving for breeding. Other swine are not covered by Part 78.

Part 78 does not regulate swine that are not brucellosis reactors or exposed to brucellosis, or that are not sows or boars moved or moving in interstate commerce for any purpose other than slaughter, sale for slaughter, or breeding. Most swine in this category would be moving or moved in interstate commerce for feeding.

Part 78 requires reactor swine moved in interstate commerce to be identified by a metal eartag (see § 78.31(b)). The regulations also require reactor swine to be accompanied by a permit (see § 78.31(c)). The permit must include certain information: owner's name and address, points of origin and destination, number of animals covered, purpose of the movement, any reactor tag numbers, and one of the following: The official eartag number, individual animal registered breed association registration tattoo, registered breed association registration brand, United States Department of Agriculture backtag number, individual animal registered breed association registration number, or similar individual identification (see § 78.1, definition of "permit"). Part 78 also requires that records kept in connection with the interstate movement of reactor swine have the words "Brucellosis Reactor" on them (see § 78.31(d)).

Part 78 requires that exposed swine may only be moved in interstate commerce if accompanied by a permit (see § 78.32). The permit must include the same information listed above.

Part 78 provides that sows and boars that are not brucellosis reactor or exposed swine may only be moved in interstate commerce for slaughter or for sale for slaughter if individually identified: (1) By an official eartag or USDA backtag applied before movement in interstate commerce and before they are mixed with swine from any other source (see § 78.33(a)(1)); (2) by an official eartag or USDA backtag applied upon arrival after movement in interstate commerce and before they are mixed with swine from any other source, when moved directly from their herd of origin to a recognized slaughtering establishment or a stockyard, market agency, or dealer operating under the Packers and Stockyards Act, as amended (see § 78.33(a)(2)); or, (3) by a Veterinary Services-approved tattoo that has been authorized in writing by the Deputy Administrator, VS (see § 78.33(a)(3)). The regulations also state that serial numbers of official eartags, USDA backtags, and Veterinary Services approved tattoos will be assigned to persons who apply in the state where they maintain their place of business. "Persons assigned serial numbers must: (1) Identify the herd of origin of swine upon which the serial numbers were used and record this information on a document; (2) maintain these records at their place of business for 2 years; and (3) make these records available for inspection during ordinary business hours upon request by a Veterinary Services representative or a state representative" (see § 78.33(d)). The regulations also state that:

"[t]he operator of each place of business where sows and boars are identified on arrival in accordance with this section must enter the identification on the yarding receipt, sale ticket, invoice, or waybill relating to the sows and boars, and maintain the document at the place of business for 2 years. The operator must make the document available for inspection during ordinary business hours upon request by a Veterinary Services representative or state representative" (See § 78.33(e)).

Part 78 provides that sows and boars that are not brucellosis reactor or exposed swine may only be moved in interstate commerce for breeding if individually identified by an official eartag, or by ear notching or an ear tattoo that has been recorded in the book of record of a purebred registry association. According to the regulations, the identification must be done before the swine move in interstate commerce and before they are mixed with swine from any other source. (See § 78.33(b)).

Part 85 contains APHIS's regulatory program to control the spread of pseudorabies. The regulations include requirements for interstate movement of: infected swine, exposed swine, vaccinated swine that are not known to be either infected or exposed, and unvaccinated swine that are not known to be either infected or exposed.

Infected swine and exposed swine may be moved interstate under Part 85 to certain locations under certain conditions. One of the conditions is that they are accompanied by a permit or owner-shipper statement. All permits and owner-shipper statements must include certain information, including the number of swine being moved, the points of origin and destination, the consignor and consignee, and any other information required by the regulations. (See § 85.1, definitions of "Owner-shipper statement" and "Permit".) Section 85.5(a)(3) requires that the permit or owner-shipper statement accompanying infected swine and exposed swine interstate to slaughter must also list "the identification tag, tattoo earnotch recognized by a breed association, or similar identification of each swine being moved; *except* if the swine are moved interstate and the identity of the farm of origin of each swine is maintained, the permit or the owner-shipper statement need not list the individual identification required * * * if such swine are identified to the farm of origin at the recognized slaughtering establishment or the first slaughter market." Similarly, the permit accompanying exposed swine moving interstate to a quarantined herd or a quarantined feedlot must include "the identification tag, tattoo, earnotch recognized by a breed association, or

similar identification of each animal being moved." (See § 85.5(b)(5)).

Pseudorabies vaccinated swine that are not known to be either infected with the disease or exposed to it can be moved to slaughter if they are accompanied by a permit or owner-shipper statement (see § 85.6(a)(2)). These documents need only include the number of swine being moved, the "points of origin and destination," and "the consignor and the consignee." The documents do not need to include identification of the swine. However, pseudorabies vaccinated swine moving to a quarantined herd or quarantined feedlot must be accompanied by a permit that include "the individual identification tag, tattoo, earnotch recognized by a breed association or similar identification of each animal being moved." (see § 85.6(b)(2)).

Swine that have not been vaccinated for pseudorabies, and that are not known to be either infected with the disease or exposed to it, can be moved interstate to slaughter without being accompanied by any document and without being identified. These swine must be moved either directly to a recognized slaughtering establishment or "directly through one or more slaughter markets and then directly to a recognized slaughtering establishment." (See § 85.7(a)).

Swine that have not been vaccinated for pseudorabies and that are not known to be either infected with the disease or exposed to it, can be moved interstate to feedlots, quarantined feedlots, quarantined herds, and approved livestock markets under certain conditions. Only in certain circumstances must the swine be accompanied by documents or identified. If they are moved from a state "which requires the State animal health official * * * to be immediately notified of any suspected or confirmed case of pseudorabies in that State and which requires that exposed or infected livestock be quarantined" under certain conditions, then the swine must either: (a) Be accompanied by an owner-shipper statement, moved directly from a farm of origin to an approved livestock market, and identified at the approved livestock market to the farm of origin by an identification tag (see § 85.7(b)(3)(i)); or must, among other things, (b) be accompanied by a certificate which states "the identification of the farm of origin of each swine being moved by an earnotch recognized by a breed association, identification tag, tattoo, or similar identification * * * " (see § 85.7(b)(3)(ii)).

Swine that have not been vaccinated for pseudorabies and that are not known to be either infected with the disease or exposed to it, can be moved interstate for other purposes only if they are accompanied by a certificate that includes the number and description of the swine being moved, the points of origin and destination, the consignor and consignee, and "the identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved." (See § 85.1, definition of "Certificate" and § 85.7(c)).

Finally, Part 85 requires consignors "of swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies which are moved interstate directly to a feedlot, quarantined feedlot, quarantined herd, or to an approved livestock market for subsequent movement directly to a feedlot, quarantined feedlot or quarantined herd" to maintain "records whereby individual swine can be traced to the farm of origin." (See § 85.11(a)). Part 85 also requires consignors to maintain these records for 2 years after the swine are moved interstate, and to make the records available on request (see § 85.11(b)).

The APHIS regulations in Parts 78 and 85 are designed to provide a way to locate swine infected with brucellosis or pseudorabies, trace them to their sources, and identify all animals they may have exposed to disease and that may in turn have become infected and able to spread the disease. For this reason, most swine are required to be individually identified, accompanied during movement in interstate commerce by some document showing their ownership, origin, and destination, or both identified and accompanied by certain documents. Only with this information can APHIS eradicate and control brucellosis and pseudorabies in swine.

However, these requirements do not effectively allow APHIS to trace all swine in interstate commerce. This is because some swine in interstate commerce are not covered under any of the identification and documentation requirements. The current regulations require identification and documentation of swine with respect to only two diseases; brucellosis and pseudorabies. If swine in interstate commerce are not required to be identified or accompanied by documents under either Part 78 or Part 85, then no identification or documentation requirements apply to them, and they cannot be traced back through marketing channels. Also, because the current regulations do not require maintenance of records showing the ownership of swine at all times while they are in interstate commerce, not all swine can be traced. A system requiring all swine in interstate commerce to be identified, and also requiring complete records of their ownership, would help APHIS trace diseased swine, control the spread of diseases, and eradicate sources of infection. This type of system would also help APHIS enforce its existing regulations concerning interstate movement of swine.

FSIS: Responsibilities and Current Regulations

FSIS, under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), has responsibility for ensuring that meat and meat food products intended for consumers in the United States are wholesome and not adulterated or misbranded. The FMIA, among other things, requires the Secretary of Argiculture, through appointed inspectors, to conduct ante-mortem and post-mortem examination and inspection of certain livestock, including swine, when these animals are slaughtered in an establishment that is subject to federal inspection (see 21 U.S.C. 603 and 604). The inspection is performed by veterinarians or by trained food inspectors working under veterinary supervision, and is administered by FSIS.

FSIS conducts visual and manual inspections of animals and carcasses. The agency also conducts the National Residue Program to help prevent products that are adulterated with residues of drugs and other chemicals, such as pesticides and industrial contaminants, from being distributed in commerce. In the monitoring phase of the program, tissue samples are collected by inspectors on a random basis. These samples are subjected to laboratory examination to determine, among other things, if levels of substances are higher than the established tolerances. Besides the monitoring samples, other samples may be taken from specific animals and carcasses that FSIS has reason to believe may be adulterated. For example, if the FSIS inspector finds injection lesions or other conditions that indicate possible adulteration, the animal or carcass and parts may be retained until the results of laboratory tests on tissue samples are known.

There are not enough FSIS personnel to test every animal or carcass for possible adulteration with chemical residues, and even if there were, it is not practical to retain every carcass until test results are known. This fact was important consideration in establishing

the National Residue Program. Also, the cost of testing all animals or carcasses and holding them for test results would be prohibitive. Therefore, a system whereby FSIS could predict which animals or carcasses were most likely to be adulterated would help the agency more accurately to choose animals and carcasses for blood and tissue sample testing, use its personnel more efficiently, more effectively enforce its regulations, and more effectively keep adulterated meat out of the nation's food supply.

To do this, FSIS needs a system in which all swine in interstate commerce arriving at slaughter are identified and in which a record of the previous ownership and location of each swine is provided. Then, when FSIS locates an adulterated carcass, the animal from which the carcass is derived can be traced through marketing channels. Tracing animals would allow officials to locate other animals that are likely to yield adulterated meat. These specific animals could then be tested at slaughter. For example, if a carcass were adulterated with antibiotics, the animal from which the carcass is derived could be traced to the location where the antibiotics were given. Other animals from that location, which would also be likely to yield adulterated meat, could then be traced. Also, steps could be taken to stop more animals from being improperly treated with antibiotics, and animals already treated could be held longer before slaughter, until the adulteration problem naturally corrected itself. For another example, if a carcass is adulterated with a pesticide, the animal from which the carcass is derived could be traced back to the farm or other premises where it came in contact with the pesticide. Again, other animals from the premises, which would also be likely to yield adulterated meat, could be traced. Steps could then be taken to stop or reduce exposure of animals at the premises to the pesticide.

However, the current identification requirements for swine do not provide a means for all swine in interstate commerce to be traced through marketing channels. The reasons for this are explained above in the discussion of current APHIS regulations.
Requirements that swine be identified while in interstate commerce, and requirements that records be maintained showing ownership of swine, would help FSIS meet its responsibilities under the FMIA, would help FSIS more efficiently locate a larger proportion of adulterated carcasses at slaughter, and would allow sources of adulteration to be located and eliminated. With this type of regulation in effect, FSIS would be better able to enforce its existing regulations and therefore better able to protect the wholesomeness of the United States meat supply.

Proposed Regulations

Under current law, there is only one feasible way to trace outbreaks of swine diseases to their source, eradicate infection, control spread of diseases, and locate swine that are likely to have residue problems before they enter the nation's food supply. That is to require all swine in interstate commerce to be identified, and to require records showing the identification of all swine moved in interstate commerce to be kept. If the swine in interstate commerce would be identified, and records would be kept showing that identification, the swine could be traced through marketing channels to their respective sources. Tracing would be accomplished by starting with the current owner and location of the swine, and working backwards through each previous owner and location of the swine, to the point when and where the individual swine entered interstate commerce. As explained below, under the proposed regulations, each person (individual, firm, corporation, or other legal entity) who owns or possesses or has owned or possessed a swine which was or is in interstate commerce, and each person who applies or has applied identification to swine which were or are in interstate commerce, would have to maintain a record of any identification the person applied to the swine, along with certain information about the person from whom he/she or it acquired the swine and any identification on the swine when he/she or it acquired the swine. To trace individual swine, USDA personnel would start by interviewing and inspecting the records of the person currently owning or possessing the swine or its carcass. From those records, they would learn the identity of the previous person which owned or possessed the swine, the previous location of the swine, and any identification on the swine when it was most recently acquired. If necessary, USDA personnel would then go to the next person which owned or possessed the swine, moving backwards in time, using the identification records to identify the specific swine being traced. This process would continue until the location where the swine were farrowed is reached. At each stop, USDA personnel would be able, by examining the records, to trace animals back another step in commerce. In this manner, individual swine can be traced back through marketing channels. This same method could be used to trace swine forward through marketing channels. This would be done when a source of disease is found and all swine exposed to it must be located. The same tracing method would be used.

Tracing is impossible without two things: (1) The swine must be identified with some marking or device; and (2) there must be a written record of who has owned or possessed the swine, where the swine have been located, and the identification applied to them. Both these requirements are included in the proposed regulations, which are explained below. The written record of ownership or possession and location alone, without the swine being identified, is not enough. For example, a slaughterhouse must keep written records of the persons from whom it has purchased swine. In turn, a person who sells the swine to the slaughterhouse must, if the swine are in interstate commerce, make a record of the source of the swine. But if the swine are not individually identified, and the person purchased swine from more than one source, then there may be no means of determining which swine came from which source. Therefore, individual swine could not be traced back through marketing channels in all instances without the swine being identified with some marking or device.

As explained above, various agencies within the Department do have some regulations requiring identification of swine and maintenance of various records. However, the APHIS identification and documentation requirements do not cover all swine in interstate commerce, and the PSA record-keeping requirements neither specifically require swine identification, nor authorize FSIS and APHIS personnel to have access to the records.

The Department therefore proposes various amendments to the regulations in Title 9, Code of Federal Regulations[1]. The Department proposes to require, with one exception, that no swine may be sold, transported, received for transportation, or offered for sale or transportation, in interstate commerce, unless they are individually identified by means of identification devices approved by the Deputy Administrator (see proposed §§ 71.19 and 309.16(c)).

[1] The Food and Drug Administration of the Department of Health and Human Services (FDA), which is responsible, in part, for protecting the American public against adulterated and misbranded foods and drugs, has informed FSIS that a swine identification program would greatly improve the ability of FDA to take enforcement action in drug residue violation cases.

The exception would be for swine from farrow to finish operations that are taken directly to a slaughtering establishment from the premises where they were raised (see proposed § 71.19(c)).

Under the proposed regulations, only one identification marking or device would have to be applied to each swine. If persons applied additional markings or devices, that would not conflict with the regulations. However, under the proposed regulation, it would be illegal to remove or tamper with any identification while the swine is in interstate commerce (see proposed § 71.19(f)). In addition, the records required under the proposed regulations would have to list *all* identifications applied to each swine (see proposed §§ 71.19(d)(1)(iii) and (e), and 78.33(d)(1)(iii) and (e), which are explained more fully below.)

The required swine identification would have to be maintained through post-mortem inspection (see current § 310.2(a), which requires animal identification to be maintained until post-mortem examination is completed). This is to ensure that any test samples can be identified to the swine from which they came.

Means of identification would be approved by the Deputy Administrator, Veterinary Services, APHIS, if he or she determines they can be used successfully to trace a swine in interstate commerce. The proposed regulations list several approved means of identification, to be used in different circumstances, that APHIS has determined will provide the information necessary to trace the prior movements of the animal through marketing channels (see proposed § 71.19(b)). Most of the listed means of identification could be used on any swine. However, United States Department of Agriculture swine backtags and Veterinary Services-approved tattoos would be restricted to use on swine moving to slaughter, and even then Veterinary Services-approved tattoos could not be used on sows and boars without prior approval from the Deputy Administrator. Backtags could be used only on slaughter swine because they are not suitable for long-term identification. They are made of paper and glued to the animals back. They adhere to the animal and remain legible long enough for the animal to be moved to slaughter. However, they will not stay on the animal for longer periods of time. Veterinary Services-approved tattoos could only be used on slaughter swine because these tattoos are not legible unless the animal's hair is removed. This is done at slaughter, when most swine are scalded, scraped, and dehaired. However, Veterinary Services-approved tattoos are not allowed to be used on sows and boars without prior approval from the Deputy Administrator because sows and boars, when slaughtered, are generally not scalded, scraped, and dehaired, but instead are skinned. Unless the slaughtered swine are scalded, scraped, and dehaired, the tattoo is not legible and is useless as identification. Approval to use Veterinary Services-approved tattoos on slaughter sows and boars is only given when they are to be scalded, scraped, and dehaired.

Under the proposal, requests could be submitted to APHIS to have additional means of identification approved (see proposed § 71.19(g)). If the Deputy Administrator determines that the requested devices and markings will provide a means of tracing swine, a proposal will be published in the **Federal Register** to add the devices and markings to the list of approved means of swine identification.

The Department is also proposing to require that each person who sells, for his own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce, and each person who applies approved means of identification to swine in interstate commerce, make and maintain records of the identification of the swine (see proposed §§ 71.19(d) and (e), and 320.1(b)(1)(ix)). This record would not accompany the swine in interstate commerce, but would be maintained by the person required to make the record. If identification is or has been placed on the swine, such as eartags, backtags, tattoos, and ear notching, a record would have to be made of each identification. The person would be required to maintain the records for at least two years, and would be required to allow authorized USDA employees to inspect and copy them (see proposed §§ 71.19(d)(3) and (e), 309.16(e), 310.23(a) and (b), and 320.1(b)(1)(ix)). The records would have to include information on the identification of the swine, and on their origin and destination (see proposed §§ 71.19(d) and (e), 309.16(e), and 320.1(b)(1)(ix)). The Department is not proposing to require any particular form for these records; any documentation containing the required information would be acceptable under the proposed rules. These records are necessary to allow swine to be traced. The two-year retention requirement conforms with standard business practices in the industry, under which records of sale, delivery receipt, transfer of ownership, and other matters are commonly retained for at least two years.

