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Monday
February 8, 1988

Briefing on How To Use the Federal Register—
For information on briefings in Seattle, WA, San Francisco, CA, and Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

SEATTLE, WA

WHEN: February 11; at 9:00 a.m.
WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.
RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Seattle	206–442–0570
Tacoma	206–383–5230
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SAN FRANCISCO, CA

WHEN: February 12; at 9:00 a.m.
WHERE: Room 2007, Federal Building,
450 Golden Gate Avenue,
San Francisco, CA.
RESERVATIONS: Call the San Francisco Federal Information Center, 415–556–6600

WASHINGTON, DC

WHEN: February 19; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: Roy Nanovic, 202–523–3187

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Presidential Documents

Title 3—

The President

Memorandum of January 27, 1988

Memorandum for the Secretary of State

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended, and Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the responsibility for submitting the second report and certifications required by Section 2013 of the Anti-Drug Abuse Act of 1986 (P.L. 99–570).

You are authorized and directed to publish this memorandum in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, January 27, 1988.

[FR Doc. 88-2704
Filed 2-4-88; 2:45 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5768 of February 4, 1988

National Tourism Week, 1988

By the President of the United States of America

A Proclamation

Every year, millions of Americans and visitors from abroad travel throughout our country to see for themselves the beauty of our land, the hospitality of our people, and the record of our history. They discover the glory and story of America, the evidence and the experience of all the hard-won freedom, justice, and opportunity we and our ancestors have cherished and preserved. National Tourism Week fittingly celebrates tourists, travelers, and those who earn their livelihood by serving them.

Travel and tourism offer countless benefits for Americans and for our guests from other lands, including domestic friendship and international goodwill, enhanced communication and cooperation, and the chance to view and visit natural wonders of limitless variety, city and countryside, and outstanding cultural events. Our comprehensive services and accommodations make U.S. travel and tourism the first choice of world travelers and the world's best buy for the travel dollar.

The travel and tourism industry, once small, is now our third-largest retail trade and second-largest employer. The travel industry directly or indirectly supports nearly seven million jobs and generates some $292 billion in receipts, or 6.4 percent of our gross national product. Internationally, tourism now is the largest business export among America's service industries; it contributes more than $19 billion annually to our balance of trade.

National Tourism Week reminds us not only of the economic, educational, and recreational benefits of travel and tourism but also of the warm and wide welcome that Americans traditionally and gladly offer to neighbors from near and far.

The Congress, by Public Law 100–214, has designated the week beginning the third Sunday in May 1988 as "National Tourism Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 15, 1988, as National Tourism Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of February, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc 88–2725

Presidential Documents

Proclamation 5769 of February 4, 1988

National Women in Sports Day, 1988

By the President of the United States of America

A Proclamation

The many achievements of American women in sports at home and abroad are sources of pride and inspiration for all of us. Whether on high school playing fields across our land or in Olympic arenas, female athletes time and again display qualities Americans cherish—not only great ability but also greatness in spirit, courage, and skill.

Reflection on this record of accomplishment reminds us of the many benefits of women's and girls' sports and of the importance of physical fitness for people of all ages and abilities. True physical fitness helps us do our best in life, as well as in sports and physical activities at any level. Women's sports and fitness activities also help develop leadership skills that can carry over into many other areas. Opportunities for female athletes of every background can truly touch the lives of many people for the better and enrich our country. The same is true for greater attention in schools and communities to physical fitness for girls; fitness research; and private, volunteer, and public sports programs.

In recognition of the contributions of women's sports to our country, and of the need for continuing advances in these sports, the Congress, by Senate Joint Resolution 196, has designated February 4, 1988, as "National Women in Sports Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim February 4, 1988, as National Women in Sports Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of February, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-2759
Filed 2-5-88; 10:52 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-169-AD; Amdt. 39-5843]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, -83, and -87 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of McDonnell Douglas DC-9-81, -82, -83, and -87 series airplanes by individual telegrams. This AD requires inspection of the anti-skid control unit part number to determine compatibility with the installed brake, replacement, if necessary, with the correct anti-skid control unit, and reconfiguration of the electrical wiring. This condition, if not corrected, could result in decreased braking performance or potential loss of braking, which could cause the airplane to depart the runway on landing or rejected takeoff.

DATES: Effective March 7, 1988.

This AD was effective earlier to all recipients of telegraphic AD T87-25-52, dated December 11, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: On December 11, 1987, the FAA issued telegraphic AD T87-25-52, applicable to McDonnell Douglas Model DC-9-81, -82, -83, and -87 series airplanes, which requires inspection, in accordance with McDonnell Douglas Alert Service Bulletin A32-222, dated December 10, 1987, of the anti-skid control unit part number to determine compatibility with the installed brake, and installation of the proper unit, if necessary.

Additionally, it requires reconfiguration of the wiring of the keying rack and electrical connector. That action was prompted by four reports of incorrect anti-skid control units installed on Model DC-9-80 series airplanes. Investigation revealed that clocking posts (keys) on the rack and panel electrical connector (Item R5-16) had been changed to allow installation of incorrect anti-skid control units. This condition, if not corrected, could result in decreased braking performance or loss of braking, which could cause the airplane to depart the runway on landing or rejected takeoff.

Since a situation existed, and still 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 Federal Aviation Administration 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:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, -83 and -87 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin A32-222, dated December 10, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential for decreased braking performance or loss of braking capability during landing or rejected takeoff, accomplish the following:

A. Within 10 days after the effective date of this AD, inspect the Brake/Anti-Skid Control Unit in accordance with Paragraph B of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A32-222, dated December 10, 1987, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. If correct Brake/Anti-Skid Control Unit is installed, no further action is necessary.

B. If incorrect Brake/Anti-Skid Control Unit is installed, before further flight, remove the incorrect anti-skid control unit, reconfigure the keying rack and electrical connector, and install the correct anti-skid control unit, in accordance with Paragraphs D, E, and F of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A32-222, dated December 10, 1987, or later revision approved by the the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles 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 in order to

comply with inspection requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective March 7, 1988.

This AD was effective earlier to all recipients of telegraphic AD T87–25–52, issued December 11, 1987.

Issued in Seattle, Washington, on January 28, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–2526 Filed 2–5–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–CE–25–AD; Amdt. 39–5840]

Airworthiness Directives; Gulfstream Aerospace Corporation Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Airworthiness Directive (AD) 87–24–07, Amendment 39–5774, (52 FR 43849, November 17, 1987), applicable to Gulfstream Aerospace Corporation Model 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B airplanes, herein referred to as "690 and 695" airplanes. This revision is necessary because the original intent of paragraph (a)(2)(ii) of the AD was to allow compliance with either or both Gulfstream Service Bulletins SI–211 and SI–212 rather than to require compliance with both service bulletins as stated in the original AD.

EFFECTIVE DATE: February 9, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., FAA, Central Region, Foreign Project Support Section, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932 or Ms. Alma Ramirez-Hodge, Airplane Certification Branch, ASW–150, FAA, Fort Worth, Texas, 76193–0150, Telephone (817) 624–5147.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 87–24–07, Amendment 39–5774, (52 FR 43849, November 17, 1987), applicable to Gulfstream Model 690 and 695 airplanes, the FAA found that the connecting word between the documents listed under paragraph (a)(2)(ii) was in error when the AD was published in the **Federal Register**. Therefore, action is taken herein to make this editorial change. Since this action only clarifies the intent of the original document, it imposes no additional burden on the public. Therefore, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising and reissuing AD 87–24–07 (Amendment 39–5774), (52 FR 43849, November 17, 1987), as follows:

Gulfstream Aerospace Corporation: Applies to Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B (all serial numbers) airplanes certificated in any category.

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

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

(1) Revise the airplane POH/AFM by inserting or assuring that the appropriate Gulfstream published revision has been inserted as defined by the following listing:

Model 690, Revision No. 23, dated May 20, 1987

Model 690A, Revision No. 30 dated May 20, 1987

Model 690B, Revision No. 23 dated May 20, 1987

Model 690C, Revision No. 21 dated April 9, 1987

Model 690D, Revision No. 12 dated April 9, 1987

Model 695, Revision No. 12 dated April 9, 1987

Model 695A, Revision No. 20 dated April 9, 1987

Model 695B, Revision No. 9 dated April 9, 1987

If the listed revision is not available, revise the POH/AFM by inserting Appendix 1 of this AD in the "LIMITATIONS" Section of the POH/AFM. Appendix 1 procedures supersede any other POH/AFM procedures which may be contradictory.

Note 1.—If the above actions have been accomplished in compliance with AD 86–24–12, no further action is required in order to comply with paragraph (a)(1) of this AD.

(2) For those airplanes with ignition systems having a continuous duty cycle of less than 1 hour:

(i) Fabricate and install a placard on the instrument panel in clear view of the pilot stating, "This airplane is prohibited from flight into known icing," and operate the airplane in accordance with this limitation. This placard must consist of a minimum of 0.1 inch high letters with white and red contrasting letter and background colors and may be of a plastic adhesive type.

(ii) The requirements of section (a)(2)(i) are no longer applicable when the aircraft ignition system having a continuous duty cycle of less than 1 hour is modified to increase the duty cycle to 1 hour or more in accordance with Gulfstream Service Information Nos. SI–211 and/or SI–212 both dated June 30, 1986.

(b) The requirements of paragraph (a) of this AD are no longer applicable when the airplane is modified in accordance with Gulfstream Custom Kit Nos. 138 dated April 15, 1987, or 139 dated May 28, 1987, or by the addition of other FAA approved automatic relight ignition systems for both engines.

Note 2.—Automatic-relight ignition is a system which automatically energizes engine ignition without pilot action when engine RPM or torque decays below a specified level and de-energizes engine ignition when RPM or torque exceeds the specified level. It is not synonymous with CONTINUOUS IGNITION.

(c) The requirements of paragraph (a)(1) and (a)(2)(i) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the FAR on any airplane owned or operated by the pilot, and which is not used under Part 121 or 135. The person accomplishing these actions must make the appropriate airplane maintenance record entry as prescribed by FAR 91.173.

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

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW–150, FAA, Fort Worth, Texas 76193–0150; Telephone (817) 624–5150.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to the Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123; Telephone (405) 789–5000; or may be examined at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD revises AD 87-24-07, Amendment 39-5774, which superseded AD 86-24-12, Amendment 39-5483 (52 FR 43849, November 17, 1987).

This amendment becomes effective on February 9, 1988.

Issued in Kansas City, Missouri, on January 25, 1988.

Paul K. Bohr,

Director, Central Region.

Appendix I—Supplement to the POH/AFM Gulfstream Aerospace Corporation Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B Airplanes

Continuous ignition switch shall be assured by selecting Manual IGN or IGN Override or IGN OVRD on the ignition switch as appropriate during all operations in actual or potential icing conditions described herein:

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

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

(3) Before selecting ENG INLET, when ice has accumulated.*

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

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

Caution

Flight in actual or potential icing conditions will be limited by duty cycle of the ignition system. Ignition system time limits must be observed to prevent exceeding duty cycle times. Operator should verify these limits for his particular installation.

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

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

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

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

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

[FR Doc. 88-2527 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-13-M

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

14 CFR Part 39

[Docket No. 87-NM-142-AD; Amdt. 39-5846]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR-42 series airplanes, which requires modifying the Digital Flight Data Recorder (DFDR) and Cockpit Voice Recorder (CVR) power supply logic. This amendment is needed to prevent the DFDR and CVR from continuing to operate after an accident, thereby progressively erasing the information recorded before the accident. This condition, if not corrected, could result in loss of data that may later be used to determine the cause of the accident or to address design changes that may prevent future accidents.

DATES: Effective March 21, 1988.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne. 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM-113; telephone (20) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires modifying the Digital Flight Data Recorder (DFDR) and Cockpit Voice Recorder (CVR) power supply logic on certain Aerospatiale Model ATR-42 series airplanes, was published in the **Federal Register** on November 4, 1987 (52 FR 42308).

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

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

It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,920.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42 series airplanes, as listed in Service Bulletin ATR42-23-0002, Revision No. 1, dated March 11, 1987, certificated in any category. Compliance is required within one year of the effective date of this AD, unless previously accomplished.

To prevent the loss of recorded information by continued operation of the Digital Flight Data Recorder (DFDR) and Cockpit Voice Recorder (CVR) after an accident, accomplish the following:

A. Modify the DFDR and CVR power supply logic in accordance with Aerospatiale Service Bulletin ATR42-23-0002, Revision No. 1, dated March 11, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization

Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 21, 1988.

Issued in Seattle, Washington, on February 1, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-2603 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-132-AD; Amdt. 39-5845]

Airworthiness Directives; McDonnell Douglas Model DC-6, -6A, -6B, R6D, and C-118A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas DC-6 series airplanes, which requires structural inspection and replacement, if necessary, of vertical stabilizer rear spar attach fittings. This amendment is prompted by reports of stress corrosion cracks in the attach fittings at the root of the vertical stabilizer. This condition, if not corrected, could lead to loss of the vertical stabilizer.

DATES: Effective March 21, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC-6 series airplanes, which would require inspection of the vertical stabilizer rear spar attach fittings, immediate replacement of fittings found with cracks meeting certain criteria, and replacement within three months of fittings found with cracks meeting other criteria, was published in the **Federal Register** November 2, 1987 (52 FR 42002).

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

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

It is estimated that 187 airplanes of U.S. registry will be affected by this AD, that it will take approximately 36 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $269,280.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC-6 airplanes are operated by small entities. A final evalution has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

McDonnell Douglas: Applies to McDonnell Douglas Model DC-6, -6A, -6B, R6D, and C-118A series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks and prevent failure of the vertical stabilizer rear spar attach fittings, accomplish the following:

A. Within the next 3 months after the effective date of this AD, unless already accomplished within the last 9 months, and thereafter at intervals not to exceed one year or before further flight, whichever occurs later, inspect the vertical stabilizer rear spar attach fittings, front and rear, right and left, in accordance with Douglas DC-6 Service Bulletin 723, dated May 27, 1957, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. After each inspection, apply LPS-3 corrosion inhibiting oil, or equivalent, to each fitting.

B. If a crack is found, accomplish the following:

1. Replace the fitting(s) before further flight for each of the following conditions:

a. a crack is found that matches the description in paragraph 1. of Douglas DC-6 Service Bulletin 723, dated May 27, 1957, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region;

b. more than 1 fitting per airplane is cracked;

c. the crack is chordwise.

2. Replace the fitting within the next 3 months after the crack is found, or before further flight, whichever occurs later, if the crack matches the description of paragraph 2. of Douglas DC-6 Service Bulletin 723, dated May 27, 1957, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base to comply with the repair requirement of this AD when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas

Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54–60).

These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective March 21, 1988.

Issued in Seattle, Washington, on February 1, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–2604 Filed 2–5–88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88–CE–04–AD; Amendment 39–5841]

Airworthiness Directives; Cessna Models 340, 340A and 414 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 87–23–11, Amendment 39–5782, (52 FR 45451), applicable to certain Cessna Models 340, 340A and 414 airplanes. Subsequent to the issuance of AD 87–23–11, the FAA has received reports of the fire wall access cover nutplates chafing the crossfeed fuel lines in the engine nacelles. This situation if not corrected, could result in uncontrolable fuel leakage. This AD will incorporate additional inspection requirements that will assure proper clearance for the crossfeed fuel lines and eliminate the potential fire hazard due to the resultant fuel leakage.

EFFECTIVE DATE: February 10, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Service Bulletin No. MEB87–7, Revision 1, dated January 8, 1988, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Services, P.O. Box 7704, Wichita, Kansas 67277. A copy of this information may be examined at the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles D. Riddle, Wichita Aircraft Certification Office, ACE–140W, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone 316–946–4427.

SUPPLEMENTARY INFORMATION: AD 87–23–11, Amendment 39–5782, (52 FR 45451; November 30, 1987), applicable to certain Cessna Models 340, 340A and 414 airplanes, requires inspection and modification of the crossfeed fuel lines to prevent chafing. Since the issuance of AD 87–23–11, a number of reports have been received regarding inspections and replacement of damaged fuel crossfeed lines. As a result of these reports, Cessna Service Bulletin MEB87–7 has been revised to include additional inspection criteria and provide an alternate means of installing replacement fuel lines. These additional inspection criteria will alert maintenance personnel to inspect the crossfeed fuel lines for evidence of chafing caused by the nutplates for the firewall access cover. Reports indicate the chafing of the crossfeed fuel lines by the nutplates is occurring frequently and will result in fuel leakage if not corrected, creating a potential fire hazard.

Since the condition described is likely to exist or develop in other airplanes of the same type design, this AD requires additional inspections for evidence of chafing of the crossfeed fuel line and modification of the firewall stiffener in accordance with Cessna Service Bulletin No. MEB87–7, Rev. 1, dated January 8, 1988, on certain Cessna Models 340, 340A and 414 airplanes. 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 Rules Docket at the location provided under the caption "**ADDRESSES.**" Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to Cessna Models 340, 340A (Serial Numbers 340–0001 thru 340A1817) and 414 (Serial Numbers 414–0001 thru 414–0965) airplanes certificated in any category.

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

To detect and correct fuel line chafing or fuel leaks behind the engine firewall, accomplish the following:

(a) Remove both firewall access covers and inspect the crossfeed fuel lines for evidence of chafing in accordance with Cessna Service Bulletin No. MEB87–7, Revision 1, dated January 8, 1988.

(b) If, as a result of the inspection required by paragraph (a), evidence of chafing is found that exceeds the criteria specified in Cessna Service Bulletin No. MEB 87–7, Revision 1, dated January 8, 1988, prior to further flight, replace the affected line with an airworthy part.

(c) In addition to the inspection required in paragraph (a), modify the firewall stiffener flanges and fuel lines in accordance with Cessna Service bulletin No. MEB87–7, Revision 1, dated January 8, 1988.

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

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Service, P. O. Box 7704, Wichita, Kansas 67277; or may examine the document(s) at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 87–23–11, Amendment 39–5782, published in the **Federal Register** on November 30, 1987, (52 FR 45451).

This amendment becomes effective on February 10, 1988.

Issued in Kansas City, Missouri, on January 26, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–2598 Filed 2–5–88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWP-29]

Alteration of VOR Federal Airways; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the name of the Lake Tahoe, CA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Squaw Valley VORTAC wherever the name appears in FAA airspace designations. The Lake Tahoe VORTAC is located approximately 21 miles northwest of the South Lake Tahoe Airport. On occasion, pilots have misunderstood air traffic control instructions and proceeded to the wrong fix. This name change will eliminate that confusion.

EFFECTIVE DATE: 0901 U.T.C., May 5, 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.

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to change the name of the Lake Tahoe VORTAC to Squaw Valley VORTAC where it appears in FAA regulatory airspace descriptions. Changing the name of the Lake Tahoe VORTAC eliminates a potential safety hazard resulting from a misunderstanding by pilots of air traffic control instructions as to which NAVAID the pilot is cleared to, Lake Tahoe or South Lake Tahoe Airport. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to change FAA regulations to reflect the change in the name of the Lake Tahoe VORTAC to Squaw Valley VORTAC. The amendment reflects a facility name change only and does not alter airspace designations. Therefore, I find that this is a minor technical amendment in which the public would not be particularly interested in commenting, and that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

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

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-6 [Amended]

Wherever the words "Lake Tahoe" appear substitute the words "Squaw Valley".

V-338 [Amended]

Wherever the words "Lake Tahoe" appear substitute the words "Squaw Valley".

V-494 [Amended]

Wherever the words "Lake Tahoe" appear substitute the words "Squaw Valley".

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

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-2523 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWA-48]

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 description of Federal Airway V-479 located in the vicinity of Dupont, DE. This airway is 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 U.t.c., 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 December 14, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V-479 located in the vicinity of Dupont, DE, (52 FR 47402). 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 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 description of VOR Federal Airway V-479 located in the vicinity of Dupont, DE. This airway is 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) is amended, as follows:

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-479 [Revised]

From Dupont, DE; INT Dupont 070° and Yardley, PA, 190° radials; to Yardley.

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

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-2524 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 380

[Docket Nos. RM87-15-001 et al.]

Regulations Implementing the National Environmental Policy Act of 1969

Issued February 3, 1988.

AGENCY: Federal Regulatory Commission, DOE.

ACTION: Order granting rehearing solely for the purpose of further consideration.

SUMMARY: The Commission issued a final rule on December 10, 1987, 52 FR 47,897 (Dec. 17, 1987), to adopt and supplement the regulations of the Council on Environmental Quality implementing the National Environmental Policy Act of 1969. In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: February 3, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners:

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

The Commission issued a final rule [1] on December 10, 1987, to adopt and supplement the regulations of the Council on Environmental Quality implementing the National Environmental Policy Act of 1969.[2]

Pursuant to 18 CFR 385.713 (1987), the Commission has received three timely requests for rehearing.[3] In order to review more fully the arguments raised, the Commisison grants rehearing of the order solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the requests on their merits in whole on in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.713(d) (1987)), no answers to the requests for rehearing will be entertained by the Commission.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2578 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[1] Order No. 486, 52 FR 47,897 (Dec. 17, 1987), III FERC Statutes and Regulations, ¶ 30,783 (1987).

[2] 42 U.S.C. 4321-4370a (1982).

[3] American Gas Association, Independent Petroleum Association of America and the Interstate Natural Gas Association of America.

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 235, 240, 245, 248

Endorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Policy statement.

SUMMARY: Notice is hereby given that, under Title X of the Competitive Equality Banking Act of 1987, the Secretary of the Treasury is exercising his discretion to extend the effective date set forth in the statute. The effective date for implementing legislation (i) establishing a 1-year time limit for negotiating Treasury checks, (ii) providing for the cancellation of checks outstanding after 12 months and (iii) decreasing time limits for check claims to be brought by or against the United States shall be October 1, 1989, or at such later date as may be designated by the Secretary of the Treasury and published in the **Federal Register**. The extension of the effective date will enable the Treasury and affected Federal agencies to make necessary program changes related to 31 CFR Parts 235, 240, 245, and 248 and other applicable regulations and instructions. Current regulations will remain in effect until new regulations implementing the legislation are issued.