A new § 310.23(b) would be added to the regulations specifically to provide that, if an establishment fails to provide required swine identification, the inspector shall order swine carcasses to be retained at an establishment pending completion of tests to confirm that the carcasses are not adulterated.

Miscellaneous

The Department is proposing to add definitions of the terms "Accredited veterinarian," "Area Veterinarian in Charge," "Deputy Administrator," "Interstate commerce," "Official eartag," "Premises of origin," "Purebred registry association," "State animal health official," "State representative," "United States Department of Agriculture swine backtag," and "Veterinary Services approved tattoo" to Part 71 (see proposed amendments to § 71.1).

These terms are all included in proposed § 71.19, and are new to Part 71. The proposed definition of "Interstate commerce" is intended to cover as many swine as possible under the animal quarantine laws and the Federal Meat Inspection Act, including those swine in foreign commerce that are imported into the United States. This appears to be necessary to make the proposed regulations as effective as possible. The definitions of "Official eartag," "United States Department of Agriculture swine backtag," and "Veterinary Services approved tattoo" all refer to alpha-numeric coding systems. These systems, designed by APHIS, use a combination of digits and letters to identify the state, either the dealer or market, and either the individual swine, lot of swine, or premises where the swine came from. Eartags have a nine character code: Two digits identifying the state; three letters used to increase the number of digit and letter combinations available, and therefore increase the number of unique tags available; and four digits identifying the individual swine. Backtags have an eight character code: Two letters identifying the state; two letters identifying the dealer or market; and four digits identifying the individual swine. Tattoos have a six character code: Three letters identifying the state and market, and three digits identifying tho lot of swine or premises where the swine came from. The eartag coding system has been in use for at least 30 years, and the tattoo coding system since 1973. Backtags specifically for

swine have been in use only since 1986. However, prior to that time cattle backtags could be used on swine. Cattle backtags have been used since 1959. They utilize a similar coding system, except 2 digits are used to identify the state, 2 letters to identify the dealer or market, and 4 digits to identify the individual animal. When APHIS adopted backtags specifically for swine, it was decided to change the use of digits and letters to distinguish the two types of tags while conveying the same information. The only other differences between cattle and swine backtags is that cattle backtags are ovals made of plastic coated paper and swine backtags are round disks of vinyl.

The Department is also proposing to amend Part 71 to revise the current definition of "State." The current definition does not include United States possessions or the Commonwealth of the Northern Mariana Islands, which are covered by the regulations in Part 71, including proposed § 71.19.

Under the proposed swine identification requirements, individual swine may need to be identified even if they are not immediately being moved interstate. This is because the proposed regulations are based on the broadest possible definition of "interstate commerce" under the animal quarantine laws and the Federal Meat Inspection Act. Transactions and movements occurring prior to, during, and after an interstate transaction or movement would be included as long as the commerce in the swine continued. For example, if a swine is sold and the buyer and seller are in different states, that swine would be required under the proposed regulations to be identified, whether or not it moves interstate. That is because the transaction itself would be in "interstate commerce," as the Department proposes to define that term. Prior and subsequent movements and transactions would also be in interstate commerce, as long as the swine remain in commerce.

The Department is also proposing to amend the current regulations in Parts 78 and 85 to make them consistent with the requirements of proposed § 71.19.

The Department is proposing, in Part 78, to amended the current definition of "United States Department of Agriculture backtag" to refer to swine and to clarify that these backtags are intended for use on swine. The proposed definition would be identical to the proposed definition of "United States Department of Agriculture swine backtag in § 71.1.

The Department is proposing to revise current § 78.33(c) to refer to the identification requirements in proposed § 71.19. This reference is needed because if proposed § 71.19 is adopted, sows and boars moved in interstate commerce for purposes other than slaughter or breeding would be required to meet the identification requirements of § 71.19.

The Department is also proposing to revise current § 78.33(d). Proposed § 78.33(d) states that serial numbers of USDA backtags and VS-approved tattoos will be assigned to "each person who applies to the state animal health official or the Area Veterinarian in Charge for the state in which that person maintains his or her place of business." Proposed § 71.19(d) also states that "[s]erial numbers of official eartags will be assigned to each accredited veterinarian or state or federal representative who requests official eartags from the state animal health official or the Area Veterinarian in Charge, whichever is responsible for issuing official eartags." Current § 78.33(d) does not make these distinctions as to accredited veterinarians and state and federal representatives, and other applicants for swine identification, though this regulation, and earlier versions of it, have always been interpreted and applied to distinguish among them. Official eartags are permanent identification. They are used not only for tracing animals to their herds of origin, but also for identifying individual animals for disease control purposes. To ensure that official eartags are not removed and replaced to conceal the identity of an animal, APHIS must closely control their availability and application. APHIS does this by issuing them only to accredited veterinarians and state and federal representatives. Therefore, the Department is proposing to amend § 78.33(d) to make these distinctions clear.

In addition, proposed § 71.19(d) makes it clear that accredited veterinarians, state, and federal representatives are responsible for using official eartag identification numbers and for keeping records in the same manner as are persons assigned USDA backtags and VS-approved tattoos. This same requirement appears in § 78.33(d), though not in the same words. Therefore, the Department is proposing to amend the wording in § 78.33(d) to conform to the wording in proposed § 71.19(d).

The Department is also proposing to amend § 78.33(e). In part, this section requires certain records showing identification of sows and boars to be maintained. Proposed § 71.19(e) contains similar provisions concerning all swine, but clearly requires that the records must include the street address, including the city and state, or the township, county, and state, of the premises of origin of the swine, and must include the telephone number, if available, of a person who owned or possessed the swine at the premises of origin. Under this proposal, the wording of § 78.33(e) would be amended to conform to the wording in proposed § 71.19(e).

The Department is also proposing to amend §§ 85.5, 85.6, and 85.7. These sections currently state that required permits and certificates must list the "identification tag, tattoo, ear notch recognized by a breed association, or similar identification of each swine being moved." Under the proposed regulations, these sections would be amended to remove the list of identification methods, and would instead refer to proposed § 71.19 for means of approved identification.

Only two substantive changes would be made in the existing requirements for sows and boars by these proposed amendments. One would be to require that swine, to be identified using ear notches, would have to be registered with a purebred registry association. The current regulations require registration with a breed association. A "purebred registry association" is the same thing as a "breed association." However, these organizations refer to themselves as "purebred registry associations." Also, ear tattoos registered with a purebred registry association would be allowed as identification. They are not currently allowed under these regulations. Ear notches and ear tattoos are equally permanent and useful forms of swine identification. There appears to be no reason not to allow both types of identification to be used.

The Department is also proposing to remove current § 85.11. This section concerns records used to trace individual swine to their herds of origin. This material would be included in proposed § 71.19. Therefore, to avoid confusion and to consolidate as many of the swine identification and record-keeping requirements as possible in proposed § 71.19, the Department proposes to delete this section.

Executive Order 12291 and Regulatory Flexibility Act

The Department is proposing this rule in conformance with Executive Order 12291, and has determined that it is not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would have an effect on the economy of

less than $100 million; and would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If this proposed rule were adopted, the Department anticipates that there would be no significant effect on the number of owners, producers, markets, feedlots, and other entities, both large and small, that would be required to apply identification to livestock or keep records concerning their identification. Most of the livestock in interstate commerce are cattle that are already subject to identification and documentation requirements similar to those proposed in this document for swine. Of those swine in interstate commerce, many are already subject to federal identification and documentation requirements for brucellosis and pseudorabies that are the same or substantially similar to those proposed in this document. In 1986, 1.84 million swine were identified in accordance with the APHIS regulations concerning brucellosis (see 9 CFR Part 78). This compares with 54.043 million swine in the United States in 1985. The APHIS regulations concerning pseudorabies (9 CFR Part 85) have much broader identification requirements, and a much larger proportion of the swine population must therefore be identified in accordance with these requirements. However, the Department does not have any statistics available showing the number of swine identified in accordance with Part 85. In addition to swine identified in accordance with federal requirements, many swine are subject to state-imposed identification requirements. Also, all packers, stockyards, and dealers under the jurisdiction of the Packers and Stockyards Administration are already required to maintain, for two years, records which may contain swine identification information.

Only incomplete statistics concerning swine identification and record keeping are available to the Department. However, based on the information that is available, the Department believes that adoption of these proposed amendments would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

These programs/activities under 9 CFR Parts 71, 78, and 85, are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et. seq.*,) the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under OMB control number 0579–0047. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer of APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation.

9 CFR Part 85

Animal diseases, Livestock and livestock products, Quarantine, Transportation.

9 CFR Part 309

Ante-mortem inspection.

9 CFR Part 310

Post-mortem inspection.

9 CFR Part 320

Records, Registration, Reports.

Accordingly, it is proposed to amend parts 71, 78, 85, 309, 310, and 320 as follows:

PART 71—GENERAL PROVISIONS

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

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 71.1 would be amended by adding the following definitions in alphabetical order:

§ 71.1 Definitions.

* * * * *

Accredited Veterinarian. A veterinarian who is approved by the Deputy Administrator, in accordance with Part 161 of this chapter, to perform official animal health work of the Animal and Plant Health Inspection Service specified in Subchapters, A, B, C, and D of this chapter; and to perform work required by cooperative state-federal disease control and eradication programs.

Area Veterinarian in Charge. The veterinary official of Veterinary Services, who is assigned by the Deputy Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the state concerned.

* * * * *

Deputy Administrator. The Deputy Administrator, Veterinary Services, or any other person to whom the Deputy Administrator has delegated his or her authority.

* * * * *

Interstate commerce. Trade, traffic, transportation, or other commerce between a place in a state and any place outside of that state, or between points within a state but through any place outside of that state.

* * * * *

Official eartag. An identification eartag approved by Veterinary Services as being tamper-resistant and as conforming to the nine-character alpha-numeric National Uniform Eartagging System, which provides unique identification for each animal.

* * * * *

Premises of origin. The farm or other premises where the animals are farrowed and remain until moved in interstate commerce.

Purebred registry association. A swine breed association formed and perpetuated for the maintenance of records of purebreeding of swine species for a specific breed whose characteristics are seet forth in constitutions, by-laws, and other rules of the association.

* * * * *

State animal health official. The state official responsible for livestock and poultry disease control and eradication programs.

State representative. An individual employed in animal health work by a state or a political subdivision thereof and authorized by such state or political

subdivision to perform the function involved.

* * * * *

United States Department of Agriculture swine backtag. A backtag issued by Veterinary Services for use on swine, which conforms to the eight-character alpha-numeric National Backtagging System and uniquely identifies each individual swine.

* * * * *

Veterinary Services approved tatto. A tattoo, conforming to the six character alpha-numeric National Tattoo System, which provides unique identification for each herd or lot of swine.

* * * * *

3. In § 71.1, the definition of "State" would be revised to read as follows:

* * * * *

State. Any of the fifty states, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and any territories and possessions of the United States.

* * * * *

4. In Part 71, a new § 71.19 would be added to read as follows:

§ 71.19 Identification of swine in interstate commerce.

(a)(1) Except as provided in paragraph (c) of this section, no swine may be sold, transported, received for transportation, or offered for sale or transportation, in interstate commerce, unless they are individually identified by means of identification approved by the Deputy Administrator and listed in paragraph (b) of this section. All swine shall remain so identified while they are in interstate commerce.

(2) Each person who buys or sells, for his own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce, is responsible for the identification of the swine as provided by this section.

(b) Means of swine identification approved by the Deputy Administrator are:

(1) Official eartags, when used on any swine;

(2) United States Department of Agriculture swine backtags, when used on swine moving to slaughter;

(3) Veterinary Services-approved tattoos, when used on swine moving to slaughter, except sows and boars as provided in § 78.33 of this title;

(4) Ear notching when used on any swine, if the ear notching has been recorded in the book of record of a purebred registry association; and

(5) Ear tattoos when used on any swine, if the ear tattoos have been recorded in the book of record of a purebred registry association.

(c) Swine that are kept as a group are not required to be individually identified when in interstate commerce if:

(1) They were born on the same premises;

(2) They were raised on the same premises where they were born;

(3) They are moved in a group directly to a slaughtering establishment from the place where they were raised;

(4) They are not mixed with swine from any other premises, between the time they are born and the time they arrive at the slaughtering establishment; and

(5) They are slaughtered one after another, as a group, and not mixed with other swine at slaughter.

(d) Serial numbers of United States Department of Agriculture swine backtags and Veterinary Services approved tattoos will be assigned to each person who applies to the state animal health official or the Area Veterinarian in Charge for the state in which that person maintains his/her or its place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or state or federal representative who requests official eartags from the state animal health official or the Area Veterinarian in Charge, whoever is responsible for issuing official eartags in that state. Persons assigned serial numbers of United States Department of Agriculture swine backtags, Veterinary Services approved tattoos, and official eartags must:

(1) Record the following information on a document:

(i) The street address, including the city and state, or the township, county, and state, of the premises where the approved means of identification were applied;

(ii) The telephone number, if available, of the person who owns or possesses the swine; and

(iii) Any other serial numbers or other approved means of identification appearing on the swine;

(2) Maintain these records at the person's place of business for two years; and

(3) Make these records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) upon request by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

(e)(1) Each person who buys or sells, for his own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce, must keep records relating to the transfer of ownership, shipment, or handling of the swine, such as yarding receipts, sale tickets, invoices, and waybills upon which is recorded:

(i) All serial numbers and other approved means of identification appearing on the swine; and

(ii) The street address, including city and state, or the township, county, and state, and the telephone number, if available, of the person from whom the swine were purchased or otherwise obtained.

(2) Each person required to keep records under this paragraph must maintain the records at his/her or its place of business for at least two years after the person has sold or otherwise disposed of the swine to another person, and for such further period as the Deputy Administrator may require by written notice to the person, for purposes of any investigation or action involving the swine identified in the records. The person shall make the records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

(f) No person may remove or tamper with any approved means of identification required to be on swine pursuant to this section while it is in interstate commerce, except at the time of slaughter as provided in 9 CFR 309.16(e).

(g) Written requests for approval of swine identification devices and markings not listed in paragraph (b) of this section should be sent to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Hyattsville, Maryland 20782. If the Deputy Administrator determines that the devices and markings will provide a means of tracing swine in interstate commerce, a proposal will be published in the **Federal Register** to add the devices and markings to the list of approved means of swine identification.

PART 78—BRUCELLOSIS

5. The authority citation for Part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.1 [Amended]

6. In § 78.1, the definition of "United States Department of Agriculture backtag" would be revised to read as follows:

* * * * *

United States Department of Agriculture swine backtag. A backtag issued by Veterinary Services for use on swine, which conforms to the eight-character alpha-numeric National Backtagging System and uniquely identifies each individual swine.

* * * * *

7. In § 78.33, paragraphs (c), (d), and (e) would be revised to read as follows:

§ 78.33 Sows and boars.

* * * * *

(c) Sows and boars may be moved in interstate commerce for purposes other than slaughter or breeding without restriction under this subpart, if they are identified as required by § 71.19 of this chapter.

(d) Serial numbers of United States Department of Agriculture swine backtags and Veterinary Services approved tattoos will be assigned to each person, other than an accredited veterinarian, who applies to the state animal health official or the Area Veterinarian in Charge for the state in which that person maintains his or her place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or state or federal representative who requests official eartags from the state animal health official or the Area Veterinarian in Charge, whoever, is responsible for issuing official eartags in that state. Persons assigned serial numbers of United States Department of Agriculture swine backtags, Veterinary Services approved tattoos, and official eartags must:

(1) Record the following information on a document:

(i) The street address, including the city and state, or the township, county, and state, of the premises where the aproved means of identification were applied;

(ii) The telephone number, if available, of the person who owns or possesses the swine; and

(iii) Any other serial numbers or other approved means of identification appearing on the swine; and

(2) Maintain these records at the place of business for two years; and

(3) Make these records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) upon request by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials

(e)(1) Each person who buys or sells, for his own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce must keep records relating to the transfer of ownership, shipment, or handling of the swine, such as yarding receipts, sale tickets, invoices, and waybills, upon which are recorded:

(i) All serial numbers and other approved means of identification appearing on the swine; and

(ii) The street address, including the city and state, or the township, county, and state, and the telephone number, if available, of the person from whom the swine were purchased or otherwise obtained.

(2) Each person required to keep records under this paragraph must maintain these documents at his/her or its place of business for at least two years after the person has sold or otherwise disposed of the swine to another person and for such further period as the Deputy Administrator may require by written notice to the person, for purposes of any investigation or action involving the swine identified in the records. The person shall make the records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

PART 85—PSEUDORABIES

8. The authority citation for Part 85 would continue to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 85.5 [Amended]

9. In § 85.5, paragraph (a)(3), the phrase "identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each swine being moved" would be revised to read "identification of the swine as required by § 71.19 of this chapter", and the phrase "individual identification required by this paragraph" would be revised to read "identification required by § 71.19 of this chapter".

10. In § 85.5, paragraph (b)(5), the phrase "identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved" would be revised to read "identification of the swine as required by § 71.19 of this chapter".

§ 85.6 [Amended]

11. In § 85.6, paragraph (b)(2), the phrase "identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved;" would be revised to read "identification of the swine required by § 71.19 of this chapter;".