EFFECTIVE DATES: This extension is effective on February 8, 1988. This policy statement will be in effect until October 1, 1989, or until such later date as may be designated by the Secretary of the Treasury.

FOR FURTHER INFORMATION CONTACT: Gino Dercola, Financial Management Service, Room 827 F, Prince George Center II Building, 3700 East-West Highway, Hyattsville, Maryland 20782; telephone 301/436-6400, (FTS) 436-6400.

SUPPLEMENTARY INFORMATION:

Presently, Treasury checks may be negotiated at any time after they are issued. On August 10, 1987 Congress enacted the "Competitive Equality Banking Act of 1987." Under Title X of this Act, Treasury is not required to pay Treasury checks issued on or after the effective date of the legislation which are presented over 12 months following the issue date. Treasury checks issued before the effective date of the legislation are not required to be paid unless they are presented within 12 months of the effective date. Treasury checks outstanding over 12 months are to be cancelled.

In addition, this statute limits the time the Government has to recover from a bank the amount of a check paid over a forged or unauthorized endorsement, and the time in which a person may seek payment from the Government on a particular check.

Congress provided that the amendments made by sections 1002, 1003, and 1004 of Title X of the Competitive Equality Banking Act of 1987 shall become effective either 6 months after enactment (i.e., on February 10, 1988) or on such later date as prescribed by the Secretary of the Treasury. In order to enable Treasury and other Federal agencies to make the necessary changes to payment processes, accounting systems, and other affected programs, and to allow sufficient time for a public awareness campaign and revision of outstanding regulations, the Secretary of the Treasury is exercising his discretion to extend the effective date of sections 1002, 1003, and 1004 of the Act until October 1, 1989, or a later date to be published in the **Federal Register**.

For the purposes of Executive Order 12291, Treasury has determined that this policy statement is a regulation related to agency management. Accordingly, the statement is not subject to E.O. 12291. For the purposes of the Paper Work Reduction Act, the policy statement merely enables current regulations to be maintained in a continuing effect and provides no new collection requirements. Treasury has determined that this policy statement is not a rule on which public comment is required. Therefore, it is not subject to the provisions of the Regulatory Flexibility Act. For the purposes of the Administrative Procedure Act, Treasury has determined that this statement concerns a matter of agency organization and procedure. Further, for all the reasons above, and particularly to allow sufficient time for a public awareness campaign and revision of payment processes, accounting systems and related regulations, Treasury, for good cause, finds that notice and public procedure thereon for this policy statement is impracticable, unnecessary and would be contrary to the public interest. In accordance with the Administrative Procedure Act, in order to prescribe a later effective date for the amendments made by sections 1002, 1003, and 1004 of Title X of the

Competitive Equality Banking Act of 1987, thereby avoiding disruption of current procedures and preserving the benefits and rights provided to claimants under existing statutes and regulations beyond February 10, 1988, Treasury finds good cause to make the extension of the effective date of the legislation operative immediately on publication. Current regulations will remain in effect until new regulations implementing the legislation are issued.

(Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, sec. 1006, 101 Stat. 552, 659-660.)

William E. Douglas,

Commissioner.

[FR Doc. 88-2623 Filed 2-5-88; 8:45 am]

BILLING CODE 4810-35-M

POSTAL SERVICE

39 CFR Part 111

Carrier Route Presort Information Mandatory Updates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rulemaking changes the frequency of required updating of addressing information for mailing at carrier route presort rates from two times a year to four times a year. This change is implemented to lessen the use of outdated Carrier Route Information System (CRIS) data which results in costly extra handling of the mail.

EFFECTIVE DATES: April 15, 1988. Use of the April 15, 1988, quarterly update is valid until September 30, 1988. As a transition measure, for this year only, use of the February 15, 1988, update is also valid until September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Bakshi, (202) 268-3520.

SUPPLEMENTARY INFORMATION: On November 9, 1987, the Postal Service published in the **Federal Register** (52 FR 43089) a proposal to change the frequency of use for mandatory CRIS updates from two times a year to four times a year.

The Postal Service received comments from eight organizations. Four endorsed the proposal; three were not in favor; and one stated a preference that mandatory updates remain at two times a year. However, if the Postal Service does change to four times a year, this organization stated it will start using CRIS monthly change information regularly. Currently, this organization is using CRIS monthly change information on a limited basis.

One commenter not in favor of the proposal assumed that the CRIS quarterly update process would begin on January 1, 1988. This commenter concluded that a January 1 implementation date would not provide sufficient time to adjust and develop new procedures to comply with quarterly update requirements. This commenter requested an extension until January 1, 1989 to comply with the quarterly update requirements.

As stated in the effective dates above, for this year only, use of the February 15, 1988 CRIS mandatory update, provided to current subscribers under the present semiannual (February 15 and July 15) schedule, is valid until September 30, 1988. Use of the April 15, 1988 mandatory update produced under the new quarterly update schedule is optional for mailers who have updated their files with the February 15 update. The next quarterly update (after April 15) is July 15. Use of the July 15 mandatory update is valid until December 31, 1988. Therefore, current CRIS subscribers, for this year, can use the February 15 and July 15 updates (same as under two times a year update schedule) and be in compliance with the Postal Service CRIS mandatory quarterly update requirements until December 31, 1988. Thus, the adoption of this rule as scheduled provides sufficient time to this commenter and others to adjust and develop new procedures for CRIS quarterly updates.

Another commenter argued that the problems experienced by the Postal Service from mailers using outdated CRIS information have arisen primarily from carrier route presorted third-class mail, not from First-Class Mail. Therefore, the commenter requested that quarterly update requirements should only be imposed on third-class carrier route presort mail.

The Postal Service believes that unless mailers use the monthly change information, regardless of whether the mailer is sending carrier route third-class or First-Class presort mailings, they do not reflect the most up-to-date carrier route information on their mailings. Currently, only a small number of mailers subscribe to monthly change information. The longer the gap between the mandatory updates, the more severe the problem associated with the rehandling of the incorrectly prepared mailings. The Postal Service has concluded that the existing period covered by each mandatory update is too long—the February 15 issuance covers 7½ months and the July 15 issuance covers 10½ months. Thus, mailers (both First- and third-class) are using outdated information for long periods. This use is a major contributor to the incorrectly prepared carrier route presort volume. Incorrectly prepared mail pieces require rehandling, which results in additional operating costs to the Postal Service. This cost is not included in the current carrier route presort rate. Therefore, increasing the frequency of CRIS mandatory updates is expected to sharply decrease the costs associated with processing incorrectly prepared mail pieces.

Another commenter opposed to this proposal expressed concern that the proposed increase in CRIS mandatory update frequency would place an undue cost burden on mailers. This mailer maintains a residential address list in carrier route delivery sequence. This list is used in preparing carrier route delivery (walk sequence) mailings and is updated by using the Postal Service address card sequencing service. See Domestic Mail Manual (DMM) Section 946.

According to DMM section 946.81, the customers (mailers) presenting the carrier route walk sequenced mailings to the Postal Service must ensure that mailings are prepared in the correct carrier route delivery sequence and resequence cards whenever necessary. Therefore, increasing the CRIS mandatory update frequency should not add an extra cost burden to the requirement for sequencing the cards.

After careful consideration of all the comments and for the above reasons, the Postal Service has decided to adopt its proposal and hereby amends the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1), as follows:

PART 111—[AMENDED]

1. The authority citation in 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 323—PRESORTED FIRST-CLASS MAIL

2. In 323.2, revise the sixth sentence to read as follows: "Mailers must incorporate CRIS changes in their mailings within 75 days of the effective date (January 15, April 15, July 15 and October 15) of the quarterly updates."

PART 468—SPECIAL PREPARATION REQUIREMENTS OR OPTIONS FOR RESORT-LEVEL DISCOUNT-RATED PIECES (LEVELS B, C, H, I AND K)

3. In 468.2, revise the first two sentences of b(1) to read as follows: "Mailers are responsible for makeup of mail to carrier routes according to the latest quarterly Postal Service scheme. Mailers must incorporate Carrier Route Information System (CRIS) changes in their mailings within 75 days of the effective date (January 15, April 15, July 15 and October 15) of the quarterly updates."

PART 622—THIRD-CLASS BULK MAIL

4. In 622.11e(1), revise the first two sentences to read as follows: "Mailers are responsible for the proper makeup of mail to carrier routes according to the latest quarterly Postal Service scheme. Mailers must incorporate Carrier Route Information System (CRIS) changes in their mailings within 75 days of the effective date (January 15, April 15, July 15 and October 15) of the quarterly updates."

5. In 622.11e(2)(b), in the heading change the word "Semiannual" to "Quarterly"; in the last sentence change the word "semiannual" to "quarterly"; and revise the second sentence to read as follows: "Hard Copy form is not availble from the Postal Service on a regional, state or national basis."

6. In 622.11e(2)(c), in the heading change the word "Semiannual" to "Quarterly"; and in the last sentence change the word "semiannual" to "quarterly".

7. Revise 622.11e(2)(d) to read as follows:

(d) *CRIS Quarterly Updates and Monthly Scheme Tape Changes.* CRIS scheme information in machine-sensible form on magnetic tapes is available for one or more states or for the entire United States. There are also monthly updates available on tape.

8. In 622.11e(2)(e), delete the words "except July".

9. In the Note following 622.112e(2)(e), revise the introductory sentence to read as follows: "*Note:* In any CRIS scheme tape request, the mailer must specify which of the following magnetic tape characteristics are required: ", and delete the characteristic in the Note labeled "(iv)".

PART 763—CARRIER ROUTE BOUND PRINTED MATTER

10. Revise 763.2 to read as follows:

763.2 Current Scheme.

.21 Proper Makeup. See 622.11e(1).

.22 Obtaining Schemes. See 662.11e(2).

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislation Division.

[FR Doc. 88-2536 Filed 2-5-88; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC-514-F]

Medicaid Program Payments to Institutions

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

ACTION: Final rule.

SUMMARY: This final rule (1) provides greater flexibility to States by amending regulations that specify how much of an institutionalized individual's income must be applied to the cost of care in the facility; and (2) requires that States electing to use the special income eligibility standard for institutionalized individuals apply that standard beginning with the first day of a period of not less than thirty consecutive days of institutionalization.

These final rules are designed to clarify regulations, delete unnecessary or burdensome requirements, and provide maximum flexibility to States while maintaining patient health and safety.

DATES: These regulations are effective April 8, 1988. State agencies have until 90 days after receipt of a revised State plan preprint to submit their plan amendments and required attachments. We will not hold a State to be out of compliance with the requirements of these final regulations if the State submits the necessary preprint plan material by that date.

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, (301) 594-9050.

SUPPLEMENTARY INFORMATION:

I. Background

When an individual in an institution is determined to be eligible for Medicaid, his or her income, except for a small amount for personal needs, must be used to partially pay for the cost of institutional care. The Medicaid program pays the remaining amount at the Medicaid reimbursement rate. Existing regulations require that States deduct from a recipient's income bills for medical expenses that are not covered in the State Medicaid plan. States may, however, place reasonable limits on these deductions. The existing regulations were published under the authority of section 1902(a)(17) of the Social Security Act (the Act), which gives the Secretary broad authority to set standards for the reasonable treatment of an individual's income.

States have complained that the existing regulations require them to deduct the cost of medical services that States have decided not to cover in their Medicaid plans. Some of these noncovered medical deductions are considered by States to be nonessential medical services, or services that duplicate covered services. The result is that less of an individual's income is available to contribute to the cost of institutional care, and the State pays more for care. In addition, States have reported that it is difficult for them to make monthly payment adjustments to an institution when a recipient's income is reduced by irregular medical deductions. States suggested that it would be easier for them to pay institutions if they are allowed the flexibility to estimate and project monthly recipient income and medical deductions, based on their experience in a preceding period.

On March 19, 1985, we published in the **Federal Register**, at 50 FR 10992, a Notice of Proposed Rulemaking (NPRM) to solicit comments on proposed changes to the regulations that specify how much of an institutionalized individual's income must be applied to the cost of care in the facility.

In an effort to reduce administrative problems for States, we proposed in the NPRM to permit States the flexibility to use either actual monthly income received or to project anticipated income using the average amount of monthly income received by an individual over the preceding 6 month period. Second, we proposed that a State may deduct from an individual's income none, some or all of the cost of medical expenses that are not covered under the State's Medicaid plan, subject to reasonable limits. Further, we proposed that a State must deduct from an individual's income any medical expenses that are covered in the State's plan, even though they exceed limits set by the State on amount, duration or scope, subject to reasonable limits set

by a State. Third, although not included as a proposed rule change, we solicited comments on the feasibility of permitting States the additional option of projecting deductions of an individual's medical expenses, based on an average of those expenses in previous months. On this last proposal our intent was to permit such an option if we received sufficient public support for the proposal.

These regulations do not reflect the provisions of Pub. L. 99–643, which became effective on July 1, 1987. This law amends section 1611(e)(1) of the Act, to provide an additional 2 months Supplemental Security Income (SSI) payment for certain institutionalized individuals. The additional 2 months of SSI payment is intended for the individual's use in meeting expenses outside the institution. Pub. L. 99–643 also amends section 1902 of the Act to provide that this income must be disregarded under the Medicaid program when determining the individual's required contribution to the cost of care in a medical institution. We are developing instructions and revisions to the regulations to implement the provisions of Pub. L. 99–643.

II. Response to Public Comments

In response to our request for public comments on the March 19, 1985 publication, we received 37 letters, of which 24 were from State Medicaid agencies.

A. Permit States to Project Anticipated Income Based on the Average Monthly Income Received in the Previous 6 Month Period

We proposed that, in determining an individual's monthly income to be applied to the cost of care, each State may continue to use monthly income received or it may project anticipated income using the average amount of monthly income received by an individual over the preceding 6 month period. If a State chooses to project income, we proposed that the State must periodically reconcile actual income with estimated income.

1. *Comment:* Three commenters questioned whether the proposal applies not only to income that is irregularly received or that fluctuates in amount, but also to income that is regularly received in fixed amounts, such as Social Security benefits. One commenter suggested using different methods of projection for various types of income. For example:

- For income that is received seasonally or yearly, a State would base the projection on the corresponding period of the year.
- For regularly received income, a State would base the projection on the current amount of income.
- For income that is irregularly received or that fluctuates in amount, a State would base the projection on the average amount received in the preceding 6 month period.

Response: Our intent was that the provision to project income apply to all types of income mentioned by the commenters. As the commenters pointed out, a State may be able to anticipate income that is received by an individual seasonally or yearly, and want to include that income in the projection. We believe that this is reasonable, and compatible with the intent of the projection method. Therefore, we are clarifying in the final regulations, §§ 435.725(e)(2), 435.733(e)(2), 435.832(e)(2), and 436.832(e)(2), that the agency's estimate of income must include anticipated income.

2. *Comment:* Several commenters had difficulty understanding the variety of terms we used with regard to income. They asked that we define the terms "income," "total income," "actual income," and "available income."

Response: In the proposed rule, we used "total income" to mean gross income from all sources, before any deductions are taken. The other terms listed were synonymous with total income. We distinguish total income from "countable income," which is used in Medicaid eligibility determinations to mean income remaining after certain deductions are taken. We agree that the terms used in the proposed rule were confusing, and as a result, in the final regulations we are consistently using the term "total income."

3. *Comment:* Three commenters recommended that we disregard infrequently received income when it is less than $20.00 per month, and small amounts of income (less than $10.00) from interest and dividends because they are difficult for States to verify. Another commenter suggested that States be permitted to allow small amounts of income from interest or dividends, for example, that are received infrequently to accrue as a resource, and then adjust monthly income periodically to reflect amounts exceeding allowable resource limits.

Response: We do not consider interest and dividends to be resources. We define them as income when received. Therefore, interest and dividends must be taken into account in the eligibility process. The post-eligibility process is based on a consideration of all income considered in the eligibility process. Since interest and dividends are taken into account in the eligibility step, we do not believe it is reasonable to make an exception for this type of income in the post-eligibility step. Once the State knows the amount of interest and dividends for the eligibility step, that income, no matter how small, can be calculated into the projection of total income.

4. *Comment:* Five commenters were concerned that the projections of income should be based not only on past experience, but also on reliable information concerning future changes.

Response: We agree, and are revising the regulations to require that States consider significant changes in income as they occur, and take future or past changes in circumstances into consideration when projecting income. This provision is contained in revised paragraph (e)(3) of §§ 435.725, 435.733, 435.832, and 436.832. While we are requiring that States make adjustments as soon as significant changes in circumstances are known, in the interest of State flexibility, we leave it to each State to define "significant change."

5. *Comment:* Commenters had many concerns about the requirement that States periodically reconcile the income projection with income actually received. Four commenters saw reconciliation as duplicative of the regular budgeting process, and unnecessarily burdensome. One commenter complained that requiring periodic reconciliation reduces the flexibility States had wanted.

Response: We believe that it is essential that States reconcile differences between projected and actual income to assure that the recipient's actual liability, rather than an estimate, is determined. The projection method was intended to reduce budgeting problems for States when income is irregularly received or fluctuates in amount. It was not meant to take the place of actual income in determining a recipient's contribution to the cost of care and the amount of the State's payment.

6. *Comment:* One commenter recommended that we use a retrospective budgeting procedure instead of reconciliation.

Response: Retrospective budgeting methods do not use current income as the basis for projection, but income previously received. In the retrospective budgeting used in some State cash assistance programs, future income is estimated solely on the basis of the income that was actually received in a prior period. There is no consideration of anticipated changes in income. For income such as pension checks, that are usually constant in amount, the result

under both methods will be the same. When income is irregularly received or differs in amount from time to time, retrospective budgeting may understate or overstate recipient liability, with no mechanism for adjustment. Therefore, we believe that the use of retrospective budgeting is not appropriate in the post eligibility period, and is not sufficient to protect the interests of recipients and States.

7. *Comment:* Three commenters were concerned that when projections of income are lower than actual income received, at the time of readjustment a recipient may suddenly owe the facility a large amount of money, and may have already spent that money for other things. They asked if this increased liability could be applied in future determinations.

One commenter suggested that we require that States notify a recipient at the beginning of a 6 month period that the recipient's liability is based on an estimate of income to be received in future months, and that adjustments will be required if the estimated income is different from actual income received.

Response: If a projection is too low, the additional funds received by a recipient would be adjusted in the month of reconciliation. As discussed in the response to comment A.4 States must make an immediate adjustment when there is any significant change in income. We believe that this will reduce adjustments at reconciliation to a minimal level. Moreover, this situation should occur infrequently when States work with recipients and, when appropriate, their representatives.

We do not agree with the suggestion that States should be required to notify recipients at the beginning of a period that their liability for future months is based on an estimate. Existing regulations at 42 CFR 431.206 and 431.210 require that an agency notify an applicant or recipient of any action affecting his or her claim for Medicaid benefits, and explain the reasons for the action. We believe that it is reasonable to require that agencies notify a recipient only when reconciliation results in an adjustment in the recipient's liability. Agencies may, however, provide advance notice to recipients in addition to the required notice.

8. *Comment:* Some commenters were concerned about the frequency of reconciliations between projected and actual income. One commenter thought that the requirement that States "periodically" reconcile projected income with actual income was too general, and suggested that the term, "periodically," be replaced by "at the close of each 6 month period." Two commenters recommended that reconciliation be required when a recipient dies or leaves the facility, rather than at a predetermined date.

Response: We agree with the comment that the term, "periodically" is vague. In response to the comment, we are revising paragraph (e)(3) of §§ 435.725, 435.733, 435.832, and 436.832 of the regulations to specify that States must reconcile estimated income with income received and adjust estimates at the end of a prospective period not to exceed 6 months.

In regard to the second suggestion, that States should reconcile income when a recipient dies or leaves an institution, we believe the changes discussed in the response to comment A.4 would apply. That is, paragraph (e)(3) of §§ 435.725, 435.733, 435.832, and 436.832 of the regulations now requires that States adjust their calculations when a recipient's income or circumstances change significantly.

9. *Comment:* One commenter noted that the proposal seemed to permit States to continue averaging of income.

Response: Contrary to the commenter's belief, we have never permitted averaging of income when computing recipient cost of care liability in an institution. As we understand the term, income averaging means that income received over a number of months is totaled and then divided by the number of months to obtain an average. This average income is then applied to the cost of care without any readjustment for actual amounts received. The final rule provides that projected income must be reconciled at least once every 6 months.

10. *Comment:* One commenter suggested that we include guidelines in the final rule to assist States in making reasonable income projections.

Response: We will issue guidelines to States in the form of instructions. We believe that detailed guidelines are more appropriately placed in instructions than in the final regulations.

B. Permit States to Deduct None, Some or all of Medical Expenses not Covered in the State Medicaid Plan, Subject to Reasonable Limits

We proposed that a State may deduct from an individual's income none, some or all of the cost of medical expenses that are recognized under State law, but not covered in the State's Medicaid plan, subject to reasonable limits set by a State. Further, we proposed that a State must deduct any medical expenses that are included in the State's plan, but limited by the State in amount, duration or scope, subject to reasonable limits set by the State.

On the basis of numerous comments against the proposal to require States to deduct from an individual's income medical expenses that are covered in the State plan, but beyond amount, duration and scope limits, we are revising our position on this issue. Several States said that our proposal requires them to subsidize indirectly services for which they have chosen not to pay. They believe that it also increases Medicaid program costs because recipient income that is used for noncovered medical expenses is not applied to the cost of institutional care. The result is higher payments by the State Medicaid program to a facility to compensate for smaller amounts of income from recipients. Some commenters also stated their belief that this provision is contrary to their authority under the Act to establish limits on amount, duration and scope of services covered in their State plan. Other commenters objected to it because they believe that it will be burdensome and difficult to implement, or have inequitable results, and gave illustrations.

After careful consideration of the numerous comments on this issue, we have come to the conclusion that requiring States to deduct medical expenses for services included in the State plan, but which exceed State plan limits, would be inconsistent with our intent to provide States with greater flexibility. Moreover, the comments convince us that these services fall into the same category as services not covered under the plan, in that no payment is made for them. We believe that it is reasonable to treat these services in the same way as services not covered under the State plan. Consequently, we are not requiring that States deduct these services, but are making these deductions optional. In §§ 435.725(d)(1), 435.733(d)(1), 435.832(d)(1), and 436.832(d)(1) of this final rule, we provide that a State may deduct any medical expenses included in the State's plan, which exceed that State's limits on amount, duration or scope of services for the group under which the individual is eligible, subject to reasonable limits set by the State. In §§ 435.725(d)(2), 435.733(d)(2), 435.832(d)(2), and 436.832(d)(2), we provide that a State may deduct medical expenses recognized under State law, but not included in the State's Medicaid plan.

Other specific comments follow.

1. *Comment:* One commenter requested clarification on how the

provision to deduct none, some, or all expenses not covered in the State plan would be implemented for State plan covered services requiring prior approval, and for covered services furnished by non-enrolled providers. The commenter also suggested that we revise the regulations to specify that a recipient may not deduct an institution's daily rate.

Response: We regard any service included in the State plan that is subject to prior approval, and which has been disapproved or for which the request has not been acted upon by the State in a timely manner, as a service that exceeds amount, duration and scope limits. Under these final regulations, States may deduct none, some or all of the expenses for these services from the individual's income, subject to reasonable limits set by the State. A service included in the State plan that is furnished by a nonenrolled provider may be deducted from a recipient's income. States may also choose to deduct none, some or all of an individual's expenses for services not covered under the State plan.

Since the daily or per diem rate paid by the Medicaid program to a facility that is enrolled in the program is an expense covered under the State plan, it is not an expense that is deducted from an institutionalized person's income that is applied to the cost of care.

2. *Comment:* One commenter suggested that we require that States provide recipients with a "notice of noncovered allowance". The allowance should be made only when the recipient requests it and when he or she provides verification of medical expenses.

Response: States may take this approach if they choose, but we are not making it a requirement for all States. We think it most appropriate for States to decide how to implement these provisions.

3. *Comment:* Several commenters suggested that we revise the regulations to place limits on medical deductions for expenses incurred during a period of ineligibility. One of these commenters argued that deductions should be permitted only for services furnished within a budget period. Otherwise, a State is subsidizing medical expenses for a period during which an individual was ineligible. The second commenter asked if States may limit the amount of deductions for institutional expenses during periods of ineligibility to no more than the Medicaid reimbursement rate. A third commenter asked for specific examples of limits or parameters in guidelines.

Response: Services furnished to an individual during a period of ineligibility are services not covered under the State plan. Therefore, the State is not required to deduct medical expenses for services furnished during a period of ineligibility, and may limit deductions to services within the budget period. If the State chooses to allow deductions for medical expenses furnished during a period of ineligibility, it may place reasonable limits on these deductions. This includes institutional expenses incurred during a period of ineligibility and expenses for other covered services. States have the option to deduct institutional expenses at the private rate or at the Medicaid reimbursement rate, subject to reasonable limits imposed by the State.

We will provide guidance to any State requesting it, and will consider issuing State Medicaid Manual guidelines that contain examples.

4. *Comment:* Two commenters suggested that the regulations include a definition of "reasonable limits." One of the commenters was concerned that a State may establish limits that underestimate actual medical costs, resulting in the disadvantage of recipients. The commenter suggested that we define "reasonable" to mean "reasonably reflecting actual costs incurred." The commenter suggested that States should also be required to describe how they determine that an expense is reasonable.

Response: A fixed definition of the term, "reasonable limits," would limit the flexibility we intended. Therefore, we are not defining it in these final regulations. However, as noted in the response to comment 3, we will consider issuing guidelines on this subject. Because each State has the discretion to decide what optional services will be covered under its Medicaid program and how much it will pay for the service, we believe it is inappropriate to define what constitutes "reasonable limits" in these final regulations. States have always been required to describe any limits they place on these expenses, subject to our review, and these regulations do not change this requirement.

We note that in the preamble to the proposed rule, we cited aggregate limits as an example of limits we would consider to be unreasonable. We said that it would be unreasonable for States to set a monthly dollar (aggregate) limit on all noncovered medical expenses to be deducted by an individual, but that it would be reasonable for States to set limits on each type of service not covered in the plan. In reviewing the comments, we have come to the conclusion that restricting States from imposing aggregate limits would limit flexibility in a manner inconsistent with our intent in revising this policy.

5. *Comment:* One commenter was concerned that requiring States to deduct expenses for covered services exceeding State plan limits would increase the quality control (QC) error rate.

Response: In these final regulations we are not requiring that States deduct expenses for covered services exceeding State plan limits. Quality control reviews are done in accordance with individual State plan provisions. We see no reason for increased error rates if reasonable limits are clearly described in the State plan.

6. *Comment:* Five commenters believe that the provision giving States the option to permit deductions only for services covered in the State plan will result in higher Medicaid costs. The commenters expect that significant numbers of recipients will go without needed medical care or preventive services, which will lead to recipients who need more expensive services in the future.

Response: We do not believe that this provision will result in significantly higher Medicaid costs. We have no evidence that the anticipated shift in the pattern of care will occur. Each individual in an institution is under a plan of care that must meet strict standards, and most of an individual's medical needs are met by the institution. Further, we believe that States will be careful to assure that a recipient's medical needs are met and that a neglected condition does not result in a higher cost at a later date.

7. *Comment:* Thirteen commenters argued against implementing the proposal because it will adversely affect institutional patients by denying them access to necessary medical care by preventing them from using their income for this purpose. They cite as a possible consequence that providers will refuse services. The personal needs allowance, at a minimum of $25.00 per month, is insufficient to cover the cost of noncovered care.

Response: We agree that when a particular service is not covered in a State's Medicaid plan there may be no way for a recipient to obtain that service without financial help. We believe that, because most necessary medical services for institutionalized individuals are included in services paid for by Medicaid, there is no strong evidence that individuals will not receive essential medical services that are available to a State's Medicaid population.

8. *Comment:* Three commenters contend that the proposal is inconsistent with a provision of the Act which

requires that States take into account costs for incurred medical care.

Response: While section 1902(a)(17) of the Act requires that States take into account some costs of incurred medical expenses, it does not require that all incurred expenses be considered. The Act gives the Secretary a great deal of discretion in setting standards to determine the extent of medical assistance. Moreover, the provision in section 1902(a)(17) regarding consideration of incurred medical expenses is the basis of the spend down process by which eligibility is determined for the medically needy. The statutory basis for the post-eligibility process is found elsewhere in section 1902(a)(17) in the language that authorizes States to determine the extent of medical assistance.

9. *Comment:* One provider association predicted that providers will lose Medicaid revenue under this proposal, or they will restrict services to institutional patients. The commenter also thought that the proposal would jeopardize the ability of institutions to provide quality care.

Response: The commenter seems to suggest that an institution will determine whether a recipient's income will be used for institutional care or be used for care that is beyond State plan limits. The physician, in consultation with the recipient, usually determines the need for care not provided in the institution, and the extent to which it needs to be provided. We do not believe that providers participating in a State's Medicaid program will lose Medicaid revenues since these regulations do not change the way non-institutional providers are reimbursed, and States are required to reimburse facilities the difference between patient contributions to care and the Medicaid reimbursement rate.

10. *Comment:* One client advocacy group contends that the provision discriminates against individuals in States with very limited Medicaid programs. Another commenter argued that this proposal creates an incentive for States to restrict their Medicaid coverage.

Response: Section 1902(a)(10) of the Act requires that States provide a basic level of medical coverage for Medicaid recipients. States must provide certain basic services, but have the option to expand the range of services. We believe that this provision is consistent with this basic Medicaid program principle. The potential impact of permitting States the option to exclude deduction of noncovered services, however, may be greater in States with very few covered services, which decide not to deduct uncovered medical expenses since the recipient's income after required deductions would be applied to the cost of institutional care.

There are many criteria upon which a State bases its coverage and limitations of coverage. We believe that it is unlikely that a State will substantially alter the extent of covered services in response to this provision.

11. *Comment:* One client advocacy group believes that the proposal would require an individual to use his or her personal needs allowance for noncovered care. The commenter reported that in the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), Congress declared that nursing home residents are not required to use their personal needs allowances for copayments for Medicaid services.

Response: We did not propose that nursing home residents use their personal needs allowances for medical services. We are defining how income remaining after deduction of the personal needs allowance and other specific deductions is used for medical services not paid for by a State.

12. *Comment:* One commenter noted that since the proposed regulations do not use the phrase, "recognized under State law," this would permit States to treat medical services in different ways, depending on whether the service is covered in the State Medical plan.

Response: The phrase, "recognized under State law," remains in § 435.725(d)(2), 435.733(d)(2), 435.832(d)(2), and 436.832(d)(2), and is used only in reference to services that are not covered in a State's Medicaid plan. We omitted that reference in regard to covered services because it is unlikely that a service would be covered in a State plan and not be recognized under State law.

13. *Comment:* One commenter believes that we need to encourage States to more carefully evaluate whether a noncovered medical service is medically necessary and whether the cost is reasonable. Also, the commenter suggested that we place greater emphasis on preventing unscrupulous providers from taking unfair advantage of institutionalized recipients by furnishing unnecessary or duplicative services.

Response: We agree with the commenter that institutionalized recipients may be coerced into obtaining unneeded or expensive services. We are continuing to encourage States to work with the provider community to ensure that this problem is minimized.

C. Permit States to Project Medical Deductions for Services not Paid for by a State, Based on an Average of Expenses in Previous Months

Although not included as a proposed rule change, we indicated in the preamble to the March 19, 1985 proposal that we were particularly interested in reviewing public comments on whether States should have the additional option to project deductions of an individual's medical expenses based on an average of expenses in previous months. This proposed option was intended to eliminate the need for States to do monthly budgeting.

1. *Comment:* Nineteen commenters support the idea of permitting States to project medical expenses. Six commenters added that without permitting projection of medical expenses, projection of income alone would not make monthly budgeting any easier for States. One commenter pointed out that, because existing regulations at 42 CFR 435.725, 435.733, 435.832 and 436.832 do not require that deductions for noncovered medical expenses be made on a monthly basis, we could interpret the existing regulations to permit projection of medical expenses.

Response: The overwhelming number of commenters favored permitting States to project medical expenses. While we agree that the existing regulations can be interpreted to permit projection of medical expenses, we believe it best to explicitly provide for projection of medical expenses in the regulations and to clarify the policy. In response to the comments, we are revising the regulations to permit States to project anticipated medical expenses for a period not to exceed 6 months. This estimate is to be based on the average monthly medical expenses incurred by a recipient during the preceding 6 month period. As with income projection, we will require that States consider future changes in a recipient's expenses when making the projection, and to reassess the projection if unpredicted changes occur within the 6 month period. To ensure that the projection estimate is in line with actual deductions, we will require that States reconcile estimated expenses with actual expenses at the end of each 6 month period.

2. *Comment:* Two commenters asked how quality control reviews will be performed when medical expenses are projected.

Response: Quality control reviews will determine whether a State paid the correct amount to an institution based on actual recipient income received and

medical expenses deducted. If a State chooses to estimate and project income and medical expenses, QC will determine whether a State correctly followed requirements in the regulations and procedures specified in the State's Medicaid plan. The QC reviewers will determine if the estimates of income and medical expenses are correct in view of previously received income and incurred medical expenses, whether significant changes were considered timely, and whether a reconciliation was properly done.

3. *Comment:* Commenters had different views on what time period should be used as a basis for projections of medical expense deductions and what prospective period should be used. Two commenters recommended basing the projection on the previous 6 month period, while one commenter suggested using a shorter period of no more than 3 months. Three commenters believe a prospective period of 6 months should be used to be consistent with projection of income.

Response: We agree with the majority of the commenters that a 6 month prospective period is the longest period that should be used in the interest of avoiding errors and making adjustments easier. This period is also consistent with the period used for projection of income. We are revising the regulations (paragraphs (f)(1) and (2) of §§ 435.725, 435.733, 435.832 and 436.832) to provide that States may project medical expense deductions for a prospective period not to exceed 6 months. States may base the projection on a preceding period, not to exceed 6 months.

4. *Comment:* Seven commenters agreed that, as with income projections, some kind of adjustment will be needed to reconcile estimated medical deductions with actual deductions. A variety of recommendations were made on how we should modify the regulations to ensure prompt and accurate adjustments. One commenter suggested that we permit States to set aggregate allowances for medical deductions with a reconciliation at the end of 6 months. Another commenter recommended a flexible system allowing States to recalculate expenses whenever significant changes occur. A third commenter advocated requiring that if actual costs exceed average projected costs by more than $50, a State must recalculate the projection.

Response: In considering the comments, we believe that two issues are important: (1) Flexibility for States to devise their own procedures, and (2) consistency with the policy on projection of income so that expenses and income are considered together. Consequently, we are revising the regulations (paragraph (f) of §§ 435.725, 435.733, 435.832, and 436.832) to parallel the provisions on income projection, to require that adjustments to estimates of monthly medical deductions must be made at the end of the prospective period, not to exceed 6 months, or when any significant change occurs. In the interest of flexibility, States are free to define "significant change." We believe that if States readjust calculations when medical expenses change significantly, then a recipient's monthly liability can be adjusted accordingly. To further increase flexibility, as we noted in the response to comment B.4, we are permitting States to set aggregate limits on monthly medical deductions.

D. General Comments Relating to All the Proposals

1. *Comment:* Two commenters suggested that we revise the regulations governing the quality control system and Federal financial participation (FFP) disallowances based on error rates. The commenters contend that the quality control system is unfair because FFP disallowances are taken only on errors that result in overpayment by the Medicaid program. Underpayment should also be penalized. The commenters are concerned that estimating and projecting income and medical deductions under these regulations may result in a recipient paying too much income to a facility, and the Medicaid program making too small a payment.

Response: If procedures on reconciliation of income and expenses are correctly followed by States, we anticipate few errors. We think that it is unlikely that States would deliberately underpay when they have the flexibility to design a system which promotes both accuracy and ease of administration in the post eligibility process.

2. *Comment:* One commenter recommended that these provisions be exempt from the quality control review process saying that it is too difficult to account for expenses prospectively when they are not fixed expenses.

Response: Revisions to the quality control review process are beyond the scope of these regulations.

3. *Comment:* Two commenters suggested that we must also amend 42 CFR 435.831(c)(1) (which concerns deduction of incurred medical expenses for purposes of establishing Medicaid eligibility of medically needy individuals).

Response: On September 2, 1983, we published a proposed rule (48 FR 39959) and requested public comments on revisions to regulations at 42 CFR 435.732, 435.831, and 436.831. That rule proposed changes to the eligibility process commonly known as spenddown, in which incurred medical expenses are deducted from income in determining eligibility for Medicaid. The proposed spenddown procedures are similar to those contained in this final rule, but apply only to medical deductions before an individual qualifies for Medicaid. Any revision to section 435.831 will be accomplished after public comments are considered and when the final rule is published.

4. *Comment:* A commenter suggested that the deduction for maintenance of a home, specified in 42 CFR 435.725(d), should be permitted not only for an individual, but also for an institutionalized couple.

Response: We agree that, in order to maintain the home in cases in which both members of a couple are institutionalized temporarily, States should be permitted to deduct an amount from their joint income for maintenance of their home. In response to this comment, we are revising §§ 435.725(d), 435.733(d), 435.832(d) and 436.832(d) to permit States to deduct an amount for maintenance of the home when both spouses are institutionalized temporarily.

5. *Comment:* One commenter suggested that we revise the regulations to permit deductions in cases in which a support obligation is court-ordered due to separation or divorce, and the amount exceeds allowable limits.

Response: The existing regulations, 42 CFR 435.725(c)(3), 435.733(c)(3), 435.832(c)(3), and 436.832(c)(3), require that a State deduct an amount from an institutionalized recipient's income for maintenance needs of a family at home. In applying the criteria on amounts to be deducted, we do not make a distinction between individuals with court ordered obligations exceeding the limits and individuals with other financial obligations above the limits. The same limits apply to deductions in both cases.

6. *Comment:* Three commenters suggested that we extend these revisions to regulations at §§ 435.726 and 435.735 on post eligibility treatment of income and resources of individuals receiving home and community based services. One commenter suggested that we should set a higher level of protected income for housing and maintenance for individuals receiving home and community based services, define "medical and remedial deductions," waive a percentage of insurance payments to individuals for medical expenses, and develop a system for validating medical expenses that does

not not require collection of receipts from recipients and families.

Response: We will examine the regulations concerning home and community based services to see if revisions are desirable, and consider issuing a proposed rule. Our consideration will involve changes to home and community based services made by Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985, enacted April 7, 1986.

7. *Comment:* One commenter argued that we failed to comply with the Administrative Procedure Act (APA) and solicit comments before we published the existing final rules in October, 1978.

Response: The regulations published in October, 1978 were recodifications of existing rules. Since those regulations were not revised policy, we were not required to publish a proposed rule and request public comments under the APA.

III. Application of the Special Income Standard in the First 30 Days of Institutionalization

We are revising our regulations to conform them to the Medicaid statute as amended by section 9510 of the Consolidated Omnibus Reconciliation Act, Pub. L. 99–272, enacted April 7, 1986. We believe that it is unnecessary to publish these revisions in a proposed rule because section 9510 contains clear language that leaves us no discretion in implementing the policy. (See section V.—Waiver of Proposed Rulemaking.) Following is a discussion of legislative changes and background concerning State use of the optional special income standard for institutionalized individuals.

Sections 1902(a)(10) and 1903(f)(4) of the Act (42 U.S.C. 1396a(a)(10) and 1396b(f)(4)) permit States to provide Medicaid coverage to certain institutionalized aged, blind, or disabled individuals whose income exceeds the payment standards for Supplemental Security Income (SSI) benefits or State supplements to SSI benefits as established by title XVI of the Act (42 U.S.C. 1381 et seq. and 42 U.S.C. 1382e). Under this optional provision, a State determines financial eligibility for Medicaid by comparing an individual's income to a special income standard for institutionalized individuals. This higher institutional income standard reflects the higher cost of institutional care compared to the cost of residential living in the community. Individuals often have adequate income, according to cash assistance standards, to pay living expenses in a home or apartment, but inadequate income to pay for the cost of care in an institution. For example, an individual with $800 per month income in the community may be ineligible for Medicaid based on cash assistance standards. Another individual with the same monthly income in an institution costing $1,000 per month may be eligible for Medicaid if a State uses a special income standard for institutionalized individuals.

Existing regulations at 42 CFR 435.722(c) provide that this special income standard must be applied beginning with the first full month of institutionalization. We have interpreted "full month" to mean that an individual must have been in an institution from the first day of a calendar month through the last day of that month. Thus, individuals entering an institution after the first day of a month, under existing policy, are not eligible for Medicaid under the special income standard until the following month. Thus, under existing regulations and interpretations, an individual's days in an institution prior to the first day of the calendar month would be disregarded in applying the special income standard. This interpretation parallels a requirement under the Supplemental Security Income (SSI) program that an individual's SSI benefit is reduced if he or she has been in a medical institution throughout a full calendar month.

The existing full calendar month policy has been criticized as rigid and unfair, and can have inequitable results for recipients who have been in an institution for the same length of time as other recipients, but not a full calendar month.

Recent legislation has made significant changes to the application of the special income standard. Section 9510 of Pub. L. 99–272, enacted April 7, 1986, amends section 1902(a)(10)(A)(ii)(V) of the Act, and requires that eligibility under the special institutional income standard begin with the first day of a period of not less than 30 consecutive days of institutionalization. This provision is effective with respect to payment for services furnished on or after October 1, 1985. We are revising 42 CFR 435.722(c) to add this new provision.

IV. Revisions to the Regulations

We are adopting as final the proposed rule published on March 19, 1985 at 50 FR 10992 with the following modifications:

1. In §§ 435.725, 435.733, 435.832, and 436.832, we are adding headings for paragraphs, for ease of reference.

2. In §§ 435.725(a), 435.733(a) and 435.832(a) and 436.832(a), we are inserting the term "total income," at the end of the first sentence. We are also moving provisions of the option for agencies to project income to a new paragraph (e) in each section listed above.

3. In paragraph (c) of §§ 435.725, 435.733, 435.832, and 436.832, the cross reference in the introductory language is changed to refer to paragraph (e).

4. In paragraph (d) of §§ 435.725, 435.733, 435.832, and 436.832, language is changed to refer to paragraph (e). In paragraph (d)(1) of the same sections, we are clarifying that the agency may deduct expenses for necessary medical and remedial services included in the State plan (for the categorically needy in §§ 435.725 and 435.733, and for the medically needy in §§ 435.832 and 436.832) that exceed agency limitations on amount, duration, or scope of services. In paragraph (d)(2) of these same sections, we are specifying that agencies may deduct from couples' income in addition to single individuals, an amount for maintenance of the home.

5. We are revising 42 CFR 435.725, 435.733, 435.832, and 436.832 by adding a new paragraph (e) to each section. In (e)(1), we clarify that State agencies may project income over a period not to exceed 6 months; in (e)(2), we require that States base estimates of projected income on income received in the preceding period, not to exceed 6 months and on income expected to be received; and in (e)(3) we require agencies to readjust estimates of projected income whenever significant changes occur in a recipient's income.

6. We are revising 42 CFR 435.725, 435.733, 435.832, and 436.832 by adding a new paragraph (f) to each section. In (f)(1), we specify that, in determining the amount of medical expenses to be deducted from an individual's income, an agency may deduct either incurred medical expenses, or estimate and project medical expenses for a prospective period not to exceed 6 months; In (f)(2), we require that an agency base the prospective monthly estimate of incurred medical expenses on expenses incurred in the preceding period, not to exceed 6 months and medical expenses expected to be incurred; and in (f)(3) we require that agencies adjust estimates of monthly medical expenses at the end of the prospective period, or when any significant change occurs.

7. Finally, we are revising 42 CFR 435.722(c) to require that States apply the special income standard for institutionalized individuals effective with a period of not less than 30 consecutive days of institutionalization.

This revision is in accordance with the requirements of section 9510 of Pub. L. 99-272, enacted April 7, 1986. This change was not a part of the March 19, 1985 proposed rule.