12. In § 85.7, paragraph (b)(3)(i)(B) would be revised to read as follows:

§ 85.7 Interstate movement of swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) The swine are identified at the approved livestock market to the farm of orgin by the identification required by § 71.19 of this chapter.

* * * * *

13. In § 85.7, paragraph (b)(3)(ii), the phrase "an earnotch recognized by a breed associated [sic.], identification tag, tattoo, or similar identification," would be revised to read "a means of identification required by § 71.19 of this chapter,".

14. In § 85.7, paragraph (c)(2)(i), the phrase "identification tag, tattoo, ear notch recognized by a breed association, or similar identification of each animal being moved;" would be revised to read "identification required by § 71.19 of this chapter;".

§ 85.11 [Removed]

15. Section 85.11 would be removed.

PART 309—ANTE-MORTEM INSPECTION

16. The authority citation for Part 309 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

17. Section 309.16 would be amended by adding a new paragraph (e) to read as follows:

§ 309.16 Livestock suspected of having biological residues.

* * * * *

(e) The name of each and all person(s) who sold or consigned each swine to the establishment shall be made available by the establishment to any Program employee or other authorized employee of the United States Department of Agriculture upon that employee's request and presentation of his or her official credentials. Swine identification, by means approved by the Animal and Plant Health Inspection Service, USDA, under Part 71 of this title, must be maintained throughout post-mortem inspection, in accordance with § 310.23(a) of this subchapter.

PART 310—POST-MORTEM INSPECTION

18. The authority citation for Part 310 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended. 81 Stat. 584. 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

19. The Table of Contents would be amended to add, in numerical order, "310.23 Identification of carcasses and parts of swine."

20. A new § 310.23 would be added to read as follows:

§ 310.23 Identification of carcasses and parts of swine.

(a) The identification of the carcasses and parts of swine identified in accordance with Part 71 of this title shall be made available to the inspector upon the inspector's request throughout post-mortem inspection.

(b) If the establishment fails to provide required swine identification, the inspector shall order the retention of swine carcasses at the establishment until the completion of tests to confirm that the carcasses are not adulterated.

PART 320—RECORDS, REGISTRATION, AND REPORTS

21. The authority citation for part 320 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 9903, as amended. 81 Stat. 584. 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

22. Section 320.1(b)(1) would be amended by adding a new paragraph (ix) to read as follows:

§ 320.1 Records required to be kept.

(b) * * *

(1) * * *

(ix) In the case of a person belonging to the class specified in paragraph (a)(1), and engaged, for commerce, in the business of slaughtering any swine for use as human or animal food, the name and address (including the city and state, or the township, county, and state) of each person from whom the person belonging to the class so specified purchased or otherwise obtained each swine, and the telephone number, if available, of the person from whom the swine were purchased or otherwise obtained, and all serial numbers and other approved means of identification appearing on the swine.

Done at Washington, DC, this 25th day of January, 1988.

Kenneth A. Gilles,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88–1803 Filed 2–2–88; 8:45 am]

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federal register

Wednesday
February 3, 1988

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 4, Measurement of Oil; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02]

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 4, Measurement of Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would issue Onshore Oil and Gas Order No. 4 under 43 CFR 3164.1. This Order would implement and supplement requirements found in 43 CFR Part 3160 relating to the measurement of oil produced under the terms of Federal and Indian (except Osage) oil and gas leases, as well as oil produced from State or privately owned lands when Federal and/or Indian leases receive a share of such production under the terms of an approved agreement. The Order would address oil measurement by tank gauging, by positive displacement metering systems, and by other methods acceptable to the authorized officer of the Bureau of Land Management. The Bureau of Land Management's existing internal guidelines on oil measurement were never published as a Notice to Lessees and Operators. Thus, this Order has no direct predecessor.

DATE: Comments should be submitted by April 4, 1988. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review at the above adddress during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
Richard T. Hunter (303) 236–1787
or
Sie Ling Chiang (202) 653–2127
or
Ted R. Hudson (202) 343–8735

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR Part 3190—Oil and Gas Operations—provide in § 3164.1 for the issuance of Oil and Gas Orders when necessary to implement and supplement the specific provisions of the regulations. All Orders are promulgated by rulemaking process and, when issued in final form, apply on a nationwide basis. A table is included in § 3164.1 that shows all existing or former Orders. This proposed rulemaking would result in another such Order. It is specifically intended to supplement the provisions of § 3162.7–2—*Measurement of oil*, and § 3162.7–1—*Disposition of production*.

Section 3162.7–2 requires that all production be measured by tank gauging, positive displacement metering system, or other methods acceptable to the authorized officer. This Order would set out specific and detailed requirements and minimum standards for oil measurement by tank gauging or a positive displacement metering system, based on the standards, specifications, and recommended practices published by the American Petroleum Institute. Those items proposed to be included in this Order as requirements and minimum standards are necessary to ensure that oil production is measured accurately, so that the Federal Government, the general public, and State Governments which share in the proceeds, and Indian mineral owners will receive all royalties due under the terms of the various oil and gas leases. Specific comments are requested on whether the requirements of this Order should be phased in over a period of time for existing facilities and how long such a period of time should be.

The Order would establish no specific or detailed requirements or minimum standards for any other possible systems of oil measurement which may be acceptable to the authorized officer, but would require prior approval by the authorized officer before any such alternate oil measurement method may be employed. It would require an application for an alternate system to include evidence that the proposed system would measure oil with accuracy equivalent to tank gauging or measurement by a positive displacement metering system, or result in no loss of royalty to the Federal Government or Indian mineral owners.

The Order would also address those instances where oil cannot be measured due to spillage or leakage, in which case the volume would be determined in accordance with methods and procedures approved or prescribed by the authorized officer pursuant to 43 CFR § 3162.7–2. This would include so-called waste oil as required by § 3162.7–1(a), when it is not economically feasible to put such oil into marketable condition. When it is economically feasible to put "slop" oil into marketable condition, whether it is contained in a production vessel, an open sump, or a pit, the Order would reiterate the requirement of § 3162.7–1(b) that such oil, after any treatment necessary to put it into marketable condition, shall be accurately measured by an authorized measurement system.

The Order would set out a procedure whereby an operator may request approval for a variance from any of the required minimum standards. An application for variance would be required to propose an alternative means to satisfy the minimum standard.

The Order would also contain provisions for corrective actions and normal abatement periods. These would set out for each minimum standard the corrective action required when an incident of noncompliance with the standard is detected, and the time frame within which such corrective action shall be taken. Many of these abatement periods are shown as "Prior to sales or removal" in this proposal. Specific comments are requested on whether any or all of these provisions should also specify a firm deadline as an alternative. For example, "Prior to sales or removal, or 30 days, whichever occurs first."

The principal authors of this proposed rulemaking are Mr. Richard T. Hunter, Lakewood, Colorado; Mr. Joe Delozier, Bakersfield, California; Mr. Terry Messerli, Billings, Montana; Mr. Upendra Parikh, Jackson, Mississippi; and Mr. Joe Chesser, Washington, DC of the Bureau of Land Management Orders Committee responsible for the development and issuance of this order, assisted by the Orders Task Group, the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, the Office of the Solicitor, Department of the Interior, and Mr. Raymond W. Vinyard, retired from the Bureau of Land Management. Mr. Ronald Heath, Minerals Management Service, was also a part of the Orders Committee and assisted on royalty accounting issues.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The proposed Order will have no adverse economic effects, because its requirements reflect the operating practices currently followed by prudent operators when oil production is measured in accordance with the standards and practices recommended by the American Petroleum Institute.

The proposed Order may provide a beneficial economic effect. Industry is less likely to be subjected to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions, if it has a better understanding of the requirements of the Bureau of Land Management which relate to the measurement of oil production. The State Governments that share in the royalties collected and Indian mineral owners will also benefit from assurance of more accurate oil measurement. The minimum standards established by this Order essentially are those which have been required but not officially promulgated by this Department and would impose the same burden on all lessees and operators, regardless of the size of the entity, on lands where the measurement of oil production is under the jurisdiction of the Bureau of Land Management. Therefore, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

The proposed Order will not affect current information collection and record keeping requirements. All proposed and existing reporting requirements are included in the following Office of Management and Budget approvals: 1004–0134, 1004–0135, or 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 30, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*), it is proposed to amend Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 31, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

2. Section 3164.1(b) is amended by adding the following entry to the table:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No. and subject	Effective date	FR Reference	Supersedes
* * * * *			
4. Measurement of Oil.			None.

Note: Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

November 10, 1987.

T. Steven Griles,

Assistant Secretary of the Interior.

Appendix—Text of Oil and Gas Order No. 4

Note: This appendix will not appear in the Code of Federal Regulations.

Contents

Onshore Oil and Gas Order No. 4

I. Introduction
A. Authority
B. Purpose
C. Scope
II. Definitions
III. Requirements
A. General.
B. Oil Measurement by Tank Gauging
C. Oil Measurement by Positive Displacement Metering System
D. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer
E. Determination of Oil Volumes by Methods Other than Measurement
IV. Variances from Minimum Standards
Attachment
I. Sections from 43 CFR Subparts 3163 and 3165.

ONSHORE OIL AND GAS ORDER NO. 4

Federal and Indian Oil and Gas Leases—Measurement of Oil

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior under various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operations regulations contained in Title 43 CFR Part 3160. Section 3164.1 specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations, and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at § 3162.7–1, *Disposition of Production;* § 3162.7–2, *Measurement of Oil;* and Subpart 3163, *Noncompliance and Assessment.*

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the measurement of oil by the methods authorized in 43 CFR 3162.7–2, i.e., measurement by tank gauging, positive displacement metering system, or other methods acceptable to the authorized officer. Proper oil measurement ensures that the Federal Government and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected, and to specify the assessments and penalties that will be imposed as a result of failure to correct the noncompliance within the specified abatement period. The regulations pertaining to the rights to administrative

review and hearing on the record, as well as the right to appeal and judicial review, will be attached to this Order when it becomes effective and is distributed as a circular.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to State or privately owned lands when Federal and/or Indian leases are entitled to share in the revenues generated by wells on such lands under the terms of an approved agreement.

II. Definitions

A. Authorized representative, means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, contract, or memorandum of understanding (see 43 CFR 3160.0–5).

B. Barrel (bbl) means 42 standard United States gallons of 231 cubic inches each.

C. By-pass means any piping arrangement connected upstream and downstream of a meter that allows oil to continue on the sales line without passing through the meter.

D. Cpl. means the correction factor for the effect of pressure on liquid.

E. Cps. means the correction factor for the effect of pressure on steel.

F. Ctl. means the correction factor for the effect of temperature on liquid.

G. Cts. The correction factor for the effect of temperature on steel.

H. INC means incident of noncompliance, which serves as a Notice of Violation under 43 CFR Subpart 3163.

I. Lessee means the party authorized by or through a lease or an approved assignment thereof, to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convenience of reference, the term lessee also refers to and includes the owners of approved operating rights and designated operators (see 43 CFR 3160.0–5).

J. Major violation means noncompliance which causes or threatens immediate, substantial, and adverse impact on public health and safety, the environment, production accountability, or royalty income 43 CFR 3160.0–5).

K. Minor violation means noncompliance which does not rise to the level of a "major violation" (43 CFR 3160.0–5).

L. Oil, for the purposes of this Order, shall mean all liquid hydrocarbons produced from or for the benefit of jurisdictional leases, including condensate and oil from tar sands that is measured as a liquid.

M. Clean Oil/Pipeline Oil means crude oil or condensate that is of such quality that it is acceptable to normal purchasers.

N. Bad oil means crude oil that is not marketable to normal purchasers but that can be treated economically by use of heat, chemicals, or other methods or combination of methods with existing or modified lease facilities or portable equipment.

O. Slop oil means crude oil that is of such quality that it is not acceptable to normal purchasers and which requires special treatment other than that which can economically be provided at the existing or modified facilities or portable equipment and is usually sold to oil reclaimers.

P. Waste oil means lease crude oil that has been determined by the authorized officer to be of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment and cannot be sold to reclaimers and also has been determined by the authorized officer to have no economic value and for which royalty is not due.

III. Requirements

A. General (See 43 CFR 3162.7–2)

1. The regulations at 43 CFR 3162.7–2 authorize oil measurement methods for production from leases, units, and communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1. The authorized oil measurement methods are tank gauging, positive displacement metering systems, and other methods acceptable to the authorized officer. The requirements and minimum standards for each of these methods are set forth below.

2. These requirements and minimum standards are based on the standards and practices recommended by the American Petroleum Institute (API). The API standards and recommended practices are considered by both the Department of the Interior and the oil and gas industry to be appropriate for proper oil measurement. The requirements and minimum standards set out herein are those necessary to promote conservation of natural resources and to ensure that oil production, except for waste oil, is properly measured for sales purposes, in order that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases. Any variances from these requirements and minimum standards shall be in accordance with section IV of this Order.

3. A violation of a minimum standard established by this Order shall be abated within the time period specified. If any such violation is not abated within the required period, action shall be initiated in accordance with 43 CFR Subpart 3163 (see Attachment I).

B. Oil Measurement by Tank Gauging

Oil measurement by tank gauging shall accurately compute the volume of oil withdrawn from a properly calibrated sales tank by measuring the height of the oil level in the tank before delivery (opening gauge) and then measuring the height of the oil level in the tank after delivery (closing gauge). The opening and closing gauges are then used with the tank calibration charts (tank tables) to compute accurately the volume of oil withdrawn. Gauging may be accomplished by measuring the height of the oil level from the tank bottom or a fixed datum plate upward to the surface of the oil in the tank (innage gauging) or by measuring from a fixed reference point at the top of the tank downward to the surface of the oil in the tank (outage gauging). Samples shall be taken from the oil before gauging to determine API oil gravity corrected to 60° F, oil temperature, and content of sediment and water. The measured oil volume shall then be corrected for sediment and water content, and to the standard sales temperature of 60° F.

The following requirements and minimum standards shall be accomplished in accordance with API Standard 2545 (ASTM D 1085) "Method of Gauging Petroleum and Petroleum Products," 1985, or the latest revised standard.

1. *Sales Tank Equipment.* Each oil storage tank to be used for oil sales by tank gauging shall be properly equipped for such gauging, using the "API Recommended Practice for Setting, Connecting, Maintenance, and Operation of Lease Tanks, API RP 12 R1," 1986, or latest revised standard. Tanks shall also be connected, maintained, and operated so as to comply with the Site Security Regulations, 43 CFR 3162.7–4, and Onshore Order No. 3, and sales tanks shall meet the following requirements:

a. Each sales tank shall be equipped with a pressure-vacuum thief hatch and/or vent-line valve.

Violation: Major.

Corrective Action: Install proper thief hatch and/or vent line, valve, or drain

tank and install proper equipment prior to reuse.

Abatement Period: 5 days.

b. Each sales tank shall be equipped with connections and sealable valves so the tank may be isolated from the remainder of the facility during the sales phase.

Violation: Major.

Corrective Action: Install proper connections and/or valves to allow isolation of tank during sales.

Abatement period: Prior to sales or removal.

c. Each sales tank shall be set and maintained level and free of distortion in accordance with the above-referenced API recommended practice.

Violation: Major.

Corrective Action: Level tank.

Abatement Period: Prior to sales.

d. Pursuant to API Standard 2545 (ASTM D 1085), "Method of Gauging Petroleum and Petroleum Products," 1965, or latest revised standard, each sales tank shall:

(1) Be equipped with a gauging reference point.

Violation: Minor.

Corrective Action: Affix a gauging reference point in gauging hatch.

Abatement Period: 30 days.

(2) Have the height of this reference point stamped on fixed bench-mark plate or stenciled on the tank roof near the gauging hatch.

Violation: Minor.

Corrective Action: Stamp height on bench-mark plate or stencil it open tank roof near gauging hatch.

Abatement Period: 30 days.

2. *Sales Tank Calibrations.* Each oil storage tank to be used for oil sales by tank gauging shall be accurately calibrated for such gauging, using the API Standard 2550 (ASTM D 1220), "Method for Measurement and Calibration of Upright Cylindrical Tanks," 1965, or latest revised standard. The following minimum standards shall be satisfied:

a. Sales tank capacities shall be determined by actual tank measurements by the method known as "tank calibration," and in accordance with the above-referenced API Standard.

Violation: Major.

Corrective Action: Make capacity determination and develop appropriate capacity table.

Abatement Period: Prior to sales or removal.

b. A sales tank shall be recalibrated if it is removed or the capacity is changed through denting, damage, or installation or removal of interior components, or otherwise.

Violation: Major.

Corrective Action: Recalibrate tank and develop new (revised) capacity table.

Abatement Period: Prior to sales or removal.

c. Calibration charts (tank tables) for:

(1) All calibrations performed prior to the effective date of this Order shall be submitted to the authorized officer on request.

Violation: Minor.

Corrective Action: Submit tables to authorized officer.

Abatement Period: 30 days.

(2) All calibrations performed subsequent to the effective date of this Order shall be submitted to the authorized officer on request and shall be applied to all sales.

Violation: Minor.

Corrective Action: Submit tables to authorized officer.

Abatement Period: 30 days.

3. *Oil Sampling.* Sampling of oil to be sold from sales tanks is required and shall be conducted in such fashion as to yield a representative sample of the oil for purposes of determining the physical properties of the oil, following the "API Manual of Petroleum Measurement Standards, Chapter 8, Section 1—Manual Sampling" (ASTM D–4057) October 1981, or latest revised standard, and shall meet the following minimum standards.

a. All samples shall be taken from the contents of the sales tank.

Violation: Major.

Corrective Action: Repeat sampling procedures from sales tank.

Abatement Period: Prior to sales or removal.

b. All samples from a sales tank shall be taken prior to gauging.

Violation: Major.

Corrective Action: Allow tank contents to settle for at least 30 minutes and repeat sampling procedure in proper sequence.

Abatement period: Prior to sales or removal.

c. Samples shall be taken in accordance with one of the sampling procedures specified in the above-referenced API Manual.

Violation: Major.

Corrective Action: Repeat sampling procedure.

Abatement Period: Prior to sales or removal.

4. *Sales Tank Gauging.* Gauging of oil sales tanks is required and shall be accomplished in such fashion as to measure the contents of the tank accurately, following API Standard 2545 (ASTM D 1085), "Method of Gauging Petroleum and Petroleum Products" 1965, or latest revised standard, and shall meet the following minimum standards.

a. Gauging shall be accomplished using gauging tapes:

(1) Made of steel, or corrosion resistance material if corrosive liquids are present.

Violation: Major.

Corrective Action: Replace tape with certified tape made of an appropriate material.

Abatement Period: Prior to sales or removal.

(2) With graduations clearly legible and not kinked or spliced.

Violation: Major.

Corrective Action: Replace tape with certified tape.

Abatement Period: Prior to sales or removal.

(3) Accuracy of all gauging tapes used for oil sales purposes shall be certified as accurate to the standards of the National Bureau of Standards by either the manufacturer or an independent testing facility.

Violation: Major.

Corrective Action: Replace tape or obtain certification.

Abatement Period: Prior to sales or removal.

b. Acceptable gauging requires:

(1) At least 2 identical gauges to the nearest ¼ inch for tanks with a capacity of less than 1,000 bbls.

Violation: Major.

Corrective Action: Repeat gauging until 2 identical readings are obtained.

Abatement Period: Prior to sales or removal.

(2) At least 2 identical gauges to the nearest ⅛ inch for tanks with a capacity of 1,000 bbls. or more.

Violation: Major.

Corrective Action: Repeat gauging until 2 identical readings are obtained.

Abatement Period: Prior to sales or removal.

(3) That the proper bob for innage gauging or outage gauging shall be used in accordance with the above-referenced API standard.

Violation: Major.

Corrective Action: Repeat gauging using proper bob.

Abatement period: Prior to sales or removal.

5. *Oil Gravity.* Tests for oil gravity are required, following the "API Manual of Petroleum Measurement Standards Chapter 9—Density Determination" (ASTM D 1298–80) 1981, or latest revised standard, and shall be performed or a representative sales tank oil sample obtained as specified in Part C, above, following "API Manual of Petroleum Measurement Standards Chapter 8—

Sampling." Gravity tests shall meet the following minimum standards.

a. All gravity determinations shall be completed before oil sales are made.

Violation: Major.

Corrective Action: Obtain sample from sales tank and determine oil gravity.

Abatement Period: Prior to sales or removal.

b. Accuracy of all instruments used to determine oil gravity for oil sales purposes shall be certified as accurate to the standards of the National Bureau of Standards by either the manufacturer or an independent testing facility.

Violation: Major.

Corrective Action: Replace with certified instruments or obtain certification.

Abatement Period: Prior to sales or removal.

c. The instrument used to obtain the oil gravity shall be clean, with no loose shot weights or detached gravity scale.

Violation: Major.

Corrective Action: Clean and/or replace hydrometer.

Abatement Period: Prior to sales or removal.

d. The instrument used to obtain the oil gravity shall be calibrated for a gravity range that includes the gravity of the oil sample being tested.

Violation: Major.

Corrective Action: Repeat gravity tests using hydrometer with proper scale.

Abatement Period: Prior to sales or removal.

e. Temperatures shall be measured and recorded to the nearest 0.5° F for a separate thermometer or nearest whole degree when using a thermohydrometer.

Violation: Major.

Corrective Action: Repeat test, measuring and recording temperature to nearest 0.5° F or nearest whole degree as appropriate.

Abatement Period: Prior to sales or removal.

f. Liquid density (gravity) will be measured and recorded to the nearest 0.05° API gravity, making any necessary meniscus correction as described in the above-referenced API Manual on density determinations.

Violation: Major.

Corrective Action: Repeat test, measuring and recording gravity to nearest 0.05° API gravity after making necessary correction for fluid meniscus.

Abatement Period: Prior to sales or removal.

6. *Tank Temperature.* Determination of the temperature of oil contained in a sales tank is required following the "API Standard 2543 Method of Measuring the Temperature of Petroleum and Petroleum Products" (ASTM D 1086) 1965, or latest revised standard, and shall meet the following minimum standards:

a. Accuracy of all thermometers used for oil sales purposes shall be certified as accurate to the standards of the National Bureau of Standards by either the manufacturer or an independent testing facility.

Violation: Major.

Corrective Action: Replace with certified thermometer or obtain certification.

Abatement Period: Prior to sales or removal.

b. Thermometers shall be kept clean and free of mercury separation.

Violation: Major.

Corrective Action: Replace thermometer.

Abatement Period: Prior to sales or removal.

c. Temperature measurements shall be taken by immersing the thermometer at a point not less than 12 inches from the shell of the tank and to the approximate center of the fluid column during both the opening and closing gauges.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

d. For each measurement taken, the thermometer shall be left immersed at the required level for a minimum of 5 minutes. Temperatures shall be measured and recorded to the nearest 1.0° F.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

7. *Sediment and Water (S & W).* Determinations of the sediment and water content of oil contained in sales tanks is required following the "API Manual of Petroleum Measurement Standards Chapter 10—Sediment and Water Section 4—Standard Methods of Test for Water and Sediment in Crude Oils" (ASTM D 96–68) 1970, or latest revised standard, and shall meet the following minimum standards:

a. A thoroughly mixed oil sample-solvent combination, prepared in accordance with the procedure described in the above-referenced API Manual, shall:

(1) Be heated to at least 120° F for asphaltic based oil prior to centrifuging.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

(2) Be heated to at least 140° F for paraffin based oil prior to centrifuging.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

b. At the conclusion of centrifuging, the temperature shall not fall below 115 °F without water saturated diluent, and 125 °F with water saturated diluent.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

c. The heated sample shall be whirled in the centrifuge for not less than 3 minutes.

Violation: Major.

Corrective Action: Repeat test as prescribed

Abatement Period: Prior to sales or removal.

d. The combined volume of water and sediment at the bottom of the 100 ml. centrifuge tube shall be read:

(1) To the nearest 0.05 ml. in the range from 0.1 to 1 ml.

(2) To the nearest 0.1 ml. if above the 1 ml. graduation.

(3) Estimated to the nearest 0.025 ml. if the volume is less than 0.1 ml.

Violation: Major (d.1., 2., or 3.).

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

e. The water and sediment volume in the centrifuge tube thus determined shall be multiplied by the appropriate factor for the centrifuge tube size and oil sample-solvent ratio, as specified in the above-referenced API Manual, and the product recorded as the percentage of water and sediment.

Violation: Major.

Corrective Action: Repeat procedures using specified factors.

Abatement Period: Prior to sales or removal.

C. Oil Measurement by Positive Displacement Metering System

Acceptable oil measurement by a positive displacement metering system, for purposes of oil sales, shall be accomplished by a Lease Automatic Custody Transfer (LACT) unit designed to provide for the unattended transfer of liquid hydrocarbons from a production facility to the transporting carrier while providing proper and accurate means for the determination of net volume and quality, while also providing for fail-safe and tamper proof operations in accordance with the regulations at 43 CFR 3162.7–4 and Onshore Order No. 3.

A positive displacement meter is one which registers the volume passing through said meter by a system which constantly and mechanically isolates the flowing liquid into segments of known volume.

LACT unit design shall follow API Spec. 11N "API Specifications for Lease Automatic Custody Transfer (LACT) Equipment," 1979, or latest revised standard. LACT units shall be constructed and operated so as to satisfy the following requirements and minimum standards:

1. *LACT Unit Components and General Operating Requirements.*

a. Each LACT unit shall include all of the following listed components as a minimum:

(1) Charging pump and motor.

(2) Sampler, composite sample container and mixing system.

(3) Strainer.

(4) Positive displacement meter.

(5) Meter proving connections.

(6) Meter backpressure and check valve.

(7) Air eliminator.

(8) Diverter valve.

Violation: Major: a.1., 2., 4., 5., and 6.

Corrective Action: Shut in LACT and install component.

Abatement Period: Prior to sales or removal.

Violation: Minor: a.3., 7., and 8.

Corrective Action: Install component.

Abatement Period: 30 days.

b. There shall be no by-pass piping around the LACT unit or any connections that would permit liquids to be transferred without measurement.

Violation: Major.

Corrective Action: Remove by-pass or other connection.

Abatement Period: Immediate correction required.

c. All components of LACT unit shall be accessible for inspection by the authorized officer.

Violation: Minor.

Corrective Action: Provide authorized officer with means of access to LACT.

Abatement Period: 30 days.

d. The authorized officer shall be notified of any LACT unit failure, such as electrical, meter, or other failure that requires other methods of measurement prior to sales.

Violation: Major.

Corrective Action: Provide authorized officer sales documentation (run ticket, etc.) and tank calibration tables.

Abatement Period: By 5th working day following discovery.

e. Any and all tests conducted on oil samples extracted from LACT samplers for determination of oil gravity and S & W content shall meet the same requirements and minimum standards specified in this Order with respect to oil measurement by tank gauging for all measurements taken of temperature, gravity, and S & W content (section III A. 5, 6, and 7.)

Violation: Major.

Corrective Action: Report tests for gravity, temperature, and/or S & W content per section III A. 5, 6, and 7 minimum standards.

Abatement Period: Prior to sales or removal.

2. *Operating Requirements for LACT Unit Components.* All required LACT unit components shall be operated to satisfy the following minimum standards:

a. *Sampler.*

(1) The sampler probe shall extend into the center ⅓ of the flow piping in a vertical run, at least 3 pipe diameters downstream on any pipe fitting. The probe shall always be in a horizontal position.

Violation: Major.

Corrective Action: Shut in LACT, install component properly.

Abatement Period: Prior to sales or removal.

b. *Composite Sample Container.*

(1) The composite sample container shall be capable of holding sample under pressure and shall be equipped with a vapor proof top closure and operated to prevent the unnecessary escape of vapor.

Violation: Major.

Corrective Action: Shut in LACT, install component properly.

Abatement Period: Prior to sales or removal.

(2) The composite sample container shall be emptied after each sample withdrawal.

Violation: Major.

Corrective Action: Empty container prior to using sample for sales purpose and/or empty container upon completion of sample withdrawal.

Abatement Period: Prior to sales or removal.

c. *Mixing System.*

(1) The mixing system shall completely blend the sample into a homogeneous mixture before and during the withdrawal of a portion of the sample for testing.

Violation: Major.

Corrective Action: Repair mixing system.

Abatement Period: Prior to sales or removal.

d. *Strainer.*

(1) The strainer shall be constructed so that it may be depressurized, opened, and cleaned.

Violation: Minor.

Corrective Action: Replace with properly designed strainer.

Abatement Period: 30 days.

(2) The strainer shall be located upstream from the meter.

Violation: Minor.

Corrective Action: Install component properly.

Abatement Period: 30 days.

(3) The strainer basket shall be made of noncorrosive material of a mesh size no larger than ¼ inch.

Violation: Minor.

Corrective Action: Replace basket with basket made of noncorrosive material with a mesh size no larger than ¼ inch.

Abatement Period: 30 days.

e. *Positive Displacement Meter.*

(1) Must register volumes of oil passing through said meter determined by a system which constantly and mechanically isolates the flowing oil into segments of known volume.

Violation: Major.

Corrective Action: Replace or repair meter or totalizer.

Abatement Period: Prior to sales or removal.

(2) The meter shall be equipped with a non-resettable totalizer.

Violation: Major.

Corrective Action: Replace meter with meter having a non-resettable totalizer.

Abatement Period: Prior to sales or removal.

f. *Meter Proving Connections.*

(1) All meter proving connections shall be located downstream from the LACT meter.

Violation: Major.

Corrective Action: Relocate prover loops downstream from LACT meter.

Abatement Period: Prior to proving LACT.

(2) The line valve between the inlet and outlet of the prover loop shall have a double block and bleed design feature to provide for leak testing during proving operations.

Violation: Major.

Corrective Action: Install double block and bleed line valve on line between inlet and outlet prover connections.

Abatement Period: Prior to proving LACT.

g. *Back Pressure and Check Valves.*

(1) The back pressure valve and check valve shall be installed downstream from the LACT meter.

Violation: Major.

Corrective Action: Install back pressure and/or check valve downstream from LACT meter.

Abatement Period: Prior to sales or removal.

3. *Sales Meter Proving Requirements.* LACT positive deplacement meters shall be proved periodically. Meter provings

shall follow "API Manual of Petroleum Measurement Standards Chapter 4—Proving Systems," 1978, or latest revised standard, and shall meet the following minimum standards.

a. The types of meter provers to be used, and the calibration requirements are as follows:

(1) The acceptable types of meter provers are pipe provers, tank provers, master meters, or other API recognized meter provers.

Violation: Major

Corrective Action: Shut in LACT and prove again with acceptable meter prover.

Abatement Period: Prior to sales or removal.

(2) When a prover arrives onsite to prove a positive displacement meter measuring oil production from a lease that is under Bureau jurisdiction, communitized area, or unit participating area, the lessee/operator, or its agent, shall have available at the site for review by the authorized officer, evidence that the prover has been calibrated, with the certified calibration date identified by some unique number, i.e., serial number assigned to and inscribed on the prover. The calibration evidence for a pipe or tank prover shall show the certified volume as determined by the water draw method. If a master meter is used, the most recent calibration report for said master meter shall be available. Said calibration report shall show that the master meter has an operating factor within the range specified in section III. B. 4. a(2) herein (a range from 0.9900 to 1.0100), and the calibration report shall show that the calibration met all of the requirements of section III. B. 3. c. herein, except that the 5 consecutive runs in calibration of the master meter shall have matched within a tolerance of 0.0002.

Violation: Minor.

Corrective Action: Provide calibration certification.

Abatement Period: Prior to proving.

b. Minimum proving Frequency is:

(1) Upon initial installation or following repair.

Violation: Minor.

Corrective Action: Shut in LACT, notify authorized officer of scheduled proving and prove meter.

Abatement Period: Prior to sales or removal.

(2) At least monthly thereafter for the first 3 months.

Violation: Minor.

Corrective Action: Shut in LACT, notify authorized officer of scheduled proving, and prove meter.

Abatement Period: Prior to sales or removal.

(3) Following the first 3 months, meters shall be proved at least quarterly.

Violation: Minor.

Corrective Action: Shut in LACT, notify authorized officer of scheduled proving, and prove meter.

Abatement Period: Prior to sales or removal.

(4) In the event that the total throughput exceeds 100,000 bbl per month, then proving shall be accomplished bi-weekly.

Violation: Minor.

Corrective Action: Shut in LACT, notify authorized officer of scheduled proving, and prove meter.

Abatement Period: Prior to sales or removal.

(c) In Establishing the Operating Meter Factor:

(1) At least 6 runs shall be made. Of these 6 runs, 5 consecutive runs shall match within a tolerance of 0.0005 between the highest and the lowest reading.

Violation: Major.

Corrective Action: Prove according to standard.

Abatement Period: Prior to sales or removal.

(2) The arithmetic average of these 5 consecutive runs shall be used for computation of the meter factor.

Violation: Minor.

Corrective Action: Prove according to standard.

Abatement Period: Prior to sales or removal.

(3) Meter factor computations shall also include the correction for the effect of pressure on steel (Cps); if appropriate, the correction for the effect of temperature on liquid (Ctl), and the correction for the effect of temperature on steel (Cts), and the correction for the effect of pressure on liquid (Cpl). The Cps and Cts correction factors shall be determined using the "API Manual of Petroleum Measurement Standards, Chapter 12, Section 2," 1981, or latest revised standard, and the Ctl correction factor shall be obtained from the "API Standard 2540, chapter 11.1, Volume I (ASTM D 1250–80), Table 6A," 1980, or latest revised standard, and the Cpl correction factor shall be obtained from the API Manual of Petroleum Measurement Standards, Chapter 11.2.1.

Violation: Minor.

Corrective Action: Include proper correction factors.

Abatement Period: Prior to sales or removal.

(4) The initial meter factor for a new or repaired meter shall be within the range from 0.9950 to 1.0050.

Violation: Major.

Corrective Action: Shut in LACT, replace/repair and re-prove.

Abatement Period: Prior to sales or removal.

4. *Excessive Meter Factor Deviation.* Excessive meter factor deviation may be evidence of meter malfunction, and corrective action shall be taken upon discovery of meter malfunction. However, if the operator determines that the meter did not, in fact, malfunction, the lessee/operator shall submit, for approval by the authorized officer, a report as to the findings and reasons for the excessive meter factor deviation and the determination of no meter malfunction.

The minimum standards for evidence of meter malfunction, and corrective action required, are as follows:

a. *Meter Factor Deviation.*

(1) Deviation in a meter factor shall not exceed ±0.0025 since the last proving of the meter unless explained by changing conditions, i.e., temperature or gravity or flow-rate.

Violation: Minor.

Corrective Action: Repair or replace meter, or submit report to authorized officer for approval of the findings and reasons for the determination that there is no meter malfunction.

Abatement Period: Prior to sales or removal.

(2) A meter factor shall not exceed 1 percent above or below unity, i.e. outside of the range from 0.9900 to 1.0100.

Violation: Major.

Corrective Action: Same as a.(1), above.

Abatement Period: Prior to sales or removal.

b. *Corrective Action Upon Determination of Meter Malfunction.*

(1) The meter shall be repaired or replaced. Proving is required. The proving report shall indicate any repairs to or replacement of the meter.

Violation: Minor.

Corrective Action: Shut in LACT, repair, adjust, and/or replace meter, re-prove meter, and submit proving report to authorized office complete with details of maintenance and/or repairs to meter.

Abatement Period: Prior to sales or removal.