V. Waiver of Proposed Rulemaking

It is our practice to publish general notice of proposed rulemaking in the **Federal Register**, and afford prior public comment on proposed rules. Such notice includes a statement of the nature of rulemaking proceedings, reference to the legal authority under which a rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, we do not provide a public comment period when we find good cause that such a notice and comment procedure is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rules issued.

The revisions we are making to § 435.722(c) bring it in conformance with the requirements of section 9510 of Pub. L. 99-272. The requirements of this section of the law are very clear and not subject to interpretation.

Consequently, we believe it is unnecessary to publish a proposed rule, and find good cause to waive proposed rulemaking.

VI. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to:

- Have an annual effect on the economy of $100 million or more;
- Cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local governments, agencies, or any geographic regions; or
- Have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States based enterprises to compete with foreign based enterprises in domestic or export markets.

In addition, we prepare and publish a regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) for regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities.

For purposes of the RFA, we treat all institutional providers as small entities. Institutional providers in any State that chooses to deduct some or all of a recipient's income spent on noncovered medical services will be directly affected. We also consider providers of noninstitutional services, such as physicians, dentists, and pharmacists, to be small entities. Although this rule may not directly affect the latter entities, it may affect the amount of income institutionalized recipients have available for the purchase of medically necessary services not covered by the Medicaid State plan, which may, in turn, have an economic effect on providers of the noncovered medical services. Thus, it is clear that this final rule will affect a substantial number of small entities.

In the proposed rule, we stated that the regulations would have a savings effect of between 0 and $28 million, thus not requiring us to treat this as a "major rule". In view of this relatively small effect on total Medicaid expenditures, we also determined that the proposed rule would not have a significant economic impact on small entities as defined under the RFA.

Comment: We received two comments questioning the estimated savings amount to be gained from the proposed rule. They claimed that our estimated savings figures were too low and the actual impact will be in excess of $100 million. On this basis, the commenters argued that we had not provided necessary analyses.

Response: In order to verify our initial estimates of the savings impact these regulations will have on State and Federal expenditures, we reexamined the assumptions and the data upon which our initial estimate was based. As a result of our reexamination, we have determined that the effect of these regulations could be in excess of $100 million a year within the five year period from the date these regulations become effective. Therefore, we have decided to treat this rule as a major rule and to conduct an impact analysis. Also, because the impact on small entities may be significant, we are conducting a regulatory flexibility analysis.

B. Objectives of the Regulations

As explained in section I of this preamble, section 1902(a)(17) of the Act gives the Secretary broad authority to define income for purposes of determining continued Medicaid eligiblity. Under current regulations, once an institutionalized person is determined to be eligible, and continues to meet the income requirements, a State must deduct the cost of all noncovered medical expenses from the recipient's income. Some States have argued that this requirement forces them to subsidize medical services they have elected not to cover under their State plan. By excluding the cost of such noncovered services from a recipient's income, the State is indirectly paying for the services even though the State has chosen not to provide certain services, or to limit services with respect to amount, duration, or scope.

In addition, by reducing the amount of a recipient's available income, a State must pay a larger share of the recipient's institutional care costs than it would otherwise have to pay, if it could include, as income, the amounts paid by recipients for noncovered services. Permitting a State to include amounts currently paid for noncovered medical services as income enables the State to shift more of the financial responsibility for the cost of nursing home care to the recipient, thereby permitting the State to reduce its reimbursement to the institution for institutional care. It also allows the State to eliminate the indirect subsidy for noncovered services.

These regulations will permit States to include, as income, any amounts a recipient spends for services that are not covered under the State's Medicaid plan. This provision also may be applied to those services upon which the State has set limits with respect to amount, duration, or scope. In either instance, a State has discretion over when, how, and to what extent it will consider a recipient's expenses for noncovered or covered medical services that exceed a State's limits on amount, duration, or scope. For example, a State may elect to exclude (that is, not count as available income) a recipient's expenses for certain noncovered services, and not others. Another possible approach is for a State to establish reasonable limits on the amount, duration or scope of covered or noncovered services for which it will exclude expenses from a recipient's income, Thus, States have several alternatives, which may be employed in various combinations of approaches, in excluding or including amounts expended by recipients for noncovered medical expenses as income.

The most likely approach we believe States will take under these regulations is to restrict the income deductions for those services that the State believes have marginal or questionable therapeutic value. By limiting the amount of income a recipient spends on such questionable services (either with respect to the entire service, or limited to the scope or amount), the State can discourage the recipient from using his or her income to purchase medical services of dubious value.

C. Projected Impact

Since the revisions we are implementing give States the option to

consider as income money a recipient spends on noncovered services (or services which exceed a State's limits), but does not require them to do so, it is difficult to predict precisely the impact of this rule on States, recipients and providers. Many factors will influence the course of action individual States adopt with respect to these revisions. In deciding how best to implement these revised rules, States will examine the needs of their institutionalized recipients, their current policies on noncovered services, the average income of institutionalized recipients residing in the respective States, budget constraints and other local issues specific to each State.

In keeping with the uncertainty over how States will react to the added flexibility in determining recipients income granted under these regulations, we have examined the sensitivity of estimates of Federal and State Medicaid program savings to two key assumptions: the number of recipients affected (which is dependent on the number of States that elect to exercise the flexibility authorized under this rule), and the average monthly savings per recipient realized by the States as a whole (which is dependent on both the available income of recipients currently spent on noncovered services, and the amount of that income that States elect to include).

It is impossible to predict exactly which States would include this income. However, we assume that enough States would do so to affect at least 20 percent of all institutionalized Medicaid recipients, and it is possible that as many as 50 percent of recipients could be affected. It is conceivable that less than 20 percent or more than 50 percent of recipients would be affected, but we view it as unlikely.[1] In a similar manner, we have assumed that the average monthly savings per recipient (which would be shared by the States and the Federal government) would probably fall between $50 and $75 a month. In particular States, annual per recipient savings could be higher or lower.

Based on these variables, and assuming a May 1, 1988 implementation date, we have developed a low estimate (assuming that only 20 percent of recipients would be affected and that monthly savings per recipients would average $50) and a high estimate (assuming that 50 percent of recipients would be affected and that monthly savings per recipient would average $75), as follows:

FISCAL YEAR (FY) SAVINGS (ROUNDED TO NEAREST $5 MILLION)

Assumptions used	1988			1989			1990		
	Federal	State	Total	Federal	State	Total	Federal	State	Total
Low	$5,000,000	0	$5,000,000	$25,000,000	$20,000,000	$45,000,000	$45,000,000	$40,000,000	$85,000,000
High	10,000,000	10,000,000	20,000,000	100,000,000	80,000,000	180,000,000	170,000,000	140,000,000	310,000,000

The assumptions concerning the amount of money recipients currently spend on noncovered services, which underlie our assumptions on average annual savings per recipient, deserve some discussion. Typically, an institutionalized recipient is female, over 85 years old, and receives some form of income. The most common source of income is Social Security survivors benefits. Almost all institutionalized recipients would be eligible for SSI benefits but for the fact that they are in a Medicaid certified institution. Also, because almost all of the recipients are over 65, they are eligible to receive Medicare Part A benefits as well as Medicaid. In addition, most States "buy-in" to the part B program by paying the premium, deductible, and copayments for their dually eligible recipients, thereby enabling them to receive additional inpatient and outpatient services that may not be covered under Medicaid.

While we do not have exact information on the average institutionalized recipient's income level, we estimate the median income for a nursing home patient receiving Medicaid benefits is approximately $583 per month, and may range as high as $853 per month. These estimates are based on Bureau of the Census data and maximum allowable income levels for Medicaid institutionalized recipients. Based on the available data, we estimate that institutionalized recipients in States that provide a more complete range of optional services ("generous" States) may deduct from patient income up to $300 per month for noncovered services. We believe that, ultimately, such "generous" States will not choose to deduct all such expenses from income, but will reduce the amount protected for noncovered services by $50 to $75 per month. States that are less generous in allowing expenses for noncovered services, naturally, also may seek to cut the protected amount. However, States with fewer covered services and more restrictive income criteria also generally are States with the poorest populations. Thus, recipients in these States have very little extra income to spend on noncovered services. As a result, we believe that the "poorer" States, also, will only be able to save from $50 to $75 per month institutionalized recipient.

D. Impact on Small Entities

These regulations could save from $160 to $615 million (combined Federal and State savings) for fiscal years 1987 through 1989 through transferring a portion of the cost of institutional care from the State to the recipient. However, while a State will be permitted to count more of recipients' income as available for paying for their institutional care, under current regulations, States may not force recipients to apply their income toward their nursing home care. We expect some States, as a result of exercising the flexibility available under these rules, will reduce the total amount they pay to SNFs, ICFs, and in some cases to ICFs/MR for the care of recipients.

To protect themselves from financial harm, SNFs, ICFs, and affected ICFs/MR will probably seek to adopt strategies to ensure that recipients will compensate them for the reduction in State payments. Because the institution is generally in a position to deny admission to Medicaid recipients without suffering financially, it seems likely that some will persuade newly admitted recipients to apply their available income toward their institutional care rather than for the noncovered services. However, we doubt that abuses will occur in this area because of the likelihood of adverse publicity to the institution concerned as

[1] Based on an unduplicated count of recipients in skilled nursing facilities (SNFs) intermediate care facilities (ICFs) and intermediate care facilities for the mentally retarded (ICFs/MR), the total number of institutionalized recipients reported for fiscal year (FY) 1984 was 1.488 million.

well as possible local restrictions on the actions of nursing institutions in such matters. Also, we believe that in most cases, recipients voluntarily will assume the additional cost of paying for their institutional care and forego some of the noncovered services. In many cases, these noncovered services are of marginal value, and when faced with the choice of either contributing a larger share of their income toward their maintenance and care in the nursing home or paying for medical services whose benefits are questionable, we believe that most recipients will elect the former option of paying for their institutional care.

Based on this assessment of the impact of the change in the rules for post eligibility income determination, it appears highly likely that the major impact of this regulation will fall on providers of noninstitutional services such as physicians, dentists, and physical and occupational therapists. Since each State imposes its own set of restrictions on the various types of services available in the State, it is impossible to know how the effects of these rules will be distributed.

E. Application of the Special Income Standard

We have determined that the revision to the regulations that establishes Medicaid eligibility from the first day of a stay of at least 30 days in a medical institution will not result in an annual economic effect of $100 million or meet the other thresholds in section 1(b) of the Order. Our actuaries estimate that this proposal would result in total annual costs of $9 million beginning in FY 1988 ($5 million Federal costs and $4 million State costs). Even though these costs depend on the number of States that choose to apply the special income standard as described, we have better data on which to base a cost estimate because we know that there are 17 States that use the special income standard and can project the extent to which the Medicaid institutionalized population could be affected.

Establishing Medicaid eligibility from the first day of a stay of at least 30 days will benefit those who, to date, have paid the cost of care for those days prior to the first full month of institutionalization. We believe that this change will primarily benefit recipients and family members who are paying these costs for institutional care.

VII. Paperwork Reduction Act

These changes do not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

42 CFR Part 435

Aid to families with dependent children, Grant programs-health, Medicaid, Supplemental Security Income (SSI).

42 CFR Part 436

Aid to families with dependent children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Part 435 and 436 are amended as set forth below: Part 435 is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

Subpart H—Financial Requirements for the Categorically Needy

Financial Eligibility Requirements Applicable to Optional Groups: The Aged, Blind, and Disabled in States Covering Individuals Receiving SSI

2. Section 435.722 is amended by revising paragraph (c) to read as follows:

§ 435.722 Individuals in institutions who are eligible under a special income level.

* * * * *

(c) The agency must apply the income standards established under this section effective with the first day of a period of not less than 30 consecutive days of institutionalization.

3. In Subpart H, section 435.725 is amended by revising paragraph (a), the introductory language of paragraph (b) and paragraph (c), revising paragraphs (c)(4) and (d), and adding new paragraphs (e) and (f) to read as follows:

§ 435.725 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

(a) *Application of patient income.* The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income, as determined in paragraph (e) of this section.

(b) *Applicability.* This section applies to the following individuals in med'cal institutions and intermediate care facilities.

* * * * *

(c) *Required deductions.* In reducing its payment to the institution, the agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(4) Amounts for Medicare and other health insurance premiums, deductibles, or coinsurance charges that are not subject to payment by a third party.

(d) *Optional deductions.* In determining the amount of the individual's income to be used to reduce the agency's payment to the institution, the agency may deduct the following amounts from the individual's total income as determined under paragraph (e) of this section:

(1) Necessary medical or remedial services included in the State's Medicaid plan for the categorically needy, which exceed limitations on amount, duration or scope imposed by the agency, subject to reasonable limit the agency may establish on amounts of these expenses;

(2) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses; and

(3) For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that either of the individuals is likely to return to the home within that period.

(e) *Determination of income*—(1) *Option.* In determining the amount of an individual's income to be used to reduce the agency's payment to the institution, the agency may use total income received, or it may project monthly income for a prospective period not to exceed 6 months.

(2) *Basis for projection.* The agency must base the projection on income received in the preceding period, not to exceed 6 months, and on income expected to be received.

(3) *Adjustments.* At the end of the prospective period specified in

paragraph (e)(1) of this section, or when any significant change occurs, the agency must reconcile estimates with income received.

(f) *Determination of medical expenses*—(1) *Option.* In determining the amount of medical expenses to be deducted from an individual's income, the agency may deduct incurred medical expenses, or it may project medical expenses for a prospective period not to exceed 6 months.

(2) *Basis for projection.* The agency must base the estimate on medical expenses incurred in the preceding period, not to exceed 6 months, and on medical expenses expected to be incurred.

(3) *Adjustments.* At the end of the prospective period specified in paragraph (f)(1) of this section, or when any significant change occurs, the agency must reconcile estimates with incurred medical expenses.

(4) In Subpart H, section 435.733 is amended by revising paragraph (a), the introductory language of paragraph (b) and revising paragraphs (c)(4) and (d), and adding new paragraphs (e) and (f) to read as follows:

Financial Eligibility for the Aged, Blind, and Disabled in States Using More Restrictive Requirements Than SSI

§ 435.733 Post-eligibility treatment of income and resources of institutionalized individuals; Application of patient income to cost of care.

(a) *Application of patient income.* The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section from the individual's total income, as determined in paragraph (e) of this section.

(b) *Applicability.* This section applies to the following individuals in medical institutions and intermediate care facilities:

* * * * *

(c) *Required deductions.* The agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(4) Amounts for Medicare and other health insurance premiums, deductibles, or coinsurance charges that are not subject to payment by a third party.

(d) *Optional deductions.* In determining the amount of the individual's income to be used to reduce the agency's payment to the institution, the agency may deduct the following amounts from the individual's total income as determined under paragraph (e) of this section:

(1) Necessary medical or remedial services included in the State's Medicaid plan for the categorically needy, which exceed limitations on amount, duration or scope imposed by the agency, subject to reasonable limits the agency may establish on amounts of these expenses;

(2) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses; and

(3) For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that either of the individuals is likely to return to the home within that period.

(e) *Determination of income*—(1) *Option.* In determining the amount of an individual's income to be used to reduce the agency's payment to the institution, the agency may use total income received, or it may project total monthly income for a prospective period not to exceed 6 months.

(2) *Basis for projection.* The agency must base the projection on income received in the preceding period, not to exceed 6 months, and on income expected to be received.

(3) *Adjustments.* At the end of the prospective period specified in paragraph (e)(1) of this section, or when any significant change occurs, the agency must reconcile estimates with income received.

(f) *Determination of medical expenses*—(1) *Option.* In determining the amount of medical expenses that may be deducted from an individual's income, the agency may deduct incurred medical expenses, or it may project medical expenses for a prospective period not to exceed 6 months.

(2) *Basis for projection.* The agency must base the estimate on medical expenses incurred in the preceding period, not to exceed 6 months, and medical expenses expected to be incurred.

(3) *Adjustments.* At the end of the prospective period specified in paragraph (f)(1) of this section, or when any significant change occurs, the agency must reconcile estimates with incurred medical expenses.

Subpart I—Financial Requirements for the Medically Needy

5. In Subpart I, section 435.832 is amended by revising paragraph (a), the introductory language of paragraph (b) and paragraph (c), revising paragraphs (c)(4) and (d), and adding new paragraphs (e) and (f) to read as follows:

Medically Needy Income Eligibility

§ 436.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

(a) *Application of patient income.* The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income, as determined in paragraph (e) of this section.

(b) *Applicability.* This section applies to medically needy individuals in medical institutions and intermediate care facilities.

(c) *Required deductions.* The agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(4) Amounts for Medicare and other health insurance premiums, deductibles, or coinsurance charges that are not subject to payment by a third party.

(d) *Optional deductions.* In determining the amount of the individual's income to be used to reduce the agency's payment to the institution, the agency may deduct the following amounts from the individual's total income as determined under paragraph (e) of this section:

(1) Necessary medical or remedial services included in the State's Medicaid plan for the medically needy, which exceed limitations on amount, duration or scope imposed by the agency, subject to reasonable limits the agency may establish on amounts of these expenses;

(2) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses; and

(3) For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that either of the individuals is likely to return to the home within that period.

(e) *Determination of income*—(1) *Option.* In determining the amount of an individual's income to be used to reduce the agency's payment to the institution, the agency may use total income received or it may project total monthly income for a prospective period not to exceed 6 months.

(2) *Basis for projection.* The agency must base the projection on income received in the preceding period, not to exceed 6 months, and on income expected to be received.

(3) *Adjustments.* At the end of the prospective period specified in paragraph (e)(1) of this section, or when any significant change occurs, the agency must reconcile estimates with income received.

(f) *Determination of medical expenses*—(1) *Option.* In determining the amount of medical expenses to be deducted from an individual's income, the agency may deduct incurred medical expenses, or it may project medical expenses for a prospective period not to exceed 6 months.

(2) *Basis for projection.* The agency must base the estimate on medical expenses incurred in the preceding period, not to exceed 6 months, and medical expenses expected to be incurred.

(3) *Adjustments.* At the end of the prospective period specified in paragraph (f)(1) of this section, or when any significant change occurs, the agency must reconcile estimates with incurred medical expenses.

B. Part 436 is amended as follows:

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

5. The authority citation for Part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

6. Section 436.832 is amended by revising paragraph (a), the introductory language of paragraph (b) and paragraph (c), revising paragraphs (c)(4) and (d), and adding new paragraphs (e) and (f) to read as follows:

§ 436.832 Post-eligibility treatment of income and resources of institutionalized individuals. Application of patient income to the cost of care.

(a) *Application of patient income.* The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) from the individual's total income, as determined in paragraph (e) of this section.

(b) *Applicability.* This section applies to medically needy individuals in medical institutions and intermediate care facilities.

(c) *Required deductions.* The agency must deduct the following amounts, in the following order, from the individual's total income as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(4) Amounts for Medicare and other health insurance premiums, deductibles, or coinsurance charges that are not subject to payment by a third party.

(d) *Optional deductions.* In determining the amount of the individual's income to be used to reduce the agency's payment to the institution, the agency may deduct the following amounts from the individual's total income as determined under paragraph (e) of this section:

(1) Necessary medical or remedial services included in the State's Medicaid plan for the medically needy, which exceed limitations on amount, duration or scope imposed by the agency, subject to reasonable limits the agency may establish on amounts of these expenses;

(2) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses; and

(3) For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that either of the individuals is likely to return to the home within that period.

(e) *Determination of income*—(1) *Option.* In determining the amount of an individual's income to be used to reduce the agency's payment to the institution, the agency may use total income received or it may project total monthly income for a prospective period not to exceed 6 months.

(2) *Basis for projection.* The agency must base the projection on income received in the preceding period, not to exceed 6 months, and on income expected to be received.

(3) *Adjustments.* At the end of the prospective period specified in paragraph (e)(1) of this section, or when any significant change occurs, the agency must reconcile estimates with income received.

(f) *Determination of medical expenses*—(1) *Option.* In determining the amount of medical expenses to be deducted from an individual's income, the agency may deduct incurred medical expenses, or it may project medical expenses for a prospective period not to exceed 6 months.

(2) *Basis for projection.* The agency must base the estimate on medical expenses incurred in the preceding period, not to exceed 6 months, and medical expenses expected to be incurred.

(3) *Adjustments.* At the end of the prospective period specified in paragraph (f)(1) of this section, or when any significant change occurs, the agency must reconcile estimates with incurred medical expenses.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: August 7, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 4, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88-2480 Filed 2-5-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Individual and Family Grant Program Provisions

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: On Friday, October 9, 1987, FEMA published a proposed rule in the Federal Register on the Individual and Family Grant (IFG) program. This program operates under authority of the Disaster Relief Act of 1974, Pub. L. 93-288. The comment period has ended, and FEMA is now publishing the proposal as a final rule.

Comments were requested by December 9, 1987, but accepted until December 22, 1987. Four comments were received—from the Illinois Department of Transportation, the Maryland Department of Human Resources, the New Jersey Department of Law and Public Safety (Office of Emergency

Management), and from the Alabama Department of Human Resources. All four commenters were supportive of the proposals, which dealt with the IFG flood insurance requirements and with acceptance of late IFG applications. Individual letters acknowledging receipt of the comment are being sent separately to the four commenters.

Illinois also submitted an unsolicited comment regarding another IFG matter; we will consider it separately in upcoming changes to the IFG regulations, and have notified Illinois accordingly.

The final rule makes two changes to the IFG program regulations. First, it changes the flood insurance requirement language to provide that a recipient of previous IFG assistance who was under a different flood insurance requirement retention period will be assumed to have met that requirement if he/she maintained the policy in force for three years from the grant award date. This change makes the flood insurance maintenance requirements for prior recipients equal to that of current recipients—a change to promote uniformity and consistency. States will not have to keep records back any further than three years from any current disaster declaration date to determine who should still be required to be maintaining their IFG-required policy for three years. If the State determines, through checking with the National Flood Insurance Program, that a prior grant recipient canceled a required policy within three years from the date of his/her grant, and if that cancellation occurred within three years before the current declaration, then he/she would be ineligible for assistance under the IFG program for insurable housing and personal property items.