5. *Meter Reporting Requirements.* All meter provings, meter failures, and volume adjustments following meter malfunction shall be reported to the authorized officer, as follows:

a. *Meter Proving Reports.*

(1) The meter proving report shall be filed on one of the forms set out in "API Manual of Petroleum Measurement Standards. Chapter 12—Calculation of

Petroleum Quantities, Section 2—Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters," 1981, or latest revised standard.

Violation: Minor.

Corrective Action: File report on proper form.

Abatement Period: File with authorized officer no later than the 10th working day.

(2) Each meter proving report shall be identified by lease number, communitization agreement number, or unit participating area name, and the location of the facility.

Violation: Minor.

Corrective Action: Resubmit report with appropriate identification.

Abatement Period: File with authorized officer no later than the 10th working day.

(3) Each meter proving report shall be filed with the authorized officer no later than 10 working days following the meter proving.

Violation: Minor.

Corrective Action: Submit proving report to authorized officer.

Abatement Period: File with authorized officer no later than the 10th working day.

b. All meter failures that require other methods of measurement shall be reported to the authorized officer prior to sales. The report shall include an explanation of the event, and a determination as to whether the meter failure also involved meter malfunction.

Violation: Minor.

Corrective Action: Submit proving report.

Abatement Period: File with authorized officer no later than the 10th working day.

D. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Any method of oil measurement other than tank gauging or positive displacement metering system, requires prior approval, based on applicable API standards, by the authorized officer. Other measurement methods include, but are not limited to: Turbine metering systems, Measurement by calibrated tank truck, Measurement by weight, Net oil computer.

The requirements and minimum standards for oil measurement on the lease, unit, or communitized area by an alternate method, or at a location off the lease, unit, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. *Measurement on the Lease, Unit, or Communitized Area.*

a. An application for approval of an alternate oil measurement method shall be submitted to the authorized officer and approval obtained before any such alternate oil measurement method is operated.

Violation: Major.

Corrective Action: Shut in operations. Submit application for approval of desired method of oil measurement.

Abatement Period: Prior to sales or removal.

2. *Measurement at a Location Off the Lease, Unit, or Communitized Area.*

a. An application for off-lease measurement shall be submitted to the authorized officer and approval obtained before any such off-lease oil measurement facilities are installed or operated. The application for approval of off-lease measurement shall justify location of the measurement facilities at the off-lease location desired before approval will be granted, but no additional approval as to the oil measurement method is required, provided measurement is to be accomplished by tank gauging or positive displacement metering system, pursuant to the requirements and minimum standards of this Order.

Violation: Minor:

Corrective Action: Submit application for approval of off-lease measurement.

Abatement Period: 10 days.

b. If oil measurement is to be accomplished at a location off the lease, unit, or communitized area by any alternate measurement method (any method other than tank gauging or positive displacement metering system), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate measurement method, pursuant to section III C. 1.

Violation: Major.

Corrective Action: Shut in operations. Submit application for approval of off-lease measurement and approval of desired method of measurement.

Abatement Period: Prior to sales or removal.

E. Determination of Oil Volumes by Methods Other Than Measurement

Pursuant to 43 CFR 3162.7–2, when production cannot be measured due to spillage or leakage, the amount of production shall be determined in accordance with the methods approved or prescribed by the authorized officer. This category of production includes, but is not limited to, oil which is classified as slop oil or waste oil.

The minimum standards for determining the volume of oil that cannot be measured are as follows:

1. No oil located in an open pit or sump, in a stock tank, in a production vessel or elsewhere, may be classified as waste oil unless it can be shown, to the satisfaction of the authorized officer, that it is not economically feasible to put the oil into marketable condition.

Violation: Major.

Corrective Action: Put oil into marketable condition.

Abatement Period: 10 working days.

2. No slop oil may be sold or otherwise disposed of without prior approval from the authorized officer of the method for estimating the volume of the slop oil, and the terms and conditions of any sale to an oil reclaimer or any other party.

Violation: Major.

Corrective Action: Submit complete report of sale.

Abatement Period: 24 hours.

IV. Variances From Minimum Standards

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) on making a determination that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability.

Attachment

I. Sections from 43 CFR Subparts 3163 and 3165 (not included with **Federal Register** publication).

[FR Doc. 88–2218 Filed 2–2–88; 8:45 am]

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federal register

Wednesday
February 3, 1988

Part VI

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 5; Measurement of Gas; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-630-07-4111-02]

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases, Onshore Oil and Gas Order No. 5, Measurement of Gas

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Rulemaking.

SUMMARY: This proposed rulemaking would issue Onshore Oil and Gas Order No. 5 under 43 CFR 3164.1. This Order would implement and supplement requirements found in 43 CFR Part 3160 relating to the measurement of gas produced under the terms of Federal and Indian (except Osage) oil and gas leases, as well as gas produced from State or privately owned when Federal and/or Indian leases receive a share of such production under the terms of an approved agreement.

The Order would address gas measurement by orifice meter and gas measurement by other methods acceptable to the authorized officer of the Bureau of Land Management. Gas measurement by electronic flow computers, utilizing an orifice, which calculate volume using the equations specified by the American Gas Association (AGA) Committee Report No. 3, may be approved by the Bureau of Land Management (BLM) State Office having jurisdiction over the producing area. The Bureau of Land Management's existing internal guidelines on the subject of gas measurement were never formalized in a Notice to Lessees and Operators. Thus, this Order has no direct predecessor.

DATE: Comments should be submitted by April 4, 1988. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Richard T. Hunter, (303) 236–1787,
or
Sie Ling Chiang, (202) 653–2127,
or
Ted R. Hudson, (202) 343–8735.

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR Part 3160—Oil and Gas Operations—provide in § 3164.1 for the issuance of Onshore Oil and Gas Orders when necessary to implement and supplement the specific provisions of the regulations. All Orders are to be promulgated through the rulemaking process and, and when issued in final form, apply on a nationwide basis. A table is included in § 3164.1 that shows all existing or formal Orders. This proposed rulemaking would result in another Order. It is intended specifically to supplement the provisions of § 3162.7–1—Disposition of production, and § 3162.7–3—Measurement of gas, and Subpart 3163.

Section 3162.7–3 requires that all production be measured by orifice meter or other methods acceptable to the authorized officer. This order would set out specific and detailed requirements that are minimum standards for gas measurement by orifice meter, based on the standards and specifications published by the American Gas Association (AGA) "Orifice Metering of Natural Gas" Committee Report No. 3, 2nd editions (August 1985) and the American Petroleum Institute (API) Standard 2530. This publication is referred to in the Order as AGA Committee Report No. 3. Those items selected for inclusion in this Order as requirements are those which are necessary to ensure that gas production is measured accurately, so that the Federal Government, the general public, and State governments, which share in the proceeds, and Indian mineral owners will receive all royalties due under the various oil and gas leases. Specific comments are requested on whether the requirements of this Order should be phased in over a period of time for existing facilities and how long such a period of time should be.

The Bureau is aware of the existence of old (10 to 15 years) purchase contracts whereby the lessee/operator is committed to sell the gas for a fixed price ranging from 4 to 50 cents per thousand cubic feet (MCF), and of the existence of wells producing at very low volumes (100 MCF per day or less). Compliance with the minimum standards requiring specific equipment for the measurement of the flowing gas temperature, adherence to proper Beta ratio, and the requirement for the secondary element to record the static and differential pressure in at least the middle one-third of the production chart could result in materials and labor costs out of proportion to any potential additional royalty income derived from the well. Such costs could prompt premature abandonment or shut-in, resulting in the lost of potential gas reserves and royalty payments. For example, the cost of compliance with the requirement that the flowing gas temperature be measured could be $1,000 per well. However, under a typical old contract with a price of 30 cents per MCF, and a royalty of 12.5 percent, production of 100 MCF per day would produce an annual royalty of $900. On the other hand, requiring compliance in the above situation with a temperature error 10 degrees would only increase royalties by 9 dollars per year. Even at current prices of $2.70 per MCF and a 1 percent volume error, the increase in royalty in this example would only be $81 per year. If such a well were abandoned because of the cost of compliance, these royalties and the reserves in the ground would be lost. Therefore, we believe that it would be in the public interest to exempt certain wells from some requirements of this Order. The public is specifically requested to comment on (a) the criteria for determining which wells or fields should be exempted from these standards and (b) the particular minimum standards that may be subject to exemption. It is expected that no well would be exempted from this Order as a whole, but that any exemption would apply only to specific appropriate minimum standards set forth in the Order.

With regard to other possible systems of gas measurement which may be acceptable to the authorized officer, the Order would set forth no specific or detailed requirements or minimum standards for any such method, but would clearly require, for any and all such methods, that prior approval by the authorized officer is necessary before any alternate gas measurement method may be employed. The application for approval to use any alternate system for gas measurement would be required to furnish convincing evidence that the proposed system will measure gas accurately and result in no loss of royalty to the Federal Government or Indian mineral owners.

The Order would set out a procedure whereby an operator may request approval for a variance from any of the required minimum standards. An application for variance would be required to propose an alternative means for satisfaction of the minimum standard.

The Order would also contain provisions for corrective actions and normal abatement periods. These would set out for each minimum standard, the corrective action necessary when an

incident of noncompliance with the minimum standard is detected, and the time frame within which such corrective action shall be taken. Many of these abatement periods are shown as "Prior to sales or removal" in this proposal. Specific comments are requested on whether any or all of these provisions should also specify a firm deadline as an alternative. For example, "Prior to sales or removal, or 30 days, whichever occurs first."

The principal authors of this proposed rulemaking are Mr. Richard T. Hunter, Lakewood, Colorado, Mr. Terry Messerli, Billings, Montana, and Mr. Upendra Parikh, Jackson, Mississippi, assisted by the Orders Task Group, the staff of the Office of Legislation and Regulatory Management, all of the Bureau of Land Management, the Office of the Solicitor, Department of the Interior, and Mr. Jim Fisher, retired from the Bureau of Land Management. Mr. Scott Ellis, Minerals Management Service, was also part of the Orders Committee and provided input on royalty accounting issues.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required.

The Proposed Order would have minimal adverse economic effects, since its requirements reflect the operating practices currently followed by prudent operators when gas production is measured in accordance with the standards and specifications published by the American Gas Association (AGA) and the American Petroleum Institute (API). The proposed Order may provide a beneficial economic effect, in that industry is less likely to be subjected to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions, if it has a better understanding of this Bureau's requirements for the measurement of gas production. The State governments that share in the royalties collected and Indian mineral owners will also benefit from assurance of more accurate gas measurement. The minimum standards established by this Order essentially are those which have been required but not promulgated by this Department and would impose the same burden on all lessees and operators, regardless of size, on lands where the measurement of gas production is under the jurisdiction of this Bureau. Therefore, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

The information collection requirements contained in this proposed rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004-0134, 1004-0135, and 1004-0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—Mineral resources, Indian lands—Mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), it is proposed to amend Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of May 31, 1930 (30 U.S.C. 301-306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396g), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

2. Section 3164.1(b) is amended by adding the following entry to the table:

§ 3164.1 Onshore oil and gas orders.

* * * * *

(b) * * *

Order No. and subject	Effective date	Federal Register reference	Supersedes
* * * * *			
5. Measurement of Gas.			None.

J. Steven Griles,

Secretary of the Interior.

November 5, 1987.

Appendix—Text of Oil and Gas Order No. 5

Note—This appendix will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 5

Measurement of Gas on Federal and Indian Oil and Gas Leases

I. Introduction.
- A. Authority.
- B. Purpose.
- C. Scope.

II. Definitions.

III. Requirements.
- A. Gas Measurement by Orifice Meter.
- B. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer.

IV. Variances from Minimum Standards.

Attachment.

I. Sections from 43 CFR Subparts 3163 and 3165.

Onshore Oil and Gas Order No. 5

Measurement of Gas on Federal and Indian Oil and Gas Leases

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the director to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter, be issued.

Specific authority for the provisions contained in this Order is found at: § 3162.7-1, *Disposition of production*; section 3162.7-3, *Measurement of gas*; and subpart 3163, Noncompliance and assessments.

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the measurement of gas by the methods authorized in 43 CFR 3162.7–3, i.e., measurement by orifice meter or other methods acceptable to the authorized officer. Proper gas measurement ensures that the Federal Government, the general public, State Governments which share in the proceeds, and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected, and to specify the assessments and penalties that will be imposed as a result of noncompliance and/or a failure to correct the noncompliance within the specified abatement period.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to State or privately owned lands when Federal and/or Indian leases are entitled to share in the revenues from non-jurisdictional wells under the terms of an approved agreement.

II. Definitions

A. Authorized representative means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, contract, or memorandum of understanding (43 CFR 3160.0–5).

B. Production unit means, for purposes of reporting production, a measurement unit of 1000 standard cubic feet (Mcf).

C. Standard cubic foot means the volume of gas contained in one cubic foot at a base pressure of 14.73 pounds per square inch absolute (psia), at a base temperature of 60° F or 520° Rankine (43 CFR 3162.7–3).

D. By-pass means any piping arrangement connected upstream and downstream of a meter that allows gas to continue on the sales line without passing through the meter. Equipment that permits the changing of the orifice plate without bleeding the pressure off the gas meter run shall not be considered a by-pass.

E. Incident of Noncompliance (INC) means a notice transmitted to a lessee or operator (Form 3160–9) that a violation of this Order has occurred, and serves as a notice of violation.

F. Lessee means the party authorized by or through a lease or an approved assignment to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convenience of reference, the term "lessee" also refers to and includes the owners of approved operating rights and designated operators (see 43 CFR 3160.0–5).

G. Major violation means noncompliance which causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0–5).

H. Minor violation means noncompliance which does not rise to the level of a major violation (see 43 CFR 3160.0–5).

I. Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions (see 43 CFR 3000.0–5(a)).

III. Requirements

All gas production shall be measured in accordance with an authorized method of measurement. As set out in 43 CFR 3162.7–3, gas measurement authorized for gas produced from leases, units, and communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1, may be by orifice meter or other methods acceptable to the authorized officer. The requirements and minimum standards for gas measurement are set out in this Order.

The requirements of this Order are based on the standards and specifications published by the American Gas Association (AGA) Committee Report No. 3, and the American Petroleum Institute (API). The AGA and the API published standards and specifications and considered to be appropriate for proper gas measurement by both the Department of the Interior and the Oil and Gas Industry. The requirements set minimum standards necessary to promote conservation of natural resources and to ensure proper measurement of gas production for sales purposes, so that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases.

A. Gas Measurement by Orifice Meter

The following are recognized as minimum standards for measurement of natural gas using orifice meters. Failure to comply with these minimum requirements shall be considered a violation resulting in the issuance of an INC, and appropriate enforcement action shall be taken for obtaining compliance with these minimum standards. All existing and future sales facilities shall meet the requirements of this Order.

1. The orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "flange taps," shall be between 0.15 and 0.70; however, the authorized officer may approve beta ratios between 0.10 and 0.75 on low volume wells when measurement cannot be obtained as per Section III, A, 4.

Violation: Major.

Correction Action: Shut in gas meter and install an orifice of such size that subsequent measurements will be within the appropriate beta ratio range. If changing the orifice causes the differential pressure to be recorded in the lower one-third of the chart, then either the meter tube or the differential element shall be changed, sizing the straight pipe sections in a manner that will provide subsequent measurement within the appropriate beta ratio range.

Abatement Period: Prior to sales.

2. The orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "pipe taps," shall be between 0.20 and 0.67; however, the authorized officer may approve beta ratios lower than 0.20 and higher than 0.67 on low volume wells when measurement cannot be obtained as per Section III, A, 4.

Violation: Major.

Correction Action: Same as A.1. above.

Abatement Period: Prior to sales.

3. To obtain flow conditions as near normal as possible and minimize the effects of turbulence in gas flow, the minimum length of pipe preceding and following an orifice and the use of straightening vanes, shall conform to those specifications detailed in Figure 4 through 9 of AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Shut in gas meter and install proper length of pipe where appropriate or install straightening vanes in accordance with appropriate AGA Committee Report 3 specifications.

Abatement Period: Prior to sales.

4. The orifice plate shall be sized to make the pen that records differential pressure operate in at least the middle one-third of the chart range for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size orifice to meter tube so that differential pen will deflect and record in at least the middle one-third of the chart range and so that the measurement will be within the prescribed beta ratio range.

Abatement Period: 20 days.

5. The static element shall be sized to make the pen that records the static pressure operate in at least the middle one-third of the chart range for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size static element so as to cause static pen to record in at least the middle one-third of the chart range.

Abatement Period: 20 days.

6. There shall be no pipe connections between the orifice and the nearest pipe fitting other than the pressure taps and/or thermometer wells as specified in AGA Committee Report No. 3. Sample probes may be installed upstream of straightening vanes.

Violation: Major.

Corrective Action: Shut in gas meter and replace entire length of pipe ahead of orifice meter with pipe of appropriate length and inside smoothness in accordance with AGA Committee Report No. 3.

Abatement Period: Prior to sales.

7. A temperature recorder that measures the average flowing gas temperature is required and the thermometer well shall be installed in accordance with AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Shut in gas meter, and install temperature recorder and/or install thermometer well in accordance with AGA Committee Report No. 3.

Abatement Period: Prior to sales.

8. The internal diameters of the meter tube pipe and the orifice fittings shall be the same or within tolerance limits set by AGA.

Violation: Major.

Corrective Action: Shut in gas meter and install properly sized meter tube.

Abatement Period: Prior to sales.

9. Meter tubes using "pipe taps," shall have the center of the upstream tap hole placed a distance of two and one-half times the appropriate inside diameter from the upstream face of the orifice plate. The center of the downstream tap hole shall be placed at a distance of eight times the published inside diameter from the downstream face of the orifice plate.

Violation: Major.

Corrective Action: Shut in gas meter and install meter tube pipe having properly constructed meter pressure taps.

Abatement Period: Prior to sales.