The second change deals with acceptance of late IFG applications. It applies only when an application reaches the IFG agency late as a result of having been processed late by the Small Business Administration's (SBA) disaster loan program. (NOTE: Filing for an SBA disaster loan is a prerequisite for obtaining IFG assistance.) The rule now provides that SBA will refer cases, even if beyond the normal 60- plus 30-day application period, to the IFG program if they find that the application was filed late by the applicant because of "substantial causes beyond the control of the applicant," and that these referred cases will be considered timely filed. SBA will not refer late cases of IFG if the reason for late filing at SBA did not meet the "substantial causes" test. The State may then determine, using its own criteria, whether to continue processing these late-referred cases through to an IFG eligibility determination.

EFFECTIVE DATE: March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Office of Disaster Assistance Programs, Federal Emergency Management Agency, 500 C Street SW., Room 710, Washington, DC 20472, Phone: 202–646–3660.

SUPPLEMENTARY INFORMATION:

Content of the Rule

This rule implements section 408 of the Disaster Relief Act of 1974, 42 U.S.C. 5178. It provides FEMA policy and national eligibility criteria for use by States implementing the Individual and Family Grant program.

List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing and community development.

PART 205—FEDERAL DISASTER ASSISTANCE (PUB. L. 93–288)

Accordingly, 44 CFR Part 205 is amended.

1. The authority citation for Part 205 continues to read as follows:

Authority: 42 U.S.C. 5001; Reorg. Plan No. 3 of 1978; E.O. 12148.

2. Section 205.54 is amended by revising paragraph (d)(1)(iii)(C)(*1*) as follows:

§ 205.54 Individual and Family Grant Programs.

(d) * * *

(1) * * *

(iii) * * *

(C)(*1*) The State may not make a grant for acquisition or construction purposes in a designated flood hazard area in which the sale of flood insurance is available under the NFIP unless the individual or family agrees to purchase adequate flood insurance and to maintain such insurance for 3 years, or as long as they live in the residence to which the grant assistance relates, whichever is less. Any previous grant recipient who may have been required to maintain a policy for a longer period of time (under previous regulations) but who kept it for at least three years, is deemed to have satisfied this requirement. This provision need be applied only during the 3-year period prior to a new disaster declaration. Adequate flood insurance, for IFG purposes, means a policy which covers $5,000 building and $2,000 contents (homeowners) or $5,000 contents (renters). If the grant recipient fails to obtain the required flood insurance, he/she must return to the State the amount of the grant received for acquisition and construction of insurable real and personal property, and the flood insurance premium. If a grant recipient cancels a required policy within the 3-year period, he/she is ineligible for subsequent IFG assistance for insurable real and personal property for the remainder of the 3-year period, up to the amount which should have been covered by flood insurance. The cost of the first year's policy is a necessary expense for those required under this section to buy flood insurance.

3. Section 205.54 is amended by revising paragraph (j)(1)(ii) as follows:

* * * * *

(j)(1) * * *

(ii) Applications shall be accepted from individuals or families for a period of 60 days following the declaration, and for no longer than 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely way. *Exception:* If applicants exercising their responsibility to first apply to the Small Business Administration do so after SBA's deadline, and SBA accepts their case for processing because of "substantial causes essentially beyond the control of the applicant," and provides a formal decline or insufficient loan based on lack of repayment ability, unsatisfactory credit, or unsatisfactory experience with prior loans (i.e., the reasons a loan denial client would normally be eligible for IFG assistance), then such an application referred to the State by the SBA is considered as meeting the IFG filing deadline. The State may then apply its own criteria in determining whether to process the case for grant assistance. The State automatically has an extension of time to complete the processing, eligibility, and disbursement functions. However, the State must still complete all administrative activity within the 270-day period described in this section.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 88–2561 Filed 2–5–88; 8:45 am]

BILLING CODE 6718–01–M

Proposed Rules

Federal Register
Vol. 53, No. 25
Monday, February 8, 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 907 and 908

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Administrative Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites written comments on a proposal to amend procedures for reporting rail shipments of navel and Valencia oranges, which are contained in the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders. The Navel and Valencia Orange Administrative Committees (Committees), the agencies responsible for local administration of the orders, unanimously recommended that handlers of navel and Valencia oranges be required to report all rail shipments of such oranges by submitting with their daily manifest reports, a signed bill of lading or other documentation acceptable to the Committees for each rail shipment.

DATE: Comments due March 9, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this notice. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 907 and 908 [7 CFR Parts 907 and 908], as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are 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.

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 navel oranges and 115 handlers of Valencia oranges subject to regulation under the respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three fiscal 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 California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

The Committees meet each week during their respective marketing seasons and may recommend to the Secretary a quantity of navel or Valencia oranges which may be handled in each prorate district during a specified week. If the Secretary finds that this quantity will tend to effectuate the declared policy of the Act, the Committees then allocate allotments to each handler for that week. A handler's weekly allotment is an amount equivalent to the product of the handler's prorate base (the amount of oranges under the handler's control in a prorate district as compared to the total volume of oranges available for shipment in that district) and the total quantity of oranges grown in such prorate district fixed by the Secretary as the total quantity of oranges which may be handled during such week.

Sections 907.112 and 908.112 of the administrative rules and regulations of the orders currently provide that all handling of navel and Valencia oranges, other than shipments by rail car, must be accompanied by N.O.A.C./V.O.A.C. Forms No. 8, which are Certificates of Assignment of Allotment covering each quantity of oranges so handled. These forms contain, among other information, proof of shipment by truck of such oranges.

These certificates are used by the Committees' field staff to verify daily reports filed by handlers and thereby to ascertain compliance with volume regulations. These reports provide the Committees with the information required to successfully conduct audits and compile data during an investigation of possible violations of such regulations.

Presently, similar data is not available for rail car shipments. When the above rules were put into effect, handler reports of rail shipments were unnecessary as the U.S. Department of Agriculture's Marketing Field Office in California provided this data to the Committees after reviewing railroad manifests and recording the necessary information. The Committees later took over this task. However, railroad companies no longer provide this documentation.

The Committees need documentation to substantiate shipments by rail, as currently provided for truck shipments. While daily manifest reports (N.O.A.C./V.O.A.C. Forms No. 3) which are submitted to the Committees within 24 hours after shipment is made by a handler do list rail shipments, these forms provide no documentation as to when the rail shipments actually

occurred. Handlers are also required to file with the Committees no later than 10 days following bulk rail shipments, information satisfactory to the Committees which substantiates and shows the derivation of the amount of equivalent cartons in the shipment. However, a handler could overship a weekly allotment by not reporting a rail shipment until a later week and not be charged with the overshipment. A handler could also, in a week when such handler undershipped a weekly allotment, report a previously shipped rail shipment rather than forfeit or attempt to loan the allotment. Allotment which is not offered for loan and not forfeited is creditable against overshipments of other handlers. Thus, such misreporting could be inequitable to those handlers. Inclusion of a signed bill of lading or other documentation acceptable to the Committees with the daily manifest report would provide verification of such shipments.

The proposed amendments to §§ 907.141 and 908.141 would add a requirement that handlers furnish a signed bill of lading or other documentation acceptable to the Committees for each rail shipment to accompany the daily manifest report. The proposed changes would apply to all handlers. However, these changes would not place a burden on handlers as the documentation is already available to handlers.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3504], 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.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements and orders, California, Arizona, Oranges, Navel, Valencia.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are proposed to be amended as follows:

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

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

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

2. Section 907.141 is revised to read as follows:

§ 907.141 Manifest reports.

(a) Within 24 hours after shipment is made by a handler, the handler shall submit to the committee, on N.O.A.C. Form No. 3, a manifest report of all oranges so shipped. Such report shall show the rail car number or the serial number of the Certificate of Assignment of Allotment for each shipment, together with the quantity by sizes per carton, of each shipment made within the United States or to Canada, or to Alaska. If the shipment was made under a size regulation and was covered by an exemption certificate, the certificate number shall also be shown. All manifest reports shall be certified by the handler to the United States Department of Agriculture and to the Navel Orange Administrative Committee as to the correctness of the information shown thereon.

(b) Each handler shall submit to the committee a signed bill of lading or other documentation satisfactory to the committee which substantiates each rail car shipment. This documentation shall accompany N.O.A.C. Form No. 3, a daily manifest report, and shall be submitted within 24 hours after shipment is made by the handler.

(c) If the shipment was by rail and contained oranges not packed in cartons or in bags, the handler shall file with the committee, no later than 10 days following the shipment, information satisfactory to the committee which substantiates, and which shows the derivation of the amount of equivalent cartons, by sizes, contained in the shipment and reported on the manifest report.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

3. Section 908.141 is revised to read as follows:

§ 908.141 Manifest reports.

(a) Within 24 hours after shipment is made by a handler, the handler shall submit to the committee, on V.O.A.C. Form No. 3, a manifest report of all oranges so shipped. Such report shall show the rail car number or the serial number of the Certificate of Assignment of Allotment for each shipment, together with the quantity by sizes per carton, of each shipment made within the United States or to Canada, or to Alaska. If the shipment was made under a size regulation and was covered by an exemption certificate, the certificate number shall also be shown. All manifest reports shall be certified by the handler to the United States Department of Agriculture and to the Valencia Orange Administrative Committee as to the correctness of the information shown thereon.

(b) Each handler shall submit to the committee a signed bill of lading or other documentation satisfactory to the committee which substantiates each rail car shipment. This documentation shall accompany V.O.A.C. Form No. 3, a daily manifest report, and shall be submitted within 24 hours after shipment is made by the handler.

(c) If the shipment was by rail and contained oranges not packed in cartons or in bags, the handler shall file with the committee, no later than 10 days following the shipment, information satisfactory to the committee which substantiates, and which shows the derivation of the amount of equivalent cartons, by sizes, contained in the shipment and reported on the manifest report.

Dated: February 2, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–2551 Filed 2–5–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–45–AD]

Airworthiness Directives: Mitsubishi Heavy Industries, Limited, Model YS–11/–11A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to the Mitsubishi Heavy Industries, Limited (MHI), Model YS–11/–11A series airplanes, which currently requires replacement of the vertical stabilizer front spar fitting attachment bolts. This proposal would add a requirement to replace the attaching washers and nuts, inspect certain vertical stabilizer-to-

fuselage attachment fittings for cracks and corrosion, and accomplish corrosion preventative treatment on certain parts of the fitting attachment assembly. This action is prompted by a report of a cracked lug and corrosion found in the vertical stabilizer front spar fuselage side fitting. Failure of the attachment fittings could lead to the structural failure of the vertical stabilizer and loss of control of the airplane.

DATE: Comments must be received no later than April 5, 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-45-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aircraft Works, YS-11 Technical Publications, Service Department, 10, Oye-Cho, Minato-Ku, Nagoya, Japan. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Sullivan, Aerospace Engineer, Western Aircraft Certification Office, ANM-172W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297-1166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-45-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: On January 29, 1986, FAA issued AD 86-03-05, Amendment 39-5233 (51 FR 4304; February 4, 1986), to require replacement of the vertical stabilizer front spar fitting attachment bolts on Mitsubishi Heavy Industries (MHI) [formerly Nihon Aeroplane Manufacturing Company (NAMC)] Model YS-11/-11A series airplanes. That action was prompted by a report of a failure of a vertical stabilizer front spar fuselage side fitting attachment bolt due to stress corrosion. Failure of the attachment fitting could lead to the structural failure of the vertical stabilizer and loss of control of the airplane.

Since issuance of that AD, MHI received a report that, during a routine periodic inspection, a cracked lug and corrosion were found in the vertical stabilizer front spar fuselage side fitting, and corrosion was found on the front spar stabilizer side fitting and the tapered joining bolt. Failure of this joining bolt could contribute to the structural failure of the vertical stabilizer and consequent loss of control of the airplane.

MHI issued NAMC YS-11 Service Bulletin 53-70 and Alert Service Bulletin A53-71, both dated May 23, 1986, which provide instructions for replacement of certain attachment bolts, washers, and nuts; and procedures for inspection and corrosion preventive treatment of the vertical stabilizer front spar fuselage side fittings and the vertical stabilizer front spar stabilizer side fittings. The Japanese Civil Aviation Bureau (JCAB) issued Japanese Airworthiness Directive No. TCD-2614-86, dated June 20, 1986, making NAMC YS-11 Service Bulletins 53-70 and A53-71 mandatory on all NAMC Model YS-11/-11A airplanes under Japanese registry.

This airplane model is manufactured in Japan 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 the same type design registered in the U.S., an AD is proposed which would require replacement of the bolt, washer, and nut installed in the vertical stabilizer front spar fuselage side fittings; replacement of certain other parts of this assembly, if conditions warrant; and inspection of the vertical stabilizer and fuselage fittings for cracks and corrosion, in accordance with the service bulletins previously mentioned.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD, that it would take approximately 11 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 the AD on U.S. operators is estimated to be $22,440.

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 of the minimal cost of compliance per airplane ($440). 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); 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 86-03-05, Amendment 39-5233, (51 FR 4304; February 4, 1986), with the following new airworthiness directive:

Mitsubishi Heavy Industries, Ltd. [formerly Nihon Aeroplane Manufacturing Company (NAMC)]: Applies to all Model YS-11/-11A series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the vertical stabilizer front spar to fuselage fittings, accomplish the following:

A. Within 600 hours time-in-service after the effective date of this AD or within 4 months after the effective date of this AD, whichever occurs first, visually inspect the vertical stabilizer front spar fuselage side fittings, Part Number (P/N) 01-38101-11/-12, for cracked lugs, in accordance with Paragraph 2, "Instructions," of NMAC YS-11 Alert Service Bulletin (SB) A53-71, dated May 23, 1986. Repeat this inspection at intervals not to exceed 1,000 hours time-in-service.

B. If any crack is found in fitting P/N 01-38101-11/-12 during the inspections required by paragraph A., above: prior to further flight, remove that fitting from the airplane and accomplish the inspections, corrosion treatment, and replacement of parts, as necessary, in accordance with Paragraph 2, "Instruction," of NAMC YS-11 Service Bulletin 53-70, dated May 23, 1986. Once this has been accomplished, the required repetitive inspections may be discontinued.

C. If no cracking is found in fitting P/N 01-38101-11/-12 during the inspections required by Paragraph A., above: within 6,000 hours time-in-service after the effective date of this AD, or by January 1, 1990, whichever occurs first, accomplish the inspections, corrosion treatment, and replacement of parts, as necessary, in accordance with Paragraph 2, "Instructions," of NAMC YS-11 Service Bulletin 53-70, dated May 23, 1986. Once this has been accomplished, the required repetitive inspections may be discontinued.

D. The repetitive inspections required by Paragraph A., above, may be terminated if the vertical stabilizer front spar fuselage side fitting P/N 01-381010-11/-12 had been given corrosion preventive treatment after September 1, 1985, or once it has been replaced by fitting P/N 01-38101-21/-22.

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Mitsubishi Heavy Industries, Ltd., Nagoya Aircraft Works, YS-11 Technical Publications, Service Department, 10, Oye-Cho, Minato-ku, Nagoya, Japan. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on January 28, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-2525 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-173-AD]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which require the incorporation of seal plates over the electrical wiring and hydraulic tubing cutouts on the body upper skin common to the vertical fin. This proposal is prompted by a recent analysis performed by the manufacturer that indicated a failure of the aft pressure bulkhead could lead to overpressurization of the vertical fin. This condition, if not corrected, could lead to structural failure of the fin.

DATE: Comments must be received no later than April 5, 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-173-AD, 17900 Pacific Highway South, C-68966, Seattle Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-173-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: Following an accident involving a Boeing 747 airplane, in which the vertical fin was apparently overpressurized because of an aft pressure bulkhead rupture, Boeing studied the Model 767 to determine if it was subject to a similar problem. It was determined that a massive rupture of the aft pressure bulkhead of the Model 767 airplane could result in a significant pressure rise in the Body Section (BS) 48 and possibly an overpressurization of the vertical fin inspar area through a failed fin access door or through skin-to-body cutouts used for routing of electrical wiring and hydraulic tubing between BS 48 and the fin inspar cavity. Overpressurization of the vertical fin could cause damage to the inspar structure and hydraulic systems which, in turn, could preclude the airplane's continued safe flight and landing.

The FAA has reviewed and approved Boeing Service Bulletin 767-53-0025, dated June 4, 1987, which provides instructions for installation of seal plates over electrical wiring and hydraulic tubing cutouts on the fin-to-body skin to preclude an overpressurization of the fin from the BS 48 cavity.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require installation of seal plates, in accordance with the service bulletin previously mentioned, to reduce the cutout area and thereby reduce the potential for overpressurization of the fin in the event of a rupture of the aft pressure bulkhead.

It should be noted that, as an additional measure to address this unsafe condition, the FAA previously issued AD 86-19-07, Amendment 39-

5402 (51 FR 30328; August 26, 1986), which requires reinforcement of the fin access doors.

It is estimated that 77 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 hours per airplane to accomplish the required actions, and that the average labor cost would be $40 per hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,240.

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 767 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.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, listed in Boeing Service Bulletin 767-53-0025, dated June 4, 1987, certificated in any category. Compliance required within 12 months after the effective date of this AD, unless previously accomplished.

To prevent structural failure of the vertical fin in the event of a failure of the aft pressure bulkhead, accomplish the following:

A. Install seal plates over the electrical wiring and hydraulic tubing cutouts on the fin-to-body skin in accordance with Boeing Service Bulletin 767-53-0025, dated June 4, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provide 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.

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

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

Issued in Seattle, Washington, on February 1, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-2600 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-05-AD]

Airworthiness Directives; de Havilland Model DHC-3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to supersede Airworthiness Directive (AD) 85-11-01, Amendment 39-5071, applicable to de Havilland DHC-3 airplanes. AD 85-11-01 requires initial and repetitive checks of the security of engagement of the utility seat front leg with the floor rail until a positive locking modification is installed. Subsequent to the issuance of AD 85-11-01, it was realized that it did not provide for a check of the seat engagement with the floor rail each time the folding seat is moved from the stowed to the deployed position. This proposal is deemed necessary to address this condition to ensure the continuing airworthiness of the airplane. In addition, it will still require the repetitive checks specified in the superseded AD.

DATES: Comments must be received no later than May 11, 1988.

ADDRESSES: Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-05-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. The applicable Service Bulletin (S/B) No. 3/42, Revision A, dated September 18, 1987, may be obtained from the de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5, Telephone (416) 633-7310. This information may also be examined at the FAA, Central Region, Office of the Regional Counsel, at the address specified above. Comments may be inspected at the FAA, Central Region, between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791-6220.

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: Rules No. 88-CE-05-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: AD 85-11-01, Amendment 39-5071 [50 FR 21586; May 28, 1985], applicable to the de Havilland Model DHC-3 airplanes requires initial and repetitive checks at intervals of 50 hours time-in-service of the security of

engagement of the utility seat front leg with the floor rail until Modification No. 3/932 in de Havilland S/B No. 3/42 is installed. Subsequently, the FAA issued AD 87-03-12, Amendment 39-5549, effective March 16, 1987, against identical seats installed in de Havilland Model DHC-6 airplanes. The Model DHC-3 AD does not require inspections each time the seats are deployed, as is required by the Model DHC-6 AD. While no loose front seat legs have been reported in Model DHC-3 airplanes, the applicability of AD 87-03-12 and the identical nature of the seat attachment in Model DHC-6 airplanes means that an unsafe condition exists in Model DHC-3 airplanes. This commonality is the basis for the similarity of actions between the two types of airplanes.

Transport Canada who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada has issued Canadian AD CF-85-03, effective March 18, 1985, requiring inspection of the utility front seat leg for security, reinspection every 50 hours (TIS) until de Havilland Modification No. 3/932 is incorporated. Canadian AD CF-85-03R1, effective April 24, 1986, revised AD CF-85-03 by requiring an additional inspection of the seat legs each time the seats are moved from the stowed to the deployed position. de Havilland SB No. 3/42, Revision A, dated September 18, 1987, was revised to include this check.

The FAA has examined the available information related to the issuance of S/B No. 3/42, Revision A, dated September 18, 1987, and believes that the condition addressed by this bulletin is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Therefore, an AD is proposed which will supersede AD 84-11-01, Amendment 39-5071, and require a check of the security of attachment of the seat front leg with the floor rail each time a utility seat is moved from the stowed to the deployed position on DHC-3 airplanes and at 50 hour intervals until Modification No. 3/932 in S/B No. 3/42, Revision A, dated September 18, 1987, is installed. Also, the checks may be accomplished by a flightcrew members.

It is estimated that 42 airplanes of U.S. registry would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required check, and that the average labor cost would be $40 per manhour. Based on these figures, the cost of checking all seats is estimated to be $40 per airplane per seat deployment. The total cost impact of the AD on U.S. operators is estimated to be $1680 for the fleet check.

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

Air transportation, Aviation safety, Aircraft safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

2. By superseding AD 85-11-01, Amendment 39-5071 [50 FR 21586; May 28, 1985], with the following new airworthiness directive:

De Havilland: Applies to Model DHC-3 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished in accordance with AD 85-11-01, Amendment 39-5071.

To prevent disengagement of the folding utility seat forward leg from the floor mounting rail, which could result in hazards to seat occupants from an inadequately restrained seat during a crash, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, and at subsequent intervals of 50 hours TIS, attempt to move the lower end of each leg sideways into the open part of the keyhole slot using as much force as can be exerted by hand. If the leg can be released from the keyhole slot, remove the seat from service until de Havilland Modification No. 3/932 is incorporated. (This modification is contained in de Havilland Service Bulletin No. 3/42, Revision A, dated September 18, 1987).

(b) Repeat the check in Paragraph (a) of this AD each time the seats are moved from the stowed to deployed position.

(c) The check required by Paragraph (b) of this AD may be accomplished by a flightcrew member, certificated under FAR 61 or FAR 63 rules, briefed on the procedure.

Note: When the checks required by Paragraph (b) of this AD are accomplished by a flightcrew member pursuant to the restrictions specified in Paragraph (c) of this AD, maintenance records must be made as required by FAR 43.9 and those records must be maintained as required by FAR 91.173, 121.380, or 135.439 as applicable.

(d) When Modification No. 3/932 is installed in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" of de Havilland S/B No. 3/42, Revision A, on each seat, subsequent checks required by this AD are no longer required.