10. Meter tubes using "flange taps" shall have the center of the upstream pressure tap hole placed 1 inch from the upstream face of the orifice plate. The center of the downstream pressure tap hole shall be 1 inch from the downstream face of the orifice plate.

Violation: Major.

Corrective Action: Shut-in gas meter and install orifice holder with properly constructed pressure taps.

Abatement Period: Prior to sales.

11. There shall be no by-pass piping around the gas meter or other upstream connections that would permit gas to be transferred without being measured.

Violation: Major.

Corrective Action: Shut in gas meter and remove by-pass. Remove the unauthorized connection(s) installed upstream of the meter.

Abatement Period: Prior to sales.

12. Orifice plates shall be removed from the flange or plate holder, and inspected for visual conformance with AGA standards and specifications during testing of the accuracy of measuring equipment.

Violation: Minor.

Corrective Action: Remove and inspect orifice plate for visual conformance with AGA standards and specifications.

Abatement Period: No later than the next meter calibration.

13. Any plate or orifice that is determined not in conformance with AGA standards shall be replaced with one that is in conformance.

Violation: Major.

Corrective Action: Shut in gas meter and replace orifice plate.

Abatement Period: Prior to sales.

14. All connections and fittings of the secondary element (including meter pots and meter manifolds) shall be leak tested prior to conducting tests of the meter's accuracy, and at any other time leaks are detected, and all leaks shall be stopped.

Violation: Minor.

Corrective Action:

a. Stop meter calibration and conduct leak test. Stop leaks before further test for meter accuracy.

b. Repair secondary element where necessary to stop leak.

Abatement Period: Prior to completion of calibration.

15. The appropriate "zero" position of meter pens shall be checked during each test of meter accuracy, and adjustments made if necessary.

Violation: Minor.

Corrective Action: Stop meter calibration and check for appropriate "zero" position of meter pens and make appropriate adjustments.

Abatement Period: Prior to completion of calibration.

16. The meter's differential pen arc, the ability of the differential pen to duplicate the test chart's time arc over the full range of the test chart, shall be checked during each testing of the meter's accuracy and adjustments made if necessary.

Violation: Minor.

Corrective Action: Stop meter calibration and re-test meter accuracy. Check for proper differential pen arc and make appropriate adjustments.

Abatement Period: Prior to completion of calibration.

17. Differential pen accuracy shall be tested throughout the entire range of the test chart.

Violation: Minor.

Corrective Action: Stop meter and re-test meter accuracy. Check for differential pen accuracy throughout the entire range of the appropriate test chart.

Abatement Period: Prior to completion of calibration.

18. During testing of the meter accuracy, the static pen time lag shall be adjusted for proper operation.

Violation: Minor.

Corrective Action: Check for proper time lag and make appropriate adjustments which will assure independent travel of the static pen in relation to differential pen.

Abatement Period: Prior to completion of calibration.

19. For all sales and allocation meters, the accuracy of the measuring equipment at the point of delivery or allocation shall be tested monthly following initial meter installation or following repair for the first three months and, if proven adequate, at least quarterly thereafter unless a longer period is approved by the authorized officer. All extensions of intervals between tests of meters shall be approved in writing by the authorized officer.

Violation: Minor.

Corrective Action: Test meter for accuracy following intial installation or repair, and/or quarterly thereafter.

Abatement Period: Prior to next sales.

20. At least a 24-hour notice shall be given to the authorized officer prior to conducting the tests and calibrations required by this order.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled meter tests and calibrations at least 24 hours prior to next tests and calibrations.

Abatement Period: Prior to completion of calibration.

21. If the inaccuracy in the measuring equipment results in a volume calculation more than 2 percent in error, the volume measured shall be corrected in addition to adjusting the meter to zero error. Also, the operator shall submit a corrected report adjusting the volumes of gas sold, and showing or discussing

all calculations made in correcting the volumes. The volumes shall be corrected back to the time the inaccuracy occurred, if known. If this time is unknown, volumes shall be corrected for the last half of the period elapsed since the date of last calibration.

Violation: Minor.

Corrective Action: Calculate correct volumes to zero volume error and submit corrected volume on an amended report.

Abatement Period: Prior to completion of calibration.

22. If, for any reason, the measuring equipment is out of service or malfunctioning so that the quantity of gas delivered is not known, the volume delivered during this period shall be estimated using one of the following methods, in this order of priority:

a. Record data on check metering equipment if used in lieu of main meter recordings. If check meters are not installed or are found to be recording inaccurately; then,

b. Base corrections on the percentage error found during the instrument test. If that is not feasible; then,

c. Estimate the quantity of gas run, based on deliveries made under similar conditions when the metering equipment was registering accurately.

Violation: Minor.

Corrective Action: Re-estimate volumes delivered during those periods cited using one or more of the approved methods identified in the order of priority and submit an amended Monthly Report of Operations (Form 3160–6).

Abatement Period: 20 days.

23. Volumes of gas delivered shall be determined according to the flow equations specified in § 6.3 of the AGA Committee Report No. 3.

Violation: Minor.

Corrective Action: Recalulate all gas volumes not determined in accordance with flow equations specified in § 6.3 of the AGA Committee Report No. 3 and submit an amended Form 3160–6 report.

Abatement Period: 30 days.

24. Unless otherwise established, the point of sales delivery and appropriate measurement shall be on the leasehold (or within the boundaries of the communitized area (CA) or unit participating area). Sales measurement off the leasehold (or outside the CA or unit participating area) may be approved by the authorized officer.

Violation: Minor.

Corrective Action: Submit application to authorized officer for approval of off lease (CA or Unit participating area) measurement.

Abatement Period: 20 days.

25. The weighted average BTU content shall be determined at least annually, unless otherwise required by the authorized officer, by means of (1) a recording calorimeter, (2) calculations based on a complete compositional analysis of the gas and the heating value of each constituent, or (3) any other method acceptable to the authorized officer. The authorized officer shall be apprised of the method used for each determination and be furnished with all needed analytical data or other documentation upon request. The BTU content most recently determined and used for royalty purposes shall be reported monthly to the authorized officer on Form 3160–6.

Violation: Minor.

Corrective Action: Conduct test for weighted average BTU and submit on an amended Form 3160–6 the proper weighted average BTU.

Abatement Period: 20 days.

26. Operators shall submit a copy of the meter calibration report to the authorized officer within 30 working days.

Violation: Minor.

Corrective Action: Submit meter calibration report(s) to authorized officer.

Abatement Period: 10 days.

27. No special form is required, but all meter calibration report forms shall include the following information, if applicable:

a. Name of producer or seller.

b. Name of purchaser.

c. Federal or Indian lease number, communitization agreement number, or unit name or number, and participating area identification.

d. Station or meter number.

e. Meter data (make, differential and static range, recording period).

f. Type of connections (flange or pipe, upstream, or downstream static connections).

g. Orifice data (plate size and ID of meter tube).

h. Base of data used on each chart or record (temperature, specific gravity, atmospheric pressure, integration value, etc.).

i. Name of company performing the integration.

j. Time and date of test.

k. Instrument error(s) found and certification of corrections, and "found" and "left" data for all instruments.

l. Signature and affiliation of tester and witness.

m. Remarks.

Violation: Minor.

Corrective Action: Submit amended meter calibration report(s) to authorized officer, including all required information.

Abatement Period: 10 days.

28. For purposes of measurement and meter calibration, atmospheric pressure is that value defined in the buy/sell contract (normally assumed to be a constant value). In the absence of such a definition in the buy/sell contract, the atmospheric pressure shall be established as a constant value based on the elevation at the metering station.

Violation: Minor.

Corrective Action: Recalibrate gas meter and submit amended Form 3160–6 indicating correcting volumes due to adjusted "absolute zero" or incorrectly calculated pressure extensions.

Abatement Period: 20 days.

29. The method and frequency of determining specific gravity are normally defined in the buy/sell contract. Except when a continuous recording gravitometer is used, specific gravity may be determined at the time of an instrument check using a spot or cumulative gas sample, and is usually effective the first of the following month. The continuous recorder may be of a balance of kinematic type. Also, specific gravity may be determined from a laboratory analysis of a spot or cumulative gas sample.

Violation: Minor.

Corrective Action: Redetermine specific gravity of gas by approved method and submit an amended Form 3160–6 with corrected volume.

Abatement Period: 20 days.

30. The operator shall keep all test data, meter reports, charts/recordings, or other similar records for 6 years from the date they were generated, or if involved in an audit or investigation, the records shall be maintained until the record holder is released by the Secretary from the obligation to maintain them. The authorized officer and/or authorized representative may request these records any time within this period. Records submitted shall include all additional information used to compute volumes so that computations may be verified.

Violation: Major.

Corrective Action: Submit data as required.

Abatement Period: 20 days.

B. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Using any method of gas measurement other than by orifice meter at a location on the lease, unit, or communitized area, requires prior approval from the authorized officer pursuant to 43 CFR 3162.7–3. Other measurement methods include, but are not limited to:

Turbine metering systems

Pitot tube
Orifice well tester
Critical flow prover
Gas–oil ratio

The requirements and minimum standards for gas measurement on the lease, unit, or communitized area by an alternate method of measurement, or at a location off the lease, unit, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. *Measurement on the Lease, Unit or Communitized Area*

a. An application for approval of an alternate gas measurement method shall be submitted to the authorized officer and approval obtained before any such alternate gas measurement method is installed or operated. Any lessee/operator requesting approval of any alternate gas sales measurement system shall submit performance data, actual field test results, or any other supporting data or evidence acceptable to the authorized officer, that will demonstrate that the proposed alternate gas sales measurement system will perform with reliability and accuracy equal to or exceeding gas measurement by orifice meter.

Violation: Major.

Corrective Action: Submit application and obtain approval.

Abatement Period: Prior to sales.

2. *Measurement at a Location Off the Lease, Unit, or Communitized Area*

a. An application for off-lease measurement shall be submitted to the authorized officer and approval obtained before any such off-lease gas measurement facilities are installed or operated. The application for approval of off-lease measurement shall justify location of the measurement facilities at the desired off-lease location before approval will be granted, but no additional approval as to the gas sales measurement method is required, provided measurement is to be accomplished by orifice meter pursuant to the requirements and minimum standards of this Order.

Violation: Minor.

Corrective Action: Submit application and obtain approval.

Abatement Period: 20 days.

b. If gas measurement is to be accomplished at a location off the lease, unit, or communitized area by any alternate measurement method (any method other than measurement by orifice meter), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate measurement method pursuant to Sec. III B 1 of this Order.

Violation: Major.

Corrective Action: Submit application and obtain approval.

Abatement Period: Prior to sales.

IV. Variances From Minimum Standards

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in Section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances warranting approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) if it is determined that the proposed alternative(s) meets or exceeds the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability.

Attachment

I. Sections from 43 CFR Subparts 3163 and 3165 (not included with **Federal Register** publication).

[FR Doc. 88–2217 Filed 2–2–88; 8:45 am]

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federal register

Wednesday
February 3, 1988

Part VII

Farmers Home Administration

7 CFR Part 2054

Election of County Committee Members; Proposed Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 2054

Election of County Committee Members

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) is proposing to amend the Agency's regulations governing the election of county committee members. The proposed rule is necessary to comply with section 607 of the Agricultural Credit Act of 1987, Public Law (Pub. L.) 100–233. The intended effect of this action is to revise the criteria for voting and serving as elected county committee members to permit greater participation by the public in the process.

DATES: Comments must be received on or before March 4, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert A. Miller, Chief, Personnel Programs and Evaluation Branch, Personnel Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6440, South Agriculture Building, Washington, DC 20250; telephone (202) 382–1061.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor. The proposed action is not likely to result in any of the following: (a) An annual effect on the economy of $100 million or more, (b) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse 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.

Environmental Impact

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190; an Environmental Impact Statement is not required.

Intergovernmental Review

This action affects the following Catalog of Federal Domestic Assistance numbers and programs:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans
10.421 Indian Tribes and Tribal Corporation Loans

For the reasons set forth in the final rule related Notice to 7 CFR 3015 Subpart V, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

County committee members assist local FmHA offices by determining the eligibility of applicants for Farmer Program (FP) loans. The 1985 Farm Security Act, Pub. L. 99–198, established county committee elections of two of the three members of the county committee by farmers deriving the principal part of their income from farming who reside within the county or area * * * " However, section 607 of the Agricultural Credit Act of 1987, Pub. L. 100–233, has amended this provision by deleting the requirement that eligible voters derive the principal part of their income from farming. Other changes made in the county committee election process by Pub. L. 100–233 include permitting FmHA borrowers and those eligible for loans made or insured by FmHA to serve on the county committee subject to section 336(c) of the Farm Security Act of 1985, as amended, making spouses of eligible farmers eligible to participate in the election process, increasing the period for receipt of nominations from 25 days to 45 days, and increasing the length of the notice period prior to elections from 10 days to 30 days. The changes in the proposed action are designed to comply with section 607 of the Agricultural Credit Act of 1987 (Pub. L. 100–233). In addition to changes made to the regulation as a result of Pub. L. 100–233, the Agency clarified language regarding voting to ensure that each individual voter only casts one ballot, whether that ballot is voted in person or mailed in. Another change was to clarify that functions performed by county or area committees must be conducted under appropriate Civil Rights regulations. Two corrections were made to the regulations. The first dealt with retention of disputed ballots. The time frame for retention of such ballots was increased from 30 to 60 days to conform with the requirement that all ballots be retained for 60 days. The second correction dealt with the processing of Federal appointments for committee members that related to the inclusion of Form I–9, "Verification of Employment Eligibility" in the appointment papers.

List of Subjects in CFR Part 2054

Agriculture, County Committee Members.

Therefore, FmHA proposes to amend Chapter XVIII, Title 7 of the Code of Federal Regulations by revising Subpart W of Part 2054 as follows:

PART 2054—EMPLOYMENT

1. The authority citation for Part 2054 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart W, consisting of §§ 2054.1101–2054.1150, is revised to read as follows:

Subpart W—Employment, Pay, and Functions of County and/or area Committees

Sec.

2054.1101 General.
2054.1102 Establishment and composition of county and/or area committees.
2054.1103 Functions of the county and/or area committee.
2054.1104 Eligibility to hold office.
2054.1105 Election requirements.
2054.1106 Voting eligibility.
2054.1107–2054.1110 [Reserved]
2054.1111 Conducting elections.
2054.1112–2054.1114 [Reserved]
2054.1115 Prohibition of employee participation in committee elections.
2054.1116 Ballots.
2054.1117 Absentee ballots.
2054.1118 Ballot boxes and safekeeping of returned ballots.
2054.1119 Basic requirements for ballot count.
2054.1120 Counting ballots and announcing results.
2054.1121–2054.1122 [Reserved]
2054.1123 Notifying candidates of election results.

Sec.
2054.1124 Safekeeping and disposition of election records.
2054.1125 [Reserved]
2054.1126 Appointment.
2054.1127 Compensation.
2054.1128 Certification of services.
2054.1129 Termination of services.
2054.1130–2054.1149 [Reserved]
2054.1150 OMB control number.

Subpart W—Employment, Pay, and Functions of County and/or Area Committees

§ 2054.1101 General.

This subpart provides instructions for selection of county committee members. Nomination, election, or designation of county committee members are made without regard to race, color, sex, religion, national origin, age, political affiliation, marital status, or handicap.

§ 2054.1102 Establishment and composition of county and/or area committees.

(a) *General.* In each county or area in which Farmers Home Administration (FmHA) activities are carried out, there shall be a county or area committee composed of three members:

(1) Two members shall be elected by farmers. For this subpart, farmer is defined as any person who has an interest in a farm as owner, tenant, or sharecropper within the county or area. The term "farmer" shall include the spouse of an eligible farmer. One member, who shall reside within the county or area, shall be designated by the State Director. Designation may also be made for alternates for each member of the county committee and will be subject to all other requirements contained in this subpart.

(2) In selecting designated members of the county committee, care should be taken to ensure, to the greatest extent practicable, that the committee is fairly representative of farmers in the county or area. Designated committee members must be in sympathy with the family farm concept, be familiar with the problems of farmers and residents of rural communities, and be in general agreement with the objectives of FmHA. Designated committee members and alternates may also be farmers. However, if they are farmers, they need not meet the criteria in § 2054.1102(a)(1).

(3) It is FmHA policy that membership on county committees reflect, to the extent practicable, the diversity of the individuals served by the Farmer Programs. Eligible minorities and females will be designated wherever possible, to serve on county and/or area committees. Therefore, State Directors and/or County Supervisors will:

(i) Engage in community outreach and information activities designed to educate minorities and women on the nomination, election, selection, or appointment process for FmHA county committees.

(ii) Make efforts to obtain recommendations from civil rights and women's organizations.

(b) *Area committees.* A county committee will normally be established in each county. Area committees may be established by State Directors to serve a part of a county, parts to two or more counties, or a combination of two or more counties when:

(1) Topography and communications make it impractical to establish county committees according to county boundaries;

(2) The workload in an individual county is extremely low;

(3) More than one county office is necessary to service the workload of an individual county; or

(4) It has been determined that there are insufficient interested individuals to create a county committee in a single County Office's jurisdiction.

(c) *Action to create area committees.* When a State Director establishes an area committee, he or she must issue a State supplement designating the boundaries that the committee will serve. The State Director shall give public notice of boundary changes to county or area committees in official county newspapers or publications serving the area at least 30 days before a county committee election takes place. If the establishment of an area committee will result in the elimination of a county committee and a surplus of elected county committee members, the State Director will take the following steps:

(1) Terminate one of the designated members of the two committees, if necessary.

(2) Poll the elected members of the committees as to their continued desire to serve, and accept resignations from those who voluntarily wish to resign in inverse order as to their remaining terms; i.e., 1 year, 2 years, 3 years.

(3) If a surplus of elected members still remain after taking step (2) (paragraph (c)(2) of this section), the County Supervisor should have the members draw lots for the positions.

(4) In combining two county committees to create an area committee, the State Director must ensure that no more than one member of the reconstituted committee is a farmer eligible for a loan made or insured by FmHA.

(d) *Temporary absence of committee members.* When committee members are not available to attend meetings, the County Supervisor can call alternates to become acting members of the committee with the same duties and authorities as regular members. A quorum of at least two members or alternates is needed to have a county committee meeting.

When utilizing alternates, the County Supervisor should ensure that no more than one member of the committee is a farmer eligible for a loan made or insured by FmHA. Persons will be considered covered by this provision if they either currently have such a loan, or are qualified applicants for such a loan.

(e) *Permanent vacancies.* In cases of permanent vacancies, alternates may be used to complete the unexpired terms of either elected or designated members. Alternates should be designated in order of succession at the State Director's discretion; e.g., first alternate, second alternate, and third alternate. This rule of succession is subject to the requirement that no more than one farmer eligible for a FmHA loan serve at the same time. Alternates succeeding to members' unexpired terms will serve out the remainder of the term. If an alternate is not available to fill the county committee vacancy, the State Director will review the prevailing circumstances and determine the best course of action as follows:

(1) Continue with existing members until the next regular election.

(2) Designate additional alternates.

(3) Call a special election to fill vacancies.

(f) *Special elections.* The State Director may set the date for special elections that might be necessary in filling permanent vacancies or vacancies caused by inability to complete a slate of nominees during a regular election. Vacancies created by the inability to complete a slate of nominees to fill an expired term of an elected member must be filled through special elections held not later than 120 days after the regular elections. Committee members elected through special elections will serve out the remainder of the term of the position for which the election was called.

§ 2054.1103 Functions of the county and/or area committee.

(a) The functions which are subject to appropriate program regulations, Civil Rights Laws, and Subpart E of Part 1901 of this chapter to be performed by committees, consist of:

(1) Determining the eligibility of applicants for certain types of loans, including farmer program loans.

irrigation and drainage loans and loans to grazing associations;

(2) Making recommendations on resolving problem cases;

(3) Conferring with the County Supervisor on the servicing of FmHA loans with respect to borrowers who should be referred to other credit sources, including graduation;

(4) Making recommendations regarding applications for compromise or adjustment or cancellation of debts owed to FmHA;

(5) When requested by the County Supervisor, advising the County Supervisor, debtors, and their creditors in connection with voluntary debt adjustment; and

(6) Attending appeal hearing authorized under Subpart B of Part 1900 of this chapter.

(b) Members will not be assigned to perform service as individuals and will be paid for service only when requested to attend county committee meetings, make certain field visits with the County Supervisor, and attend appeal hearing and training meetings in accordance with FmHA regulations. They may not counsel prospective borrowers regarding preparation of loan documents. This will not prohibit a county committee member from making inquiries concerning applicants and borrowers during the normal contacts in his or her county of area.

(c) The County Supervisor is authorized to convene the county committee subject to the limitations specified in § 2054.1127(a)(1) of this subpart. Form FmHA 2006–9, "Notice of Visit or Meeting," may be used to notify county committee members of meetings. The County Supervisor serves without extra compensation as Executive Secretary of the county committee.

(d) At the first meeting after July 31 of each year, the members of the county committee will elect one member to serve as Chairperson for that year.

(e) The County Supervisor will prepare Form 2054–7, "Record of County/Area Committee Meetings," and maintain such files and records as may be required to reflect actions taken by the committee. The County Supervisor may designate the Assistant County Supervisor to represent him or her at county committee meetings, when it is not possible for the County Supervisor to attend. Such designations may be made orally. In these instances, the Assistant County Supervisor will prepare and sign minutes of the meetings as Executive Secretary and other records necessary to reflect actions taken by the committee.

§ 2054.1104 Eligibility to hold office.

Elected committee members must be persons who have their principal farming operation within the county or area in which activities of the county committee are carried out, and are farmers (as defined in § 2054.1102(a)(1) of this subpart). Criteria for selection of the designated member and alternates are found in § 2054.1102(a)(2) of this subpart. Any farmer eligible for a loan made or insured by FmHA shall be eligible to serve as an elected or appointed county committee member. Not more than one farmer eligible for a loan made or insured by FmHA may serve on a county committee at the same time. Persons will be considered "eligible" for an FmHA loan if they either currently have such a loan, or are certified applicants for such a loan. In addition, the elected and/or designated members and alternates must meet all of the following requirements to hold office as a county committee member:

(a) Be a citizen of the United States, or an alien lawfully admitted to the United States for permanent residence.

(b) Not have been removed for cause from any public office, or have ever been convicted of fraud, larceny, embezzlement, or any felony.

(c) Not have been dishonorably discharged from any branch of the armed services.

(d) Not currently be an officer or employee of a partisan political party, or be active in the management or affairs of any political club, organization, or committee. The general rules are contained in FmHA Instruction 2045–CC (available in any FmHA office). See especially §§ 2045.1402(b) (Coverage), 2045.1407 (Prohibited activities), and 2045.1410 (Accepting and holding State and local offices). Committee members are also subject to the prohibitions contained in Executive Order 11222 and Department of Agriculture (USDA) policy contained in Part 735, Departmental Personnel Manual (DPM) Supplement 990–1, with respect to holding public office.

(e) Not be employees of FmHA, Agricultural Stabilization and Conservation Service (ASCS), Soil conservation Service (SCS), Extension Service (ES), Rural Electrification Administration (REA), Federal Crop Insurance Corporation (FCIC), or agents of these agencies.

(f) Not currently be an employee of a Federal Land Bank, Production Credit Association, or other Farm Credit System institutions, or serve on a committee which make recommendations for approval of loans by these organizations since FmHA may be involved in particiation loans with such Farm Credit System loans.

(g) Not perform any of the following functions for an FmHA-financed association or organization after appointment:

(1) Serve as an official;

(2) Perform administrative or employee functions including performing clerical services, maintaining financial or other records, preparing financial reports, or developing operating budgets.

(h) Not currently be an employee or serve on Boards of Directors of Banks or Savings and Loan Associations or be the spouse of or a family member living in the same household with an individual serving on the board of such organizations in the county or area over which the county committee has jurisdiction, since FmHA may be involved in participation loans with such banks.

(i) Meet the legal or regulatory requirements for appointment to Federal employment. (See § 2054.1126 of this subpart.) This determination will be made subsequent to nomination but prior to the committee member taking office.

§ 2054.1105 Election requirements.

(a) *Election dates.* All regular elections of county committee members shall be held in those years that an elected member's term expires. This date must be in June but not either a Saturday or Sunday or a federally or State-recognized holiday. It shall be selected by the State Director and announced to the public.

(b) *Length of terms.* Elected and designated members of the county committee shall serve for a term of three years.

(c) *Beginning dates of terms.* County committee members begin their terms as follows:

(1) For regular elections, no later than July 31.

(2) For special elections, no later than 30 days after the election was held.

(d) *Notice to the public.* Information concerning county committee elections shall be made available to the general public through the use of official county newspapers or publications in general circulation serving the area, through notices prominently posted in FmHA offices within the areas, and, if possible, in ASCS and/or ES newsletters and through public service announcements on radio or television stations serving the area. To ensure participation of women and racial and ethnic minorities, publications in circulation serving these

groups should also be utilized to provide information concerning the elections.

§ 2054.1106 Voting eligibility.

An individual farmer is entitled to one vote. A "farmer" who is a legal entity such as a corporation, partnership, cooperative, joint operation, association or other legal entity is entitled to one vote by its duly authorized representative. A farmer may vote in only one county or area election. In order to vote in the election of a county committee member, voters must:

(a) Be farmers; i.e., persons who have an interest in a farm as owner, tenant, or sharecropper or spouses of such persons, or be duly authorized representatives of a legal entity which has an interest in a farm.

(b) Have their principal farming operation within the county or area for which the election is being held.

§ 2054.1107–§ 2054.1110 [Reserved]

§ 2054.1111 Conducting elections.

(a) *Election calendar.* An election calendar is provided as Exhibit C of this subpart (available in any FmHA office).

(1) The election calendar provides a sequence of events for conducting the election.

(2) If the final date for any event is a nonworkday, it is automatically extended to the next workday.

(b) *Developing slates of nominees.* Nomination by petition shall be the method used for developing slates of nominees.

(1) The period for nominating by petition will be 45 days and end 20 days before the election date.

(2) The opportunity to nominate by petition shall be announced in official county newspapers or other publications in general circulation serving the county or area and, if possible, in ASCS and/or ES newsletter and through public service announcements on radio and television stations serving the area. In addition, notices shall be posted in all FmHA offices within the area. The Notice of Right to Nominate by Petition shall be completed by the County Supervisor and read as set forth in Exhibit A of this subpart (available in any FmHA office).

(3) The minimum number of eligible nominees for a slate is one per vacant elected committee member position. The State Director or designated staff may solicit nominations during the nominating period.

(4) At least three eligible voters (including the nominee) within the county or area must sign a nominating petition in order for it to be valid. No one may sign more than one nominating petition.

(5) All eligible nominees nominated by valid petition shall be included on the slate for county committee.

(c) *Approval and processing of nominations by public petitions.* The County Supervisor shall review all petitions and verify their validity, including the eligibility of the nominee to hold office. In order to be valid, petitions must be:

(1) Limited to one nominee each.

(2) Signed by the nominee certifying that he or she is willing to serve if elected.

(3) Received in the County Office no later than 20 days before election date, whether delivered in person or by mail.

(4) Accompanied by a signed statement by the nominee certifying that he or she either currently meets the criteria to hold office, or will do so prior to taking office. If all the criteria are not met at the time the nomination is filed, the candidate must specify how he or she will meet the criteria; e.g., resign from a position listed in § 2054.1104 (d), (e), (f), (g), or (h).

(d) *Action to complete slate of nominees.* The State Director or designated staff may solicit nominations during the nominating period.

(1) The petitions will be returned to the County Office for execution of Form 2054–5, "Nominating Petition."

(2) The completed Form FmHA 2054–5 must be in the County Office no later than 20 days before the election.

(3) The County Supervisor will send a letter to all eligible nominees explaining the duties of county committee member and will retain a copy in the County Office files. See FmHA Guide Letter No. 2054–1, "Letter to Nominees" (available in any FmHA office).

(4) If less than the required minimum number of valid nominations are made by petition, the regular election will be cancelled, and the State Director will designate the necessary number of pro tem county committee members to have a full committee. These pro tem designees must meet all the requirements of this subpart concerning designated members and may serve only until a special election can be held and elected members appointed. Pro tem appointments may be made not-to-exceed 120 days. If a special election fails to produce a sufficient slate of candidates, requests for extensions of pro tem appointments, with supporting justification, may be made to the Director, Personnel Division.

§§ 2054.1112–2054.1114 [Reserved]

§ 2054.1115 Prohibition of employee participation in committee elections.

FmHA employees shall not campaign for or against any county committee candidate or nominee, or actively participate in the election except as necessary to:

(a) Perform their official duties.

(b) Vote, if eligible.

§ 2054.1116 Ballots.

Ballots shall be published at the time an election is announced in county newspapers or publications serving the area. The Notice of Election, which contains the ballot, shall be completed by the County Supervisor and read as set forth in Exhibit B to this subpart (available in any FmHA office). Each State may distribute additional ballots through means other than publications, as necessary. The announcement must be made at least 30 days prior to the date of the election. There shall be a statement in the announcement as to where and when the ballots should be returned. Ballots shall also be available at the County Office. Ballots should be mailed as set forth in § 2054.1117 of the subpart to any person who requests one even though the person's eligibility has not been determined. The names of voters who vote in person will be verified against an ASCS list of producers and checked from that list. A separate list must be maintained manually by the County Supervisor of those individuals voting in person or by absentee ballot in the county committee election. The ASCS producer list will be used by FmHA only as an indicator that the prospective voter has an interest in farming. Presence or absence of an individual from the ASCS list does not automatically qualify or disqualify an individual. The County Supervisor can challenge anyone presenting themselves to vote, if there is a reasonable basis to believe that the voter is not eligible to cast a ballot. However, the County Supervisor should count the vote of a prospective voter if his or her name is found on the ASCS list, is not otherwise known to be ineligible, and submits a ballot. If the prospective voter is not on the producer list, but can provide information that shows he or she is otherwise eligible, the voter should be permitted to vote. Individuals voting in person may only cast their own vote.

§ 2054.1117 Absentee ballots.

Persons who do not plan to vote in person may request that a ballot be mailed to them. The ballot should be enclosed in an envelope along with voting instructions, a return envelope

with the County Office address, and a plain white envelope stamped ballot enclosed. The voter must pay the postage on the return envelope and return the ballot on or before the date set for the election. Upon receipt of the ballot, the name of the voter will be verified against the ASCS producer list, checked off that list, and added to the FmHA voter list. Absentee ballots are subject to the same review process as ballots voted in person. The County Supervisor may challenge any absentee ballot for which there is a reasonable basis to believe that the person voting is not eligible. In these cases, and in cases where the prospective voter is not on the ASCS list, the County Supervisor will hold the ballot in abeyance and write or otherwise contact the individual advising that he or she must provide a verbal explanation or documentation that he or she meets the voter criteria. Individuals must be given 5 working days to respond. If the prospective voter does not respond within the time permitted, or does not provide sufficient information for the County Supervisor to make a determination, the vote will not be counted, and the ballot will be destroyed 60 days after the election. All absentee ballots submitted by eligible voters will be placed unopened in the ballot box by the County Office staff. Each ballot must be mailed in a separate envelope with the name and address of the voter clearly marked on the outside of the envelope. If more than one ballot is mailed in the same envelope, all ballots contained therein will be invalid, the votes will not be counted, and the ballots will be destroyed 60 days after the election.

§ 2054.1118 Ballot boxes and safekeeping of returned ballots.

Each County Office holding an election will provide a ballot box in the County Office. The boxes must:

(a) Be of sufficient size.

(b) Be constructed so ballots cannot be read or removed.

(c) Be sealed so that tampering with the box would be visible.

(d) Be identified as the ballot box for the county or area in which it is used.

§ 2054.1119 Basic requirements for ballot count.

Ballot count by County Office staff:

(a) Ballots shall be counted within 7 working days after the election.

(b) The counting process should be public. This can be done by counting in the County Office during regular working hours.

§ 2054.1120 Counting ballots and announcing results.

The County Office staff shall:

(a) Announce the beginning of the count, if witnesses are present.

(b) Open the ballot box in the presence of witnesses.

(c) Examine the ballots and determine whether each meets the election requirements.

(d) Separate the valid from the invalid ballots. Invalid ballots will not be counted and will be destroyed as specified in § 2054.1124 of this subpart. Examples of invalid ballots are those that contain write-in candidates, more votes than are specified as being appropriate, or no clear vote.

(e) Call out the votes shown on the ballots.

(f) Review the final vote count and determine the candidate(s) elected.

(g) Settle all two-way ties by coin toss, if necessary. Ties involving more than two will be settled by drawing lots.

(h) Only those candidates who receive one or more votes can be elected. If less than the necessary number of candidates are elected to fill the vacant positions, special elections will be required for those seats left unfilled.

§ 2054.1121–2054.1122 [Reserved]

§ 2054.1123 Notifying candidates of election results.

The County Supervisor will promptly notify successful candidates of election results in writing See FmHA Guide Letter No. 2054-2, "Letter to Elected County Committee Members," (available in any FmHA office).

§ 2054.1124 Safekeeping and disposition of election records.

(a) Ballots for each County Office should be placed in a sealed container.

(b) Ballots should be retained for 60 days after the elections and then destroyed if no complaint or investigation is initiated.

(c) FmHA voter lists, and other election documents such as the nominating petitions, nominee's certification to held office, etc., should be retained in the County Office files and disposed of after a period of 3 years.

§ 2054.1125 [Reserved]

§ 2054.1126 Appointment.

(a) *Employment conditions.* County committee members both elected and designated are given Federal appointments on an intermittent basis under "Schedule A, § 213.3113(e)(2)" of Civil Service Rules and Regulations. They are not required to take an Office of Personnel Management (OPM) examination and are not selected from OPM registers. They do not acquire competitive status through their appointment, but such service is creditable toward retention and retirement in connection with other Federal employment. Neither retirement nor social security deductions are made from their pay, nor do they earn annual or sick leave. County committee members are not eligible for life insurance or health benefits coverage.

(b) *Processing accessions.* To document selection of county committee members, specific remark codes have been assigned for use in processing the accession action (SF–52, "Request for Personnnel Action", and AD–350A, "Change Action Notice,") for members. One of the remark codes listed below must be entered in Blocks 37 and 56, respectively. The National Finance Center (NFC) will supply the descriptive data and complete the remark.

(1) Elected county committee member—remark code 167—remark is—Employee elected as a county committee member.

(2) Designated as a county committee member—remark code 168—remark is—Employee designated as a county committee member.

(3) Designated as an alternate county committee member—remark code 169—remark is—Designated as an alternate county committee member.

(c) *Dual compensation.* A person may be appointed and paid as a county committee member while also holding another Federal appointment on a part-time or intermittent basis, subject to the exclusions found in § 2054.1104(e) of this subpart. In such cases, the member may not receive pay under both appointments for more than 40 hours in any one calendar week.

(1) A full-time Federal employee may be appointed only on a "Without Compensation" (WOC) basis.

(2) A full-time or part-time State government employee (not disqualified under § 2054.1104 of this subpart) may be appointed. If acceptance of the Federal salary would violate a State law, while acceptance of the appointment itself would not be prohibited by the State Constitution or laws, it may be made on a WOC basis.

(3) A retired civilian employee of the Federal Government may be appointed only on a WOC basis.

(4) Dual compensation restrictions do not apply to persons receiving retired pay for enlisted military service, provided they are not receiving other payments from the Federal Government which would constitute a violation of such restrictions.