(e) An equivalent means of compliance may be used when approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; Telephone (416) 633-7310, or may examine them at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 85-11-01, Amendment 39-5071.

Issued in Kansas City, Missouri, on January 27, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-2601 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-126-AD]

Airworthiness Directives: The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Model DHC-8 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 de Havilland Model DHC-8 series airplanes, which currently requires deactivation of the ground spoilers and roll control spoilers in the ground mode. That action was necessary to prevent an uncommanded deployment of ground spoilers and roll control spoilers in the ground mode, and to preclude a hazardous loss of lift in a critical phase of flight. This proposed action would

require the installation of modifications which will permit removal of the operational limitations established by the existing AD and re-establish normal use of all spoilers in the ground mode.

DATES: Comments must be received no later than March 21, 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-126-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, Systems Branch, ANE-173, FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-126-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The FAA issued ED 86-14-51, Amendment 39-5423 (51 FR 33031; September 18, 1986), applicable to certain de Havilland Model DHC-8 series airplanes, to require the deactivation of the ground spoilers and roll control spoilers in the ground mode. That action was prompted by an incident in which there was an uncommanded ground spoiler deployment in flight. This condition, if not corrected, could result in a hazardous loss of lift in a critical phase of flight.

Since issuance of that AD, the manufacturer has issued de Havilland Service Bulletin 8-32-54, dated May 8, 1987, which describes a design improvement for the Landing Gear Proximity Switch Electronic Unit (PSEU); and Service Bulletin 8-32-55, dated May 8, 1987, which describes electrical power phase supply changes for the PSEU Built-In Test Equipment (BITE) Power Circuit during roll-spoiler ground mode and ground spoilers deployment. Installation of these modifications will eliminate the potential for the unsafe condition addressed in AD 86-14-51.

In addition, the manufacturer has issued de Havilland Service Bulletin 8-27-34, dated May 22, 1987, which provides instructions for reactivating the equipment required to be deactivated by AD 86-14-51, once the modifications described in Service Bulletins 8-32-54 and 8-32-55 have been installed.

The Canadian Air Transport Administration, which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF-86-11R2, dated July 9, 1987, addressing installation of this modification and re-activation of the spoilers in ground mode.

This airplane is manufactured in Canada 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 on other airplanes of this same type design certificated in the United States, this action proposes to revise AD 86-14-51 by requiring the installation of the modifications described in the service bulletins previously mentioned in order to re-establish normal use of all spoilers in the ground mode configuration and to remove the operational limitations imposed by AD 86-14-51.

It is estimated that 9 airplanes of U.S. registry would be affected by this AD, it would require 20 manhours to accomplish the required actions, and the average labor charge would be $40 per manhour. Modification kits would be available at no charge from the manufacturer. Based on these figures the total cost impact of this AD to U.S. operators is estimated to be $7,200.

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 of the minimal cost of compliance per airplane ($800). 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 Section 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.

2. By amending AD 86-14-51, Amendment 39-5423 (51 FR 33031; September 18, 1986), by revising paragraphs A. and B. to include the specific compliance time in each paragraph, adding a new paragraph C., and redesignating the existing paragraph C. as paragraph D., as follows:

The De Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd.: Applies to Model DHC-8-101 series airplanes, Serial Number 003 and subsequent, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To preclude the uncommanded deployment of ground spoilers and roll control spoilers in the ground mode, accomplish the following:

A. Prior to further flight, lockout circuit breaker ROLL SPLRS CONT, location F6, right essential bus, and circuit breaker GND SPLRS CONT, location C7, left main bus, in accordance with Section A of de Havilland Alert Service Bulletin AB-27-25, dated July 3,

1986. Install a placard in the flight compartment, on the glareshield under the flight/taxi switch, to state the following: "GROUND SPOILERS AND ROLL CONTROL SPOILERS IN GROUND MODE ARE INOPERATIVE."

B. Prior to further flight, insert a copy of this AD in the Airplane Flight Manual (AFM) Limitation Section. The elimination of all spoiler functions in ground mode increases landing distance and landing field length required by 15 percent when using flaps at 35 degrees (AFM, Figure 5.8.4.), and 10 percent when using flaps at 15 degrees (AFM Supplement #9, Figure 5.8.7.). With all spoiler functions in ground mode inoperative, there is negligible increase in the takeoff distance required and the takeoff run required.

C. Within 20 days after the effective date of this AD, re-establish normal use of all spoilers in the ground mode configuration and remove the operating limitations of paragraphs A. and B., above, by accomplishing the following:

1. Modify the Landing Gear Proximity Switch Electronic Unit (PSEU) in accordance with de Havilland Service Bulletin 8–32–54, dated May 8, 1987.

2. Modify the electrical power phase supply for the PSEU BITE Power Circuit, in accordance with de Havilland Service Bulletin 8–32–55, dated May 8, 1987.

3. Remove the placard required by paragraph A., above and reinstate the equipment required to be deactivated by paragraphs A. and B., above, in accordance with the instructions of de Havilland Service Bulletin 8–27–34, dated May 22, 1987.

D. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on February 1, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–2602 Filed 2–5–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 91 and 135

[Docket No. 25149]

Special Flight Rules in the Vicinity of the Grand Canyon National Park; Public Hearings

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of public hearing.

SUMMARY: This notice announces 2 public hearings on procedures for the operation of aircraft in the airspace above the Grand Canyon.

DATES: Public hearings will be held at 7:00 p.m. on the following dates:

Phoenix, AZ, March 2, 1988

Las Vegas, NV, March 3, 1988.

ADDRESSES: Comments on the proposal, when issued, may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–204), Docket No. 25149, 800 Independence Avenue SW., Washington, DC 20591 or delivered in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

Public hearings will be held at the following locations:

March 2, 1988:

Arizona Air National Guard Theater, Hess Street, Phoenix, Arizona.

March 3, 1988:

Commissioners' Conference Room, 5th Floor, Main Terminal Building, McCarran International Airport, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–3471. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Background

Special Federal Aviation Regulation No. 50–1 (52 FR 22734, June 15, 1987), Special Flight Rules in the Vicinity of the Grand Canyon National Park, currently restricts the flight of aircraft in the airspace above the Grand Canyon up to an altitude of 9,000 feet above mean sea level (MSL).

Legislation enacted on August 18, 1987, Pub. L. 100–91, required the Secretary of the Interior to submit recommendations to the FAA for an aircraft management plan at the Grand Canyon National Park. The legislation directs the FAA to adopt the regulations, to the extent consistent with air safety, after a hearing and opportunity for public comment.

The Department of the Interior submitted its recommendations under Pub. L. 100–91 to the FAA on December 29, 1987. The recommendations submitted included both rulemaking and nonrulemaking actions. The DOI recommendations which are regulatory in nature and would require rulemaking action by the FAA for implementation may be summarized as follows:

1. Establish special use airspace (SUA), designated as the "Grand Canyon Special Flight Rules Area" and classified as prohibited airspace, over the geographical boundaries of the Grand Canyon from the surface to 14,500 feet MSL.

2. Establish within the Grand Canyon Special Flight Rules Area three types of zones:

a. *Below Rim Level Zone.* Aircraft flight would be prohibited below the rim of the canyon with limited exceptions for NPS administrative flights; flights to Supai and Hualapai Indian reservations; and certain flights transporting persons to or from boat trips on the Colorado River.

b. *Flight-free Zones.* Flight would be prohibited, with the exception of the categories of flights excepted from flight below the rim, in 4 large areas together encompassing 530,000 acres or 44 percent of the total park area. A map of the recommended flight-free zones is included in this notice.

c. *Above Rim Level Zone.* Flight above rim level and outside of flight-free zones, to 14,500 feet MSL, would be subject to special route and altitude regulations for separation of aircraft. In some cases, the space between flight-free zones would be limited to 2-miles wide corridors in which any air tours and transient general aviation operations would be conducted.

3. Retain the existing prohibition on operation of aircraft within 500 feet of any terrain or structure within the canyon.

4. Consider adoption of the "hemispherical rule" (§ 91.109), which specifies different altitudes for eastbound and westbound aircraft, for aircraft operation outside of the flight-free zones.

6. Modify or eliminate low-altitude Federal airways V–257, V–293, and V–210 to avoid the flight-free zones and preferably the entire Special Flight Rules Area. On a temporary basis while the matter is being studied, NPS recommended that V–257 and V–293 be relocated to travel between the Page VOR and the Tuba City VOR, and that V–210 be moved 5 miles south of its present location in the vicinity of the Park.

Exceptions to the restrictions contained in the recommendations would be allowed only in an emergency, in the case of inclement weather, or if otherwise necessary for safety of flight. The Manager of the FAA Las Vegas Flight Standards District Office (FSDO) and the Superintendent, GCNP will jointly develop procedures to address these exceptions.

The FAA is developing a rulemaking proposal based on the Department of Interior recommendations. The proposal will be published in the **Federal Register** and copies will be available at the public hearings. The 2 public hearings described in this notice are being held to accept public comment on the Department of Interior recommendations and on the proposed rule to be published by the FAA.

The FAA will also accept written comments on the proposed rule when issued. The closing date for the comment period has not been set but will be no earlier than 2 weeks after the second hearing. Comments should be sent to the office listed under **"ADDRESSES"** above.

Public Hearing Schedule

The schedule for the meetings is as follows:

Date: March 2, 1988, 7:00 p.m.

Place: Arizona Air National Guard Theater, Hess Street, Phoenix, Arizona.

Date: March 3, 1988, 7:00 p.m.

Place: Commissioners' Conference Room, 5th Floor, Main Terminal Building, McCarran International Airport, Las Vegas, Nevada.

Agenda

7:00 to 7:15—Presentation of meeting procedures.

7:15 to 8:00—FAA presentation of proposal.

8:15 to finish—Public presentations and discussion.

Meeting Procedures

Persons wishing to make a presentation at the meeting may contact Ron Debelak at (213) 297–1658.

Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The hearing will be informal in nature and will be conducted by the designated representative of the Administrator under 14 CFR 11.33. Each participant will be given an opportunity to make a presentation. Questions may be asked of each presenter by other participants or by representatives of the Administrator.

(b) The hearing will begin at 7:00 p.m. (local time). There will be no admission fee or other charge to attend and participate. The presiding officer may accelerate the meeting if it is more expeditious than planned.

(c) All meeting sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be distributed. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the hearing should not be taken as expressing a final FAA position.

Authority: 49 U.S.C. 1303, 1348, 1354(a), 1421, and 1422; 16 U.S.C. 228g; Pub. L. 100–91, August 18, 1987; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

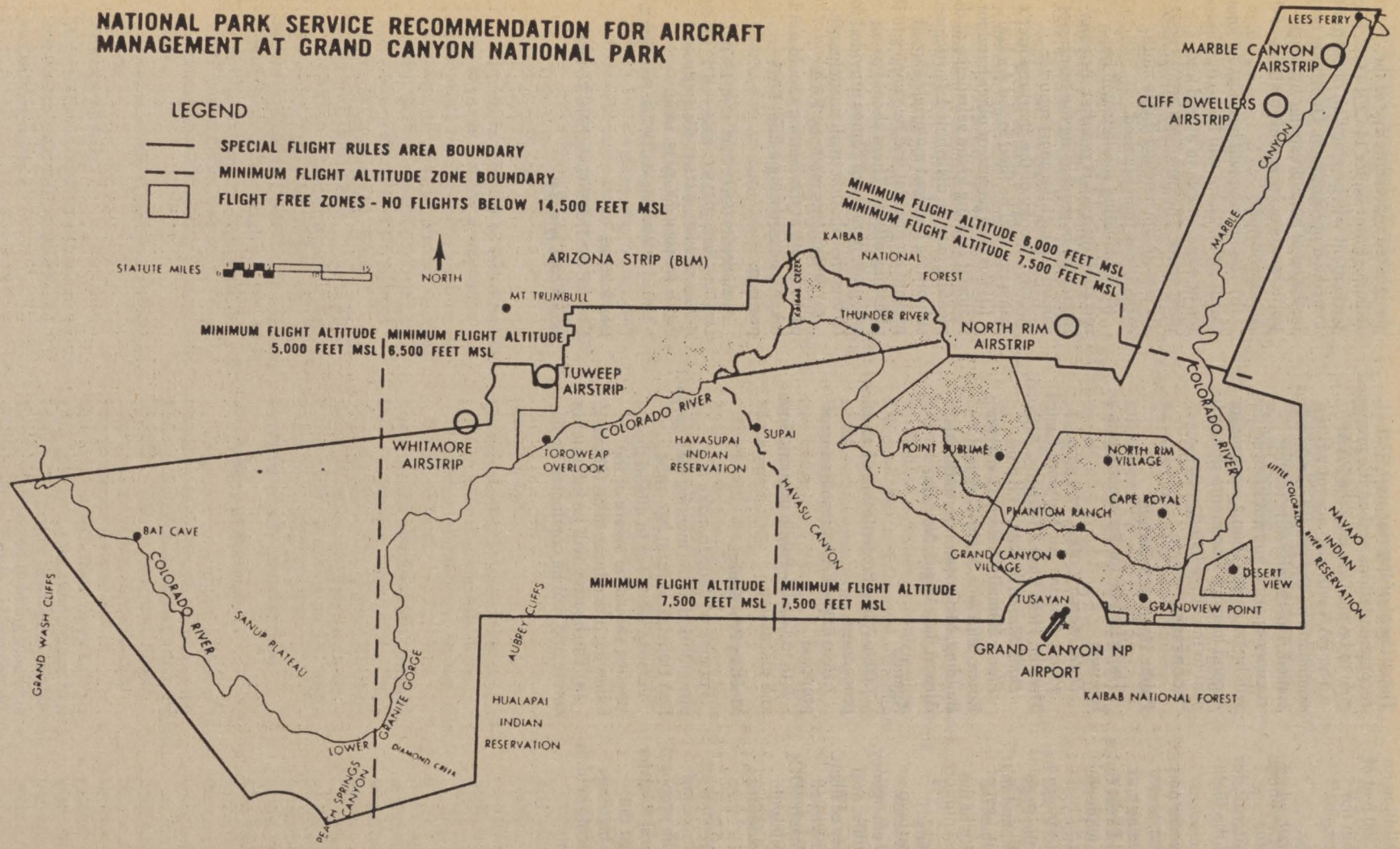
Issued in Washington, DC, on February 2, 1988.

John R. Ryan,

Director, Air Traffic Operations Service.

BILLING CODE 4910-13-M

NATIONAL PARK SERVICE RECOMMENDATION FOR AIRCRAFT MANAGEMENT AT GRAND CANYON NATIONAL PARK



[FR Doc. 88-2597 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-13-C

Coast Guard

33 CFR Part 165

[COTP Cleveland REG 87-02]

Safety Zone; Old River and Cuyahoga River; Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Public hearing on proposed regulation; extension of comment period.

SUMMARY: The Captain of the Port, Cleveland, has authorized this public hearing to be held to receive comments on a proposed regulation to create ten safety zones in the Old River and the Cuyahoga River. The comment period is being extended to March 7, 1988. This hearing is being held at the request of several commenters because the opportunity to make oral presentations may aid the rulemaking process.

DATES: (a) The hearing will be held on March 7, 1988 at 2:00 p.m.

(b) Written comments may be submitted on or before March 7, 1988.

(c) Those desiring to participate in the hearing should notify by March 4, 1988, the Contact Officer of their intent to attend and present comments.

ADDRESSES: (a) The location of the hearing and the mailing address is the U.S. Coast Guard Marine Safety Office, 1055 E. 9th St., Cleveland, OH 44114. Comments may also be hand-delivered to this address.

(b) All comments received will be available for examination at the above address.

FOR FURTHER INFORMATION CONTACT: CDR John H. Distin, Captain of the Port, Cleveland (216) 522-4406.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published in the **Federal Register** on December 3, 1987 at page 45974 and was distributed to each of the affected entities.

The public hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed regulation, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement must notify the Contact Officer listed above on or before March 4, 1988. Such notification may be in writing or by telephone. Persons wanting more than five minutes to state their positions must request that with the above notification, and must explain why and how much more time is desired.

A transcript will be made of the hearing and may be purchased by the public. Interested persons who are unable to attend this hearing may also participate in the consideration of this proposed regulation by submitting their comments in writing by March 7, 1988. Each comment should state reasons for support or opposition, suggest any proposed changes to the regulation, and include the name and address of the person or organization submitting the comment.

All comments received will be considered before final action is taken on the proposed regulation. After March 7, 1988, the Captain of the Port, Cleveland will determine a final course of action.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

Dated: February 1, 1988.

J.H. Distin,

Commander, U.S. Coast Guard, Captain of the Port, Cleveland, OH.

[FR Doc. 88-2588 Filed 2-5-88; 8:45 am.]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 53, No. 25
Monday, February 8, 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

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Date and Time: February 15, 16 and 17, 1988 8:00 a.m.

Place: 8:00 a.m. at the Sheraton National Hotel Columbia Pike and Washington Blvd., Arlington, Virginia.

Status: Open.

Matters to be considered: On February 15, 16, and 17 the Commission will continue the process of drafting recommendations.

Written statements may be filed before or after the meeting with: Contact person named below.

Contact person for more information: Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Avenue, NW., Suite 1100, Washington, DC 20005, (202) 638–6222.

Signed at Washington, DC, this 1st day of February 1988.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 88–2594 Filed 2–5–88; 8:45 am]

BILLING CODE 3410–05–M

Office of the Secretary

Privacy Act of 1974; Amendment of Existing System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Amendment of an existing system of records.

SUMMARY: The purpose of this document is to provide notice of the intention of the United States Department of Agriculture to refer certain information regarding delinquent debts to consumer reporting agencies.

DATES: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Comments received on or before March 9, 1988, will be considered. Unless comments are received which would require a contrary determination, this amendment shall be effective as proposed without further notice at the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Carolyn Wright, Security, Employee and Labor Relations Staff, Office of Personnel, Department of Agriculture, Washington, DC 20250, (202) 447–3083.

SUPPLEMENTARY INFORMATION: The Spending Reduction Act of 1984 established a tax refund offset program whereby an agency could request that tax refunds of persons indebted to it be reduced by the amount of the debt with the amount offset being paid instead to the creditor agency. The Department of Agriculture has been participating in this program. On October 6, 1986, a routine use for the system of records known as USDA/OP–1 was published which allowed the Department to furnish to the Internal Revenue Service the identities of employees and former employees who were indebted to it along with the amount of the indebtedness. At the request of the Department of the Treasury, the Department now intends to exercise its statutory authority to also refer this information to consumer reporting agencies. The following information concerning the statutory authority for such a referral is being added to the Office of Personnel's system of records known as USDA/OP–1 published at 49 FR 48071 et. seq., December 10, 1984.

USDA/OP–1

SYSTEM NAME:

Personnel and Payroll System for USDA Employees, USDA/OP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

Roland R. Vautour,

Acting Secretary.

Dated: February 1, 1988.

[FR Doc. 88–2550 Filed 2–5–88; 8:45 am]

BILLING CODE 3410–01–M

Farmers Home Administration

Housing Demonstration Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of Housing Demonstration Program.

SUMMARY: The Farmers Home Administration (FmHA) of the U.S. Department of Agriculture (USDA) is accepting in fiscal year 1988 proposals for a Housing Demonstration program under section 506(b) Title V of the Housing Act. Under this section, FmHA may provide loans for innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase the availability of affordable housing for low-income families, through innovative designs and systems.

FOR FURTHER INFORMATION CONTACT: Mathias J. Felber, Branch Chief, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenue SW., Room 5343, South Building, Washington, DC 20250, telephone 202–382–1474 or Ray McCracken, Senior Loan Officer, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenues SW., Room 5343, South Building, Washington, DC 20250, Telephone 202–382–1486.

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient incomes to qualify for loans to obtain adequate housing. Section 506(b) of Title V of the Housing Act of 1949 authorizes a housing demonstration program that could result in housing that these families can afford. The Congress of the United States made two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried

out will not be adversely affected, and (2) that the aggregate expenditures for the demonstration may not exceed $10 million in any fiscal year.

FmHA State Directors are authorized in fiscal year 1988 to continue to accept proposed demonstration concept proposals from nonprofit organizations, profit organizations and individuals as announced in 51 FR 19240 on May 28, 1986. The State Directors will evaluate the proposals on a first-come first-served basis. An acceptable proposal is to be sent to the National Office for the Assistant Administrator, Housing concurrence before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant, in writing, giving specific reasons why the proposal was not selected.

The funds for the demonstration program are section 502 funds, and are available to housing applicants that may wish to purchase an approved demonstration dwelling. However, there is no guarantee that a market exists for demonstration dwellings and applicants for such a section 502 RH loan must be eligible for the program in all other respects.

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in Final Rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983) this program/activity is excluded from the scope of Executive Order 12372 which requires the intergovernmental consultation with state and local officials.