(5) Dual compensation restrictions apply for persons receiving retired pay for *service as a commissioned officer.*

The State Director will make the necessary determinations in such cases in accordance with Federal Personnel Manual (FPM) chapter 550, Subchapter 6, "Reduction-in-Retired Pay Provision of the Dual Pay Status."

(d) *Appointment procedures.* The following procedures are to be followed:

(1) The County Supervisor will have the prospective county committee members including alternates complete Standard Form (sf) 171, "Personal Qualifications Statement," in an original only, which will be forwarded to the State Director by the County Supervisor with Form FmHA 2054–6, "Mileage Certification for County Committee Members," in an original completed by the County Supervisor. Although veteran's preference does not apply to county committee member appointments, copies of the DD–214 should be obtained from veterans in order to accurately establish Service Computation Dates (SCD) for members.

(2) *Care should be taken that all Federal, territorial, State, county, or local offices held by a nominee for county committee appointment are specified on the SF 171,* in the space showing experience, so that the State Director may determine eligibility under the applicable restrictions.

(3) The State Director will review SF 171 for completeness and conformity with requirements and will process Form AD–350A. The State Director will send a copy of Forms AD–350A, AD–349, "Declaration Sheet," SF–61, "Appointment Affidavits," I–9, "Employment Eligibility Verification," Treasury Form W–4, "Employee's Withholding Exemption Certificate," and State Income Tax Withholding form, where applicable, to the County Supervisor. The copy of Form AD–350A will be retained in the County Office committee file. FmHA Instruction 2045–BB and Appendix 1, "Employee Responsibilities and Conduct," will be sent to the County Supervisor with other forms for distribution to the new committee member.

(4) The County Supervisor will instruct the committee member in completing Forms AD–349, SF–61, I–9, Treasury Form W–4, and State Income Tax Withholding form, when used, and will return these forms to the State Director for review. The date of Appointment Affidavit must be recorded on Form AD–321–3, "Time and Attendance Report," before Form AD–349 is forwarded to the State Director. Failure to enter the date of the Appointment Affidavit on the Time and Attendance Report will delay the committee member's pay. Form AD–349 must be executed in its entirety. The State Director will forward the "Employee Copy" of the SF 50B "Notification of Personnel Action" printout produced by NFC to the County Supervisor for delivery to the county committee member.

(5) The terms of committee members and alternates begin on the effective date of the Schedule A Appointment. Terms of appointments are for three years except in cases where the appointee is completing the unexpired term of a former member.

(6) Elected county committee members will be issued a "Certificate of Election" by the County Supervisor. These certificates can be reordered only by the State Offices. When ordering from the warehouse, State Offices should ask for Item No. 410, "Certificate of Election."

(e) County committee members are covered by FmHA Instruction 2045–BB, including Exhibits A and B "Employee Responsibilities and Conduct."

§ 2054.1127 Compensation.

(a) *Commuting time.* Service performed by regular and alternate county committee members will be computed in units of whole days. Alternate county committee members who, at the request of County Supervisors, attend county committee meetings for training and/or orientation purposes are entitled to compensation even if all three regular county committee members are present.

(1) *Service time limits.* County committee members are limited to a maximum of 20 days of service in any one calendar month. Avoid short or unnecessary meetings.

(2) *Compensation restrictions.* Payment of salary for county committee services (as distinguished from the allowance "in lieu of travel and subsistence") may be prohibited in some cases as outlined in § 2054.1126(c) (3) and (4).

(b) *Rates of pay and allowance.* For county committee services performed in connection with the FmHA program, members will be paid at the basic daily rate of $30 plus an allowance in lieu of travel and subsistence on a sliding scale based on the distance from the county committee member's residence to the County Office or other place where county committee meetings are normally held, as provided on the following chart:

1-way mileage from residence to meeting place	Salary	Allowance	Total
25 or less	$30	$6	$36
25–50	30	9	39
51 and over	30	12	42

(1) The allowance in lieu of travel and subsistence for each county committee member will be established by the State Director at the time of appointment. The rate will be based upon certification from the County Supervisor as to the mileage between the county committee member's residence and the place where the meetings are normally held, by way of the most commonly traveled route. This rate will remain fixed after initially established, unless there is a change in the residence or place where meetings are normally held, so as to place the member in a lower or higher allowance zone. The change in allowance is effective the first of the month which is not less than 30 calendar days after: the change in residence; or the first meeting at the new regular location. Changes in allowance in lieu of travel and subsistence will not be made for attendance at training meetings, appeal hearings, or for occasional county committee meetings not held at the regular location.

(2) County Supervisors will certify on Form 2054–6, for each person appointed. The certification will be submitted to the State Director at the time other documents required by § 2054.1128 of this subpart are submitted.

(3) A revised certification on Form FmHA 2054–6 will be submitted for a county committee member as required. This certification will be submitted as soon as possible after the county committee member's residence has been changed, or after the first county committee meeting at the new location.

(4) If the County Supervisor has positive knowledge of the proper mileage zone, he or she may make the required certification without taking speedometer readings. Otherwise, the certification will be based on actual speedometer readings.

(5) The speedometer readings will be taken to the nearest full mile, with five tenths of a mile counted as the next highest mile. All certification will be prepared in duplicate, with a copy retained in the County Office.

§ 2054.1128 Certification of services.

The County Supervisor will certify biweekly on Form AD–321–3, all services for which county committee members are to be paid. These forms should be completed and submitted promptly to NFC according to the Management of Objectives with Dollars

through Employees (MODE) Time and Attendance Report Handbook.

§ 2054.1129 Termination of services.

If a county committee member is terminated prior to the expiration of the appointment, the State Director will process Form AD-350A. The Employee's copy will then be forwarded to the County Supervisor for delivery, using Form FmHA 2054-4, "Separation Notice to County Committee Members," or other suitable letter from the State Director to the committee member. If the form letter is used, no copy is needed.

(a) *Resignation.* The resignation of a county committee member may not be coerced by the County Supervisor or any other person. Members wishing to resign, however, should be urged to do so in writing so that the resignation may be properly documented. Resignations will be sent by the County Supervisor to the State Director, accompanied by a recommendation for replacement, if possible, (see § 2054.1102(e) of this subpart).

(b) *Other separations.* (1) The County Supervisor will inform members that they no longer meet eligibility requirements when they enter military service. Elected members will lose eligibility if they no longer maintain their principal farming operation in the county or area they represent. Designated and alternate members will lose their eligibility if they move from the area. In all cases the County Supervisor will so notify the State Director. If a resignation is not promptly submitted, termination of the appointment will be processed by the State Director.

(2) When a committee member accepts public office or engages in political activity in violation of the restrictions outlined in § 2054.1104 of this subpart, it is the State Director's responsibility on receipt of such information to make a full report to the Administrator. The report should be sent to the attention of the Director, Personnel Division. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(3) The County Supervisor will notify the State Director if a member dies so that the appropriate action may be processed.

(4) If a County Supervisor or other FmHA officials have information concerning the personal conduct of a county committee member which adversely affects FmHA and the USDA, such information should be sent in a confidential letter to the State Director who will forward a report to the Administrator. The report should be sent to the attention of the Director, Personnel Division. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(5) No member of a county committee shall knowingly make or join in making any certification with respect to a loan to purchase any land in which he or any person related to him within the second degree of consanguinity or affinity has or may acquire any interest or with respect to any applicant related to him within the second degree of consanguinity or affinity. Should this provision be violated, those FmHA officials having information will take action in accordance with § 2054.1129(b)(4).

(6) Where termination is due to the expiration of appointment, a termination action is not necessary. NFC will automatically drop the country committee member from FmHA rolls. A letter of appreciation will be sent to the county committee member by the State Director.

§2054.1130-2054.1149 [Reserved]

§2054.1150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and assigned an OMB control number 0575-0117.

Date: January 26, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-2275 Filed 2-2-88; 8:45 am]

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Reader Aids

Federal Register

Vol. 53, No. 22

Wednesday, February 3, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data Base Services	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

2719-2816.....1
2817-2994.....2
2995-3182.....3

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5763.....2719
5764.....2814
Executive Orders:
12301 (Revoked by EO 12625).....2812
12625.....2812
Administrative Orders:
Memorandums:
January 28, 1988.....2816

7 CFR

272.....2817
932.....2823
947.....2995
Proposed Rules:
53.....3025
54.....3025
250.....2846
318.....3028
907.....2849
908.....2849
917.....2851
925.....2851
929.....3036
948.....3037
1421.....2759
1823.....2852
1930.....2852
1933.....2852
1942.....2852
1944.....2852
1948.....2852
1980.....2852
2054.....3176

8 CFR

204.....2824

9 CFR

92.....2853
Proposed Rules:
51.....2759
71.....3146
78.....3146
85.....3146
309.....3146
310.....3146
320.....3146

10 CFR

Proposed Rules:
31.....2853

12 CFR

32.....2997
207.....2998
220.....2998
221.....2998
224.....2998
614.....2825
795.....3000

14 CFR

21.....2721-2733
23.....2721-2733
39.....2735-2737, 3001, 3002
71.....3005-3008
73.....3010
97.....3011, 3012
1206.....2738
Proposed Rules:
21.....2761, 3040, 3042
23.....2761
25.....3040, 3042
39.....2763-2765, 3044-3048
71.....3049

15 CFR

Ch. III.....3014

16 CFR

1500.....3014
Proposed Rules:
453.....2767

17 CFR

Proposed Rules:
249.....2854

18 CFR

271.....3019

19 CFR

154.....2826
270.....2826
271.....2826
273.....2826
375.....2826
381.....2826
1310.....2826
Proposed Rules:
101.....2767

21 CFR

1.....2827
Proposed Rules:
12.....2767

23 CFR

645.....2829

26 CFR

1.....3118
Proposed Rules:
1.....3118

27 CFR

9.....2834

30 CFR

934.....2837

Proposed Rules:
936..... 3050

33 CFR

203..... 2841
230..... 3120
325..... 3120
Proposed Rules:
117..... 2769

34 CFR

777..... 3020
Proposed Rules:
669..... 2918

36 CFR

222..... 2978

37 CFR

201..... 3118

38 CFR

Proposed Rules:
21..... 2855

40 CFR

60..... 2914
180..... 3021-3023
721..... 2842, 2845
Proposed Rules:
52..... 3052
721..... 2857

41 CFR

101-1..... 2738

42 CFR

59..... 2922

43 CFR

4100..... 2984
Proposed Rules:
3160..... 3158, 3168

44 CFR

5..... 2739
64..... 2741
67..... 2743

47 CFR

73..... 3024
Proposed Rules:
25..... 3056
69..... 3057
80..... 3058

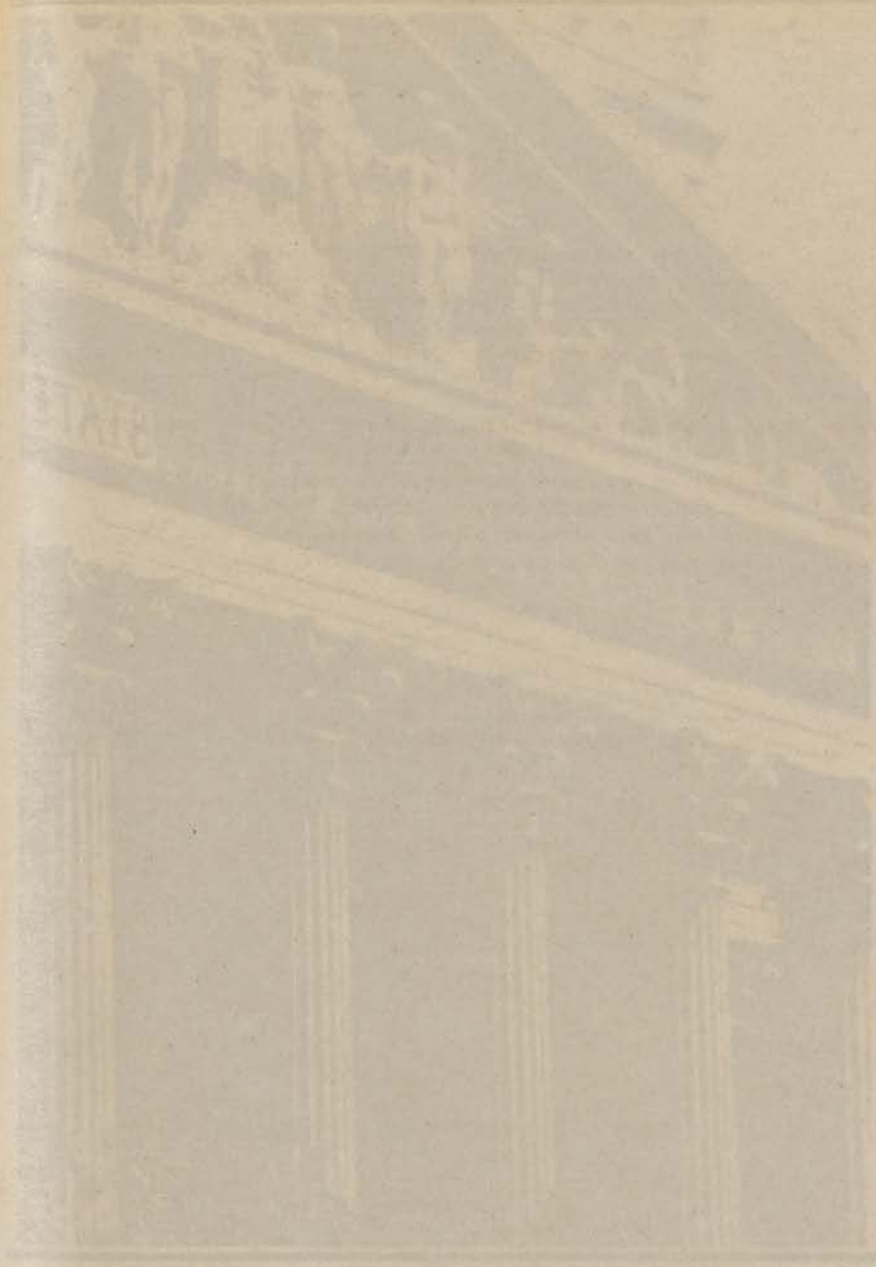
49 CFR

Proposed Rules:
1041..... 3058
1048..... 3058
1049..... 3058

LIST OF PUBLIC LAWS

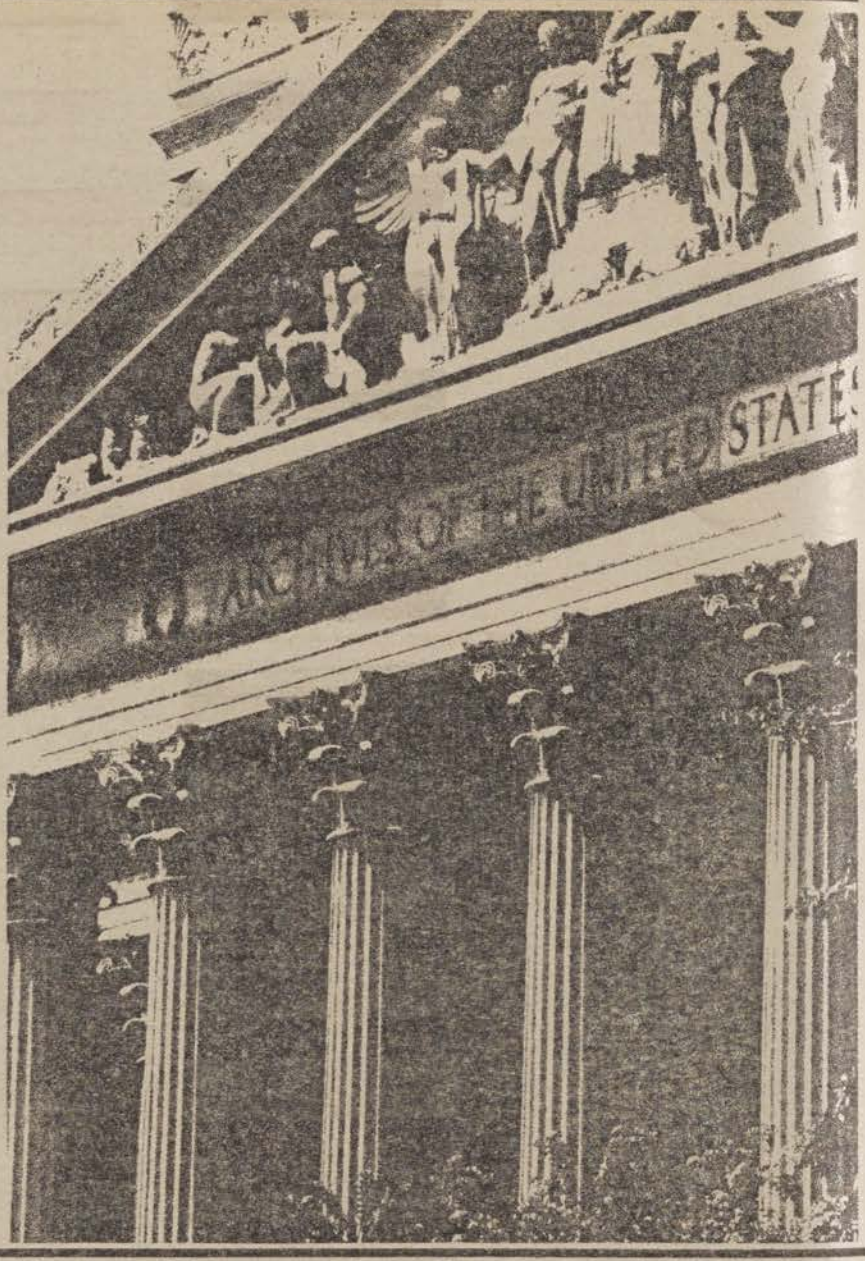
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988



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