All interested parties must make a written request for a proposal package. The request must be made to the State Director in the state in which the proposal will be submitted for evaluation. The government will not reimburse or be liable for any expenses incurred by respondents in the development and submission of applications. Following is a list of State Directors and their addresses:

State and Address

Alabama

State Director, Farmers Home Administration, Room 717, Aronov Building, 474 South Court Street, Montgomery, Alabama 36104

Alaska

State Director, Farmers Home Administration, Post Office Box 1289, Palmer, Alaska 99645

Arizona

State Director, Farmers Home Administration, 201 East Indianola, Suite 275, Phoenix, Arizona 85012

Arkansas

State Director, Farmers Home Administration, 700 W. Capitol, Post Office Box 2778, Little Rock, Arkansas 72203

California

State Director, Farmers Home Administration, Suite F, 194 West Main Street, Woodland, California 95695–2915

Colorado

State Director, Farmers Home Administration, Room 231, #1 Diamond Plaza, 2490 West 26th Avenue, Denver, Colorado 80211

Delaware/Maryland

State Director, Farmers Home Administration, 2319 South DuPont Highway, Dover, Delaware 19901

Florida

State Director, Farmers Home Administration, Room 214, Federal Building, 410 S.E. First Avenue, Gainesville, Florida 32602

Georgia

State Director, Farmers Home Administration, Stephens Federal Building, 355 E. Hancock Street, Athens, Georgia 30610

Hawaii

State Director, Farmers Home Administration, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, Hawaii 96720

Idaho

State Director, Farmers Home Administration, 304 N. Eighth Street, Room 429, Boise, Idaho 83702

Illinois

State Director, Farmers Home Administration, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, Illinois 61820

Indiana

State Director, Farmers Home Administration, Suite 1700, 5610 Crawfordsville Road, Indianapolis, Indiana 46224

Iowa

State Director, Farmers Home Administration, Room 873, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309

Kansas

State Director, Farmers Home Administration, Room 176, Federal Building, 444 South East Quincy Street, Topeka, Kansas 66683

Kentucky

State Director, Farmers Home Administration, 333 Waller Avenue, Lexington, Kentucky 40504

Louisiana

State Director, Farmers Home Administration, 3727 Government Street, Alexandria, Louisiana 71302

Maine

State Director, Farmers Home Administration, USDA Office Building, Orono, Maine 04473

Massachusetts/Connecticut/Rhode Island

State Director, Farmers Home Administration, 451 West Street, Amherst, Massachusetts 01002

Michigan

State Director, Farmers Home Administration, Room 209, 1405 South Harrison Road, East Lansing, Michigan 48823

Minnesota

State Director, Farmers Home Administration, 252 Federal Office Building and U.S. Courthouse, 316 N. Robert Street, St. Paul, Minnesota 55101

Mississippi

State Director, Farmers Home Administration, Suite 831, Federal Building, 100 West Capital Street, Jackson, Mississippi 39269

Missouri

State Director, Farmers Home Administration, 555 Vandiver Drive, Columbia, Missouri 65202

Montana

State Director, Farmers Home Administration, Room 324, Federal Building, 10 East Babcock Street, Post Office Box 850, Bozeman, Montana 59715

Nebraska

State Director, Farmers Home Administration, Room 308, Federal Building, 100 Contennial Mall North, Lincoln, Nebraska 68508

New Jersey

State Director, Farmers Home Administration, 100 High, Suite 100, Mount Holly, New Jersey 08060

New Mexico

State Director, Farmers Home Administration, Room 3414, Federal Building, 517 Gold Avenue SW., Albuquerque, New Mexico 87102

New York

State Director, Farmers Home Administration, Room 871, James M. Hanley Federal Building, 100 S. Clinton Street, Syracuse, New York 13260

North Carolina

State Director, Farmers Home Administration, Room 525, 310 New Bern Avenue, Raleigh, North Carolina 27601

North Dakota

State Director, Farmers Home Administration, Room 208, Federal Building, Third and Rosser, Post Office Box 1737, Bismarck, North Dakota 58502

Ohio

State Director, Farmers Home Administration, Room 507, Federal Building, 200 North High Street, Columbus, Ohio 43215

Oklahoma

State Director, Farmers Home Administration, Agricultural Center Office Building, Stillwater, Oklahoma 74074

Oregon

State Director, Farmers Home Administration, Room 1590, Federal Building, 1220 SW., 3rd Avenue, Portland, Oregon 97204

Pennsylvania

State Director, Farmers Home Administration, Room 728, Federal Building, Post Office Box 905, Harrisburg, Pennsylvania 17108

Puerto Rico

State Director, Farmers Home Administration, Room 623, Federico Degetau Federal Building, Carlos Chardon Street, Hato Rey, Puerto, Rico 00918

South Carolina

State Director, Farmers Home Administration, Strom Thurmond Federal Building, Room 1007, 1835 Assembly Street, Columbia, South Carolina 29201

South Dakota

State Director, Farmers Home Administration, Room 308, Federal Building, 200 4th Street, SW., Huron, South Dakota 57350

Tennessee

State Director, Farmers Home Administration, Room 538, Federal Building, 801 Broadway, Nashville, Tennessee 37203

Texas

State Director, Farmers Home Administration, Suite 102, Federal Building, 101 South Main, Temple, Texas 76501

Utah/Nevada

State Director, Farmers Home Administration, Room 5438, Wallace F. Bennett Federal Building, 125 South State Street, Salt Lake City, Utah 84138

Vermont/New Hampshire

State Director, Farmers Home Administration, 141 Main Street, Post Office Box 588, Montepelier, Vermont 05602

Virginia

State Director, Farmers Home Administration, Room 8213, Federal Building, 400 North Eighth Street, Richmond, Virginia 23240

Washington

State Director, Farmers Home Administration, Room 319, Federal Office Building, Post Office Box 2427, Wenatchee, Washington 98801

West Virginia

State Director, Farmers Home Administration, Room 320, Federal Building, Post Office Box 678, Morgantown, West Virginia 26505

Wisconsin

State Director, Farmers Home Administration, 1257 Main Street, Stevens Point, Wisconsin 54481

Wyoming

State Director, Farmers Home Administration, Room 1005, Federal Building, 100 East B. Street, Casper, Wyoming 82602

Authorities: 42 U.S.C. 1480, 7 CFR 2.23, 7 CFR 2.70.

Dated: January 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-2552 Filed 2-5-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-421-701]

Preliminary Determination of Sales at Less Than Fair Value; Brass Sheet and Strip From The Netherlands

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that brass sheet and strip from The Netherlands are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of brass sheet and strip from The Netherlands as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 18, 1988.

EFFECTIVE DATE: February 8, 1988.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that brass sheet and strip from The Netherlands are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our notice of initiation (52 FR 30412), the following events have occurred. On September 3, 1987, the ITC determined that there is a reasonable indication that imports of brass sheet and strip from The Netherlands are materially injuring a U.S. industry (52 FR 34324).

On September 10, 1987, a questionnaire was presented to legal counsel for Metallverken Nederland B.V. (MN), which accounts for a substantial portion of Dutch exports to the United States during the period of investigation.

On October 28, 1987, we received a questionnaire response from MN. We sent deficiency letters to the respondent on November 18, 1987 and December 18, 1987, and received responses to those letters on December 2, 1987 and January 4, 1988.

On December 1, 1987, petitioners requested a postponement of the preliminary determination, and on December 4, 1987, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 353.39(b) of the Department of Commerce regulations, we postponed the preliminary determination to January 26, 1988 (52 FR 46805). On January 19, 1988, petitioners requested a further postponement of the preliminary determination, and on January 22, 1988, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until February 2, 1988 (53 FR 1933).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate Tariff Schedules of the United States annotated (*TSUSA*) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS 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 officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass sheet and strip, currently provided for under the *TSUSA* item numbers 612.3960, 612.3982, and 612.3986, and currently classifiable under HS item numbers 7409.21.00.50, 7409.21.00.75, 7409.29.00.50, and 7409.29.00.75.

The chemical compositions of the products under investigation are currently defined in the Cooper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Period of Investigation

The period of investigation is February 1, 1987 through July 31, 1987.

Such or Similar Comparisons

We have determined that all of the brass sheet and strip under investigation constitutes the same class or kind of merchandise.

In order to select the most similar products, we made comparisons of merchandise based on grade (chemical composition), gauge, width, coating (tinned or non-tinned), temper and packed form (coil, cut-to-length or traverse-wound).

For merchandise where there were no identical products with which to compare a product sold to the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of brass sheet and strip from The Netherlands to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below.

United States Price

Purchase Price

As provided in section 772(b) of the Act, we used the purchase price to represent the United States price for sales of brass sheet and strip made by MN through related and unrelated sales agents in the United States to an unrelated purchaser prior to importation of the brass into the United States. The Department determined that purchase price and not exporter's sales price was the most appropriate indicator of United States price based on the following elements.

1. The merchandise was purchased or agreed to be purchased prior to the date of importation from the manufacturer or producer of the merchandise for exportation to the United States.

2. The related and unrelated selling agents located in the United States acted only as processors of sales-related documentation and as communication links with the unrelated U.S. buyers.

3. Rather than entering into the inventory of the related or unrelated selling agents, the merchandise in question was shipped directly from the manufacturer to the unrelated buyers. Thus, it did not give rise to storage and associated costs on the part of the selling grants or create flexibility in marketing for the exporter.

4. Direct shipments from the manufacturer to the unrelated buyers were the customary commercial channel for sales of this merchandise between the parties involved.

We calculated purchase price based on the packed, delivered, duty paid prices to unrelated customers in the United States. We made deductions from purchase price, where appropriate, for point-to-point freight, U.S. brokerage and handling, point-to-point insurance, U.S. duty, and year-end rebates in accordance with section 772(d)(2) of the Act.

Exporter's Sales Price

Where the brass sheet and strip were imported into the United States by a related importer before being sold to the first unrelated party, we treated such sales as exporter's sales price sales.

To calculate exporter's sales price, we used the packed, delivered or ex-works, duty paid prices of brass sheet and strip to unrelated purchasers in the United Strates. We made deductions for point-to-point freight, point-to-point insurance, U.S. duty, and U.S. brokerage and handling.

We made deductions under § 353.10(e)(2) of our regulations for direct and indirect selling expenses incurred by or for the exporter in selling brass sheet and strip in the United States. Indirect selling expenses were comprised of indirect selling expenses incurred outside the U.S., U.S. indirect selling expenses of the related reseller in the U.S., and inventory carrying costs. U.S. credit was deducted as a direct selling expense. Pursuant to § 353.10(e)(1) of our regulations, we also deducted, where appropriate, commissions paid to unrelated parties. The total of the indirect expenses and commissions formed the cap for the allowable home market indirect selling expenses offset under § 353.15(c) of our regulations.

For exporter's sales price sales involving further manufacturing, pursuant to § 353.10(e)(3) of our regulations, we deducted all value added to the subject merchandise in the United States plus a proportional amount of the profit or loss on the U.S. sale that was attributable to further manufacturing.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on the packed, delivered or ex-works prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and insurance, warranty expenses, quantity discounts, and scrap handling expenses. Where appropriate, we made additions to the home market price for quantity and scrap extras.

In order to adjust for differences in packing between the U.S. and home markets, we deducted the home market packing cost from the foreign market value and added all U.S. packing costs.

We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

Where U.S. price was based on purchase price, we made adjustments under § 353.15 of our regulations for differences in credit expenses in the U.S. and home market. We offset commissions paid on U.S. pruchase price sales with indirect selling expenses in the home market, in accordance with § 353.15(c) of our regulations.

Where U.S. price was based on exporter's sales price, we made a deduction from home market prices for credit expenses in the home market. We also deducted indirect selling expenses in the home market to offset United States selling expenses, in accordance with § 353.15(c) of our regulations.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving exporter's sales price transactions, we used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

We will verify the information used in making our final determination in accordance with section 776(a) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of brass sheet and strip from the Netherlands that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The U.S. Custom Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of brass sheet and strip from the Netherlands exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage (percent)
Metallverken Nederland, B.V.	19.61
All others	19.61

This suspension of liquidation covers imports of brass sheet and strip meeting the definition outlined in the "Scope of Investigation" section of this notice.

LTC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged, and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Acting Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination or 45 days after the final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on March 28, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Acting Assistant Secretary by March 21, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

February 2, 1988.

[FR Doc. 88-2606 Filed 2-5-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-701]

Preliminary Determination of Sales at Less Than Fair Value; Certain Electrical Conductor Aluminum Redraw Rod From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain electrical conductor aluminum redraw rod (redraw rod) from Venezuela is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of redraw rod from Venezuela as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 18, 1988.

EFFECTIVE DATE: February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Jessica Wasserman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2830 or 377-1442.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that redraw rod from Venezuela is being, or is likely to be, sold in the United States at less than fair value, as provided in

section 733 of the Tariff Act of 1930, (the Act) as amended (19 U.S.C. 1673b). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our notice of initiation (52 FR 29449, August 10, 1987), the following events have occurred. On August 28, 1987 the ITC preliminarily determined that there is a reasonable indication that a U.S. industry is materially injured by reason of imports of redraw rod from Venezuela (52 FR 33300, September 2, 1987).

On September 8, 1987, we presented an antidumping duty questionnaire to Suramericana de Aleaciones Laminadas, C.A. (SURAL), which accounts for more than ninety percent of exports of redraw rod from Venezuela to the United States during the period of investigation.

We received responses to this questionnaire on September 30 and October 15, 1987. After reviewing the responses, we sent out a deficiency questionnaire on October 29, 1987 and received a supplemental response on November 18, 1987. An additional deficiency letter was sent on December 9, 1987 and a response was received on December 23, 1987.

On October 22, 1987, petitioner alleged that SURAL's third country sales of redraw rod were being made at prices that were below their cost of production. The allegation concerned third country sales because SURAL stated in its response that no home market sales of redraw rod were made during the period of investigation. On November 18, 1987, we presented a constructed value and cost of production questionnaire to SURAL and received the response on December 22, 1987. We sent out a deficiency questionnaire on January 4, 1988 and received a supplemental response on January 15, 1988.

On November 19, 1987, petitioner requested a postponement of the preliminary determination. On December 1, 1987 in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until February 1, 1988, (52 FR 46386, December 7, 1987).

Standing

On September 7, 1987, we received a letter from respondent challenging the standing of Southwire and requesting dismissal of the petition on the grounds that the petition was not filed "on behalf of" the United States industry as required by section 732(b)(1) of the Act. On September 24, 1987, we received a letter from Alcoa Conductor Products Company (ACPC), a division of the Aluminum Company of America (ALCOA), stating that ACPC does not support the position taken by Southwire in its petition. As we have frequently stated, see e.g., *Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 26, 1987); *Certain Fresh Atlantic Groundish from Canada* (51 FR 10041, March 24, 1986), there is nothing in the statute, its legislative history, or our regulations which requires that petitioners establish affirmatively that they have the support of a majority of their industries. In many cases such a requirement would be so onerous as to preclude access to import relief under the antidumping and countervailing duty laws. Therefore, the Department relies on petitioner's representations that it has, in fact, filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. See e.g., *Certain Textile Mill Products and Apparel from Malaysia*, (50 FR 9852, March 12, 1985); *Live Swine and Fresh Chilled and Frozen Pork Products from Canada* (50 FR 25097, June 17, 1985).

On October 8, 1987, we sent ACPC a questionnaire requesting clarification of whether ACPC, which is not a producer of redraw rod, speaks on behalf of ALCOA, which is a domestic producer of redraw rod. On October 22, 1987, ACPC responded that it speaks on behalf of ALCOA and that ALCOA opposes the investigation. No other industry members have expressed opposition to the petition. In the companion countervailing duty investigation on redraw rod from Venezuela, Reynolds Aluminum, another domestic producer, stated in an August 31 letter to the Department that it takes no position in the pending investigations. We are continuing to examine the standing issue for purposes of our final determination.

Scope of Investigation

The product covered by this investigation is certain electrical conductor aluminum redraw rod, which is electrically conductive and contains not less than 99 percent aluminum by weight, as provided for in the *Tariff Schedules of the United States, Annotated* (*TSUSA*) under item numbers 618.1520 and 618.1540. This product is currently classifiable under the Harmonized System (HS) item numbers 7604.10.30 and 7604.29.30.

Such or Similar Comparisons/Market Viability

For purposes of this preliminary determination, we are treating all redraw rod sold as "such" merchandise, within the meaning of section 771(16)(A) of the Act. We, therefore, did not establish separate categories of "similar" merchandise, pursuant to section 771(16) of the Act. Regardless of the diameter, redraw rod is sold uniformly on the basis of weight. According to the respondent, production costs are not materially affected by the diameter of the redraw rod. Petitioner has not challenged this assertion.

Because there were no sales of redraw rod in the home market during the period of investigation, we examined third country sales in accordance with section 773(a)(1)(B) of the Act. We compared the volume of third country sales to the volume of sales to the United States to determine whether there were sufficient sales of redraw rod in a third country to serve as the basis for calculating foreign market value. We preliminarily determine that there was a sufficient quantity sold in the United Kingdom to form an adequate basis for comparison to redraw rod imported into the United States.

Fair Value Comparisons

To determine whether sales of redraw rod from Venezuela to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. We investigated sales of redraw rod for the period February 1, 1987 through July 31, 1987.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

We calculated purchase price based on the packed, c. & f. or c.i.f. United States port of entry prices to unrelated customers in the United States. We calculated ESP based on packed, delivered or undelivered, prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for ocean freight, U.S. inland freight, marine insurance, handling charges and U.S. import duties, in accordance with section 772(d)(2) of the Act. We also made deductions from ESP, where appropriate, for credit expenses and indirect selling expenses, pursuant to section 772(e) (2) of the Act.

SURAL calculated indirect selling expenses on ESP transactions by allocating the total selling expense of Alnor, Inc. (ALNOR), SURAL's affiliate in the United States, based on an approximation of the value of all goods sold through ALNOR and of redraw rod sold through ALNOR during the period of investigation. We recalculated indirect selling expenses by allocating ALNOR's total expenses based on the actual values of all goods sold through ALNOR and of redraw rod sold through ALNOR during the period of investigation. We divided this amount by the quantity of redraw rod sold through ALNOR during the period of investigation.

Foreign Market Value

Because SURAL had no home market sales during the period of investigation, we used a sale to an unrelated United Kingdom trading company for determining foreign market value in accordance with section 773(a)(1)(B) of the Act. Petitioner alleged that the third country sale was made at less than the cost of production and that constructed value should be used to compute foreign market value.

We calculated cost of production in accordance with section 773(b) of the Act based on respondent's submissions. We made certain adjustments to the cost data when the value reported did not fully reflect the costs incurred by the company. Respondent originally allocated selling and administrative expenses between redraw rod and other products based on the number of orders processed. In our January 4, 1988 deficiency questionnaire we asked respondent to allocate on the basis of the cost of goods sold. Because respondent failed to do this, we took administrative, selling and financial expenses from the financial statement and allocated them based on the cost of goods sold. We also adjusted the selling, general and administrative expenses to include credit expenses. SURAL calculated third country credit based on the short-term commercial lending rate quoted by Lloyds Bank as of the date of sale. We recalculated third country credit on the interest rate at which SURAL discounts bills of exchange through commercial banks in Venezuela.

We compared the third country price to the cost of production. No deductions were made from the third country price for movement charges because no such movement charges were reported in the response. The response states that the terms of sale were fob port of loading, Puerto Ordaz, and that the port is at the plant site where the redraw rod is manufactured. We found that the sale to the United Kingdom by SURAL was not above cost. Therefore, we are using constructed value for foreign market value.

In accordance with section 773(e) of the Act, the constructed value includes material and fabrication costs, general expenses, adjusted in the manner described above in our discussion of "cost of production," and profit. In the absence of home market sales, we used third country selling expenses as best information available for purposes of constructed value. Since general expenses exceeded the statutory minimum of 10 percent of material and fabrication costs, the actual expenses were used. Since profit was less than the statutory minimum, eight percent profit was added. In constructing the value, packing was deducted from material and fabrication costs, and U.S. packing was added to the constructed value.

For comparisons involving purchase price sales, we made adjustments to constructed value for differences in circumstances of sale for credit expenses pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we deducted third country credit expenses from constructed value. For ESP comparisons, we also deducted indirect selling expenses up to the amount of the indirect selling expenses incurred on sales in the U.S. market, in accordance with 19 CFR 353.15(c). SURAL claimed a sales promotion trip to the United Kingdom as a direct selling expense. We disallowed this deduction as a circumstance of sale adjustment because we did not deem the expense to be an advertising expense assumed by SURAL for the sale of the redraw rod by the United Kingdom trading company. However, we allowed the expense as an indirect selling expense. SURAL did not claim an imputed inventory carrying cost as an indirect selling expense on the third country sale. Therefore, for purposes of this preliminary determination, we have not included an imputed inventory carrying cost on the third country sale as an indirect selling expense for purposes of calculating foreign market value.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. Normally, all currency conversions are made at the rates certified by the Federal Reserve Bank. However, no certified rates were available for Venezuela. Therefore, in place of the official certified rates, we used the exchange rate provided by the International Monetary Fund as the best information available.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of redraw rod from Venezuela that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of redraw rod from Venezuela exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage (percent)
SURAL	6.46
All Others	6.46

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing

at 10:00 a.m. on March 16, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by March 9, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

February 1, 1988.

[FR Doc. 88-2605 Filed 2-5-88; 8:45 am]

BILLING CODE 3510-DS-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on February 25, 1988, 2:00 p.m. at the Lowe's L'Enfant Plaza Hotel, Degas Room, Washington, DC.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician, and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of the Minutes
  A. Approval of Draft Resolution
  B. Annual Report 1987
III. Old Business
  A. Update on Visa Waiver
  B. Review of International Marketing Conference
  C. World Soccer Cup 1994
  D. World's Fairs
  E. USTTA Budget
IV. New Business
  A. Introduction of USTTA International Staff
  B. Cooperative Campaigns
  C. South American Market
  D. Pacific Initiatives
  E. European Initiatives
VI. Miscellaneous
  A. Establish next meeting date
VII. Adjournment

A very limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 88-2546 Filed 2-5-88; 8:45 am]

BILLING CODE 3510-11-M

DEPARTMENT OF DEFENSE

Department of the Army

National Board for the Promotion of Rifle Practice; Executive Committee; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of committee: National Board for the Promotion of Rifle Practice Executive Committee.

Date of meeting: March 7, 1988.

Place: Embassy Suites, 1300 Jefferson Davis Highway, Crystal City, VA 22202.

Time: 9:30 a.m.-4:30 p.m.

Proposed Agenda

1. **Federal Register** Notice of the Meeting.
2. Roll Call.
3. Address complaints from Camp Perry 1987.
4. Address recommended changes for Camp Perry 1988.
5. Review changes incorporated in new drafts of AR 920-20 and AR 920-30.
6. Review Minutes of and recommendations made at the December 1987 National Board for the Promotion of Rifle Practice Meeting.

This meeting is open to the public.

Persons desiring to attend the meeting should contact Ms. Rita Cooper at (202) 272-0810 prior to 22 February 1988 to arrange admission.

M.S. Gilchrist,

Colonel, Armor Executive Officer, NBPRP.

[FR Doc. 88-2592 Filed 2-5-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87-68-LNG]

Yukon Pacific Corp.; Application To Export Liquefied Natural Gas

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application to Export Liquefied Natural Gas to Japan, South Korea, and Taiwan.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 3, 1987, of an application filed by Yukon Pacific Corporation (Yukon Pacific) to export liquefied natural gas (LNG) from Alaska to the Pacific Rim countries of Japan, South Korea, and Taiwan. Yukon Pacific is proposing to build and operate an intrastate natural gas pipeline known as the Trans-Alaska Gas System (TAGS) to transport gas from the North Slope of Alaska at Prudhoe Bay to Valdez on Alaska's southern coast where it would be liquefied and transported by ship to those Pacific Rim countries. Construction of the pipeline, LNG plant, and marine terminal would require five years. When the TAGS facilities are fully operational, 14 million metric tons of LNG per year (660 billion cubic feet (Fcf) regasified or 730 trillion Btu's) could be exported.

Authorization is requested for a term of 25 years commencing on the date of the first delivery, which is estimated to be in 1996.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act (NGA) and DOE Delegation Order. No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than March 9, 1988.

FOR FURTHER INFORMATION:

P.J. Fleming, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4819

Ben McRae, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., (202) 586–6667

SUPPLEMENTARY INFORMATION:

Project Description

Yukon Pacific has applied for approval under section 3 of the NGA to export natural gas from the North Slope of Alaska to the Pacific Rim countries of Japan, South Korea, and Taiwan by means of the TAGS project. Specifically, Yukon Pacific proposes to export up to 14 million tons (660 Bcf) of natural gas annually for a period of 25 years commencing on the date of the first delivery, which is estimated to be in 1996.

Yukon Pacific states the TAGS project would include the construction of a intrastate, 796.5-mile, 36-inch outside diameter, buried, and chilled natural gas pipeline, originating at Prudhoe Bay, Alalska, and terminating at a tidewater site on Port Valdez, Anderson Bay, Alaska. The pipeline would transport up to 2.3 Bcf of natural gas per day. In addition to the pipeline, the TAGS project would include (1) an LNG plant designed to remove any impurities from incoming gas, and to reduce the temperature of such gas to –259 degrees Fahrenheit, thereby condensing it to a liquid state for storage and shipping; (2) four LNG storage tanks, each with an individual capacity of 800,000 barrels (bbls); (3) a marine terminal designed to berth and load two LNG tankers; and (4) 15 LNG ocean transport vessels having individual cargo capacities of a nominal 125,000 cubic meters. Yukon Pacific indicates natural gas production wells and gathering systems are already in place to produce and gather the gas to be exported from the North Slope reservoirs.

Public Interest Considerations

In support of its application, Yukon Pacific states there is no present or future domestic need for natural gas from the North Slope of Alaska. Yukon Pacific indicates there currently exists a substantial natural gas supply surplus in the United States that will continue into the next century. Yukon Pacific prepared and submitted a study that concludes that adequate supplies exist in the Lower-48 states, Canada, and Mexico to meet economically U.S. demand for natural gas in the foreseeable future without the need for the Alaskan gas proposed to be exported. This study also concludes that Alaska's reserves are sufficient to support both the TAGS project and the Alaskan Natural Gas Transportation System (ANGTS) project, a project sponsored by a partnership of other private firms to deliver North Slope gas by means of a pipeline across Alaska and Canada to the Lower-48 states that received Presidential and Congressional approval in 1977. In addition, Yukon Pacific questions whether gas from Alaska should be considered a potential source to meet domestic need because it may not be economically feasible to supply Alaskan natural gas to the Lower-48 states in the event a domestic supply shortage emerged. With respect to need for the gas in Alaska, Yukon Pacific asserts that all of the State's requirements can be satisfied by the available reserves in the Cook Inlet Basin area of Alaska.

Yukon Pacific maintains that the export of natural gas from the North Slope of Alaska to the Pacific Rim countries would be consistent with the public interest. First, Yukon Pacific indicates that exports of natural gas from Alaska would yield significant international relations and national security benefits, including: (1) Reduction in the U.S. trade balance deficit; (2) strengthening of our trade and political alliances with Pacific Rim countries; (3) promotion of international energy stability by decreasing reliance on politically unstable regimes; (4) reduction of the potential for reliance by our allies on the Soviet Union for natural gas; and (5) maintainance of Canada as a supplier of natural gas to our domestic market.

Yukon Pacific also indicates that the TAGS project will benefit the State of Alaska by assisting in the development of its natural resources, introducing new industry into the State, providing new jobs, and creating an expanded tax base.

Yukon Pacific states that the TAGS project will benefit the National economy by encouraging development and discovery of new energy sources and by providing business opportunities associated with the construction and operation of the TAGS project.

In addition, Yukon Pacific states that authorization of the TAGS project will inject an element of competition into the development of North Slope natural gas reserves which should prove healthy to both United States and Canadian entities seeking to bring natural gas to their respective domestic markets.

Finally, Yukon Pacific indicates that the TAGS project will not be detrimental to the interest of American consumers because the risks and costs associated with the completion and operation of the TAGS project, including the marketing of the gas, will be borne by the project's private sponsors, their lenders and investors, and the foreign purchasers of the gas.

Supply Sources

Yukon Pacific indicates that it has entered into discussions with certain North Slope producers and the State of Alaska for the purchase and commitment of sufficient natural gas reserves to supply the long-term export contemplated by its application. Yukon Pacific states that it is assessing its options for the purchase of proven and current production from Endicott, Kuparuk, Lisburne, Milne Point, Prudhoe Bay, and Thompson/Flaxman Island North Slope production fields. These fields represent proven and producible reserves of approximately 36.6 trillion cubic feet (Tcf). Yukon Pacific anticipates that undefined or nonproducing fields in the North Slope will be developed and exploited by North Slope producers once the TAGS pipeline facilities have been constructed. These undefined or nonproducing fields include Beechy Point, Coleville Delta, East Umiate, Gwyder Bay, Havard, Hemi-Springs, Kaktovik, Kavik, Niakuk, North Star, Reservoir, Seal, Tern, Umiat, and West Sak. Yukon Pacific states that this supply may also be utilized to serve the market and needs of ANGTS should that project ever be completed.

Yukon Pacific states that its supply procurement efforts will focus primarily on purchasing natural gas produced from the Prudhoe Bay oil field and, in particular, the gas cap from Prudhoe Bay's main oil producing formation—the Sadlerochit formation. Consideration will be given to any surplus gas from the Kuparuk field and the Endicott field as will as natural gas from Thompson/Flaxman Island.

Since Yukon Pacific has not yet procured gas reserves to support the export contemplated by this application, it has not submitted any contracts. Yukon Pacific indicates that it will submit to the ERA all agreements with the North Slope producers when they are signed and before initiating the proposed exports. The application indicates that the contract terms with each producer would be established through arms-length negotiation and would be flexible over the term of the agreement to take into account changes in market conditions. The purchase price to be paid producers would be determined by a formula using a base price per MMBtu adjusted for variations in the LNG sales price at the point of destination, but would not exceed the ceiling price established by Section 109 of the Natural Gas Policy Act of 1978.

In connection with discussions of the availability of North Slope reserves to the TAGS project, Yukon Pacific states that there is no law that explicitly prohibits the export of North Slope natural gas. Yukon Pacific notes that Section 12 of the Alaska Natural Gas Transportation Act (ANGTA) provides that exports of North Slope gas subject to the NGA and the Energy Policy Conservation Act, as well as to the requirements contained in Section 12 itself. Since each of these statutes makes provision for exports of North Slope natural gas, Yukon Pacific concludes that, so long as these statutes are satisfied, North Slope natural gas may be exported. Yukon Pacific also indicates that no North Slope natural gas reserves have been "dedicated" to interstate commerce under the provisions of Section 7 of the NGA.

Export Markets

Yukon Pacific states that the TAGS project would sell natural gas to purchasers in Japan, South Korea, and Taiwan. In support of its application, Yukon Pacific provided a June 1987 preliminary feasibility study for the TAGS project that indicates Japan and Korea will require an increasingly supply of LNG to meet growing energy requirements and that LNG from Alaska can be competitive in those markets. The study determined that Taiwan could provide a spot rather than a base-load market. Yukon Pacific states that it has entered into discussions with various parties in Japan, South Korea, and Taiwan interested in importing LNG, but that ERA export approval is required before it can obtain firm commitments from potential buyers. Yukon Pacific states that it will submit to the ERA all agreements with the Asian purchasers when they are signed and before initiating the proposed exports.

Yukon Pacific indicates that contracts with foreign purchasers would be achieved through arms-length negotiations and their provisons would be responsive to international gas market conditions. The arrangements would be for 25 years to coincide with the requested export authorization term. As presently contemplated, the delivered price of LNG sold under the proposed authorization would start with a base price per MMBtu and would vary each month according to a formula based upon changes in the average selling prices of selected major crude oils.

ERA Evaluation

This export application will be reviewed pursuant to Section 3 of the NGA and the authority contained in DOE Delegation Order No. 0204–111. The decision on whether the export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is otherwise consistent with the public interest, including the national energy policy of promoting the efficient development of our natural gas resources through the efforts of private parties in the energy marketplace. In this regard, the ERA notes the *Presidential Finding Concerning Alaska Natural Gas* issued on January 12, 1988 (53 FR 999, January 15, 1988). This finding states that "exports of Alaska natural gas would represent a judgement by the market that the energy demands of American consumers can be met adequately from other sources at comparable or lower prices." The finding concludes that such exports would not "diminish the total quantity or quality of energy available to U.S. consumers because world energy resources would be increased and other more efficient supplies would thus be available." In addition, they "would not increase the price of energy available to consumers since increased availability of secure energy sources tends to stabilize or lower energy prices." The finding also sets forth a policy of letting "the marketplace undertake a realistic consideration of various options concerning Alaska nataural gas."

Yukon Pacific asserts that the gas is not needed domestically and the export is otherwise consistent with the public interest. The application contains numerous statements to support these assertions. Parties that oppose approval of the export should comment on the conclusions of the Presidential Finding and the specific statements of the applicant. Opponents will bear the burden of demonstrating that the proposed export is not consistent with the public interest. Any party that seeks consideration of the economic feasibility of the TAGS project must demonstrate the relevance of such consideration to a public interest determination. The ERA will presume that the economic feasiblility of the TAGS project is not relevant to the extent that American consumers do not bear any of the economic risks associated with the project.

Yukon Pacific states that it is unrealistic to expect it to secure firm commitments from producers and consumers prior to the receipt of the requisite export approval from the ERA. Yukon Pacific indicates that requiring firm commitments before export approval would put the "cart before the horse" and unnecessarily delay or prevent the TAGS project. The ERA recognizes the unique aspects of producing and marketing natural gas from the North Slope of Alaska and may determine that firm commitments are not a prerequisite to its decision on this case under section 3 of the NGA.

The National Environmental Policy Act of 1969 (NEPA) requires the ERA to consider the environmental effects of gas export authorizations. In 1984 Yukon Pacific applied to the Bureau of Land Management of the Department of the Interior (BLM) and the U.S. Army Corps of Engineers (Corps) for a right-of-way to build the pipeline component of the TAGS project across Federal lands. In connection with the right-of-way application, the BLM and the Corps determined that under NEPA an environmental impact statement (EIS) for the proposed TAGS project should be prepared and jointly published a draft EIS in September 1987 (52 FR 34424, September 11, 1987) which addresses the environmental consequences of the TAGS project, including the potential environmental consequences on the Lower-48 states of exporting natural gas from the North Slope of Alaska.The DOE is a cooperating agency and assisted in the preparation and review of that draft EIS. The ERA will not issue a final decision to Yukon Pacific in this proceeding until it has reviewed the final EIS and the DOE has met its obligations under NEPA.

Yukon Pacific requested expeditious consideration of its application so that it can secure firm commitments for prospective Pacific Rim purchasers and avoid possible forfeit of "an $80 billion LNG market to Indonesian and other competing foreign suppliers." The ERA will attempt to comply with this request.

A decision on whether additional written comments or other procedures are needed in this case, however, will be made when all responses to this notice have been received and evaluated.

Yukon Pacific also filed on December 3, 1987, an application at the Federal Energy Regulatory Commission (FERC) for permission to use Port Valdez as the place of export (FERC Docket No. CP88–105–000).

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.s.t., March 9, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decison and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Yukon Pacific's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 1, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Economic Regulatory Administration.

[FR Doc. 88–2565 Filed 2–5–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES85–18–001 et al.]

Department of Energy et al., Bonneville Power Administration; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. U.S. Department of Energy, Bonneville Power Administration

[Docket No. EL85–18–001]

January 28, 1988.

Take notice that on January 13, 1988, Bonneville Power Administration (BPA) tendered for filing a compliance filing pursuant to the Commission's Order of March 17, 1986 directing the BPA to file its Pacific Northwest Coordination Agreement (PNCA) charges and "elaborate on its view of the interrelationship between the PNCA and the Northwest Power Act requirements as pertinent to the criteria for Commission review." BPA states that it has submitted in this compliance report the following items:

1. A brief factual background regarding the pertinent provisions of the Pacific Northwest Coordination Agreement (PNCA) and the proceeding in Docket No. EL85–18–000 docket, which resulted in settlement.

2. An explanation of the relationship between the PNCA and the Northwest Power Act with respect to the Commission's criteria for review.

3. A request for waiver of the Commissions' notice requirements and approval of PNCA charges for a period effective July 1, 1986, until a PNCA party requests Commission approval of revised charges pursuant to the PNCA.

Comment data: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Montana Power Company

[Docket No. ER88–215–000]

February 1, 1988.

Take notice that on January 25, 1988, Montana Power Company (MPC) tendered for filing pursuant to Section 205 of the Federal Power Act an agreement dated November 30, 1987 (as amended) for a seasonal capacity exchange with the Utah Power & Light Company during the period from November 16, 1987 through September 4, 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.

A Certificate of Concurrence has been filed by Utah Power & Light Company in lieu of the filing of the rate schedule specified.

Comment date: February 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER88–217–000]

February 1, 1988.

Take notice that on January 26, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing, as a change in rate schedule, an Agreement Between Pacific Gas and Electric Company and the City and Country of San Francisco (Agreement), covering rates, terms, and conditions for services rendered by PG&E pursuant to the Agreement.

Prior to April 1, 1988, PG&E served the City and County of San Francisco (CCSF) with part of the capacity and energy necessary to meet CCSF's loads as well as transmission and distribution service to CCSF's loads (CCSF also operates the Hetch Hetchy hydroelectric project to meet its loads). Part of the capacity and energy necessary to serve CCSF's loads, including Modesto Irrrigation District (MID) and Turlock Irrigation District (TID), was provided by PG&E through a Contract

Amendment to Rate Schedule No. 53 which expires March 31, 1987. Since the agreement was to expire, CCSF and PG&E have developed the Agreement to take the place of the previous agreement.

Under the Agreement, PG&E sells firm Supplemental Power plus Capacity Reserves as well as providing the capacity and energy necessary in dry years and at other times when Hetch Hetchy is not fully available. If surplus Hetch Hetchy power exists in some wet years, PG&E allows CCSF to serve certain PG&E customers. In addition, PG&E provides transmission and distribution service to CCFS's loads.

Pursuant to the Agreement, PG&E will provide the following services under rates set or to be set in accordance with the terms of the following schedules:

Supplemental Power, Rate Schedule A
Maintenance Power and Emergency Power, Rate Schedule B
Firm Transmission and Distribution Service for Municipal Loads and Airport Tenants, Rate Schedule C
Other Firm Transmission and Distribution Service, Rate Schedule D
Interruptible Transmission Service, Rate Schedule E
Capacity Reserves, Rate Schedule F
Spinning Reserves, Rate Schedule G
Scheduling Services, Rate Schedule H
Regulation Service, Rate Schedule I
Reactive Power and Voltage Control Service, Rate Schedule J.

In addition, the following is covered by the Agreement: Rate Procedures for Diablo Canyon, Rate Adjustments and Fuel Cost Adjustment.

PG&E and CCSF have agreed to an effective date of April 1, 1988.

Comment date: February 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER88-216-000]

February 1, 1988.

Take notice that on January 25, 1988, Southern California Edison Company (Edison) tendered for filing a letter agreement which amends the Edison-Vernon CDWR Firm Transmission Service Agreement designated Rate Schedule FERC No. 195, which has been executed by Edison and the City of Vernon, California (Vernon).

The letter agreement provides for the continuation of firm transmission service for Vernon's purchases of up to 27 MW of capacity and associated energy from the California Department of Water and Power (CDWR) during January and February 1988 or until Vernon's gas turbines are operational, whichever is earlier.

Edison requests and Vernon supports waiver of prior notice requirements as contained in Section 35.3 of the Commission's regulations and respectfully requests an effective date of January 1, 1988.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon, California.

Comment date: February 16, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Tucson Electric Power Company

[Docket No. ER88-214-000]

February 1, 1988.

Take notice that on January 25, 1988, Tucson Electric Power Company (Tucson) tendered for filing Amendment Number 1 to a Short-term Energy Sale and Purchase Agreement (Agreement) between Tucson and Southern California Edison Company. The primary purpose of Amendment Number 1 is to extend the term of the Agreement from December 31, 1987 to January 31, 1988.

Tucson requests an effective date of November 10, 1987, and therefore requests waiver of the Commission's notice requirements.

Tucson states that copies of the filing were served upon Edison.

Comment date: February 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2543 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-185-000 et al.]

Algonquin Gas Transmission Co. et al.; Natural Gas Certificate Filings

February 2, 1988.

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Company

[Docket No. CP88-185-000]

Take notice that on January 15, 1988, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road Boston, Massachusetts 02135, filed in Docket No. CP88-185-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing Algonquin to render a 74,220 MMBtu per day (MMBtu/d), net of fuel, firm transportation service for seven of its existing resale customers, and to construct and operate the necessary facilities to provide this service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin explains that it will provide the firm transportation service for a primary term or ten years under proposed Rate Schedule FTP to Boston Gas Company, Central Hudson Gas & Electric Corporation, The Connecticut Light and Power Company, Connecticut Natural Gas Corporation, Fall River Gas Company, Town of Middleborough, Massachusetts, and The Southern Connecticut Gas Company (collectively referred to as the Algonquin Shippers). Algonquin states that the proposed Rate Schedule FTP is designed to provide transportation for gas supplies purchased by the Algonquin Shippers from PennEast Gas Sevices Company (PennEast), and from other third party suppliers. Algonquin contemplates commencing the firm transportation on or about November 1, 1989.

To accomplish the firm transportation service for the Algonquin Shippers, Algonquin proposes at an estimated cost of $51,640,600 to: (1) Construct and operate 1.5 miles of 24-inch pipeline from Medford to Malden, Massachusetts; (2) retest and refabricate 10.2 miles of the existing J-System pipline from Waltham to Medford, Massachusetts; (3) add 12,600 horsepower in new compression each at Mansfield, Connecticut, Stony Point and Southeast, New York; and (4) construct two new meter stations at Bristol, Connecticut and Malden, Massachusetts. It is indicated that the proposed facilities would be initially financed with funds on hand, funds

generated internally, and borrowings under revolving credit agreements or shortterm financing which would be rolled-in to permanent financing.

It is noted that Algonquin filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment Date: February 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Algonquin Gas Transmission Company

[Docket No. CP88–186–000]

Take notice that on January 15, 1988, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP88–186–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing Algonquin to construct and operate the necessary facilities to provide firm transportation services proposed in Algonquin's applications filed in Docket Nos. CP88–187–000 and CP88–188–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In Docket Nos. CP88–187–000 and CP88–188–000, Algonquin proposes to provide firm transportation services for Northeast Energy Associates (Northeast) and Tellus Cogeneration Associates (Tellus), respectively, by November 1, 1989. To accomplish this firm transportation service for Northeast and Tellus, Algonquin proposes herein at total cost of $87,000,000 to: (1) Construct and operate 36.2 miles of various size pipeline loop from Sommers to Southeast, New York; from Ramapo to Stony Point, New York; from Southbury to Oxford, Connecticut; from Medway to Sherborn Massachusetts; from Avon to Brockton, Massachusetts; and near Norwich, Connecticut; (2) add 18,100 horsepower in new compression at Hanover, New Jersey, and Oxford, Connecticut; and (3) construct a new meter station at Bellingham, Massachusetts. It is indicated that the proposed facilities would be initially financed with funds on hand, funds generated internally, and borrowings under revolving credit agreements or shortterm financing which would be rolled-in to permanent financing.

It is noted that Algonquin filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment Date: February 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Algonquin Gas Transmission Company

[Docket No. CP88–188–000]

Take notice that on January 15, 1988, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road Boston, Massachusetts 02135, filed in Docket No. CP88–188–000 an application pursuant to section 7(c) of the Natural Gas Act for a Certificate of Public Convenience and Necessity authorizing Applicant to provide a firm transportation service to Tellus Cogeneration Company, Inc., (Tellus), acting on behalf of Mid-Hudson Cogeneration Limited Partnership and Oxford Cogeneration Associates Limited Partnership, as described more fully in the application which is on file with the Commission and open to public inspection. Such service will be performed under Rate Schedules X–36 and X–37, respectively, to be contained in Applicant's FERC Gas Tariff Original Volume Number 2. Applicant proposes to recover the costs related to the service through a monthly demand charge of $12.008 MMBtu of Contract Demand. To effectuate the firm transportation service for Tellus Applicant is proposing in a concurrent application in Docket No. CP88–192–000 to construct and operate certain pipelines and appurtenant facilities, as more fully described therein.

Applicant states that the proposed service would involve receipt, firm transportation and delivery of up to 45,000 MMBtu of natural gas per day. It is stated that such transportation service would be available for a primary term of twenty year, starting upon the commencement date which is contemplated to be November 1, 1989. The gas would be received from Penn East Gas Services Company, a subsidiary of Texas Eastern Gateway, Inc. and CNG Transmission Corporation, at an existing interconnection located in Lambertville, New Jersey transported through the Applicant's system and redelivered at (1) Applicant's existing Mendon, Massachusetts interconnection point with Tennessee Gas Pipeline Company for the Oxford Plant and (2) Applicant's existing Somers New York point of delivery to Central Hudson Electric & Gas Corporation for the Mid-Hudson plant, it is further stated.

It is noted that the Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP–87–451–000, concerning project to supply natural gas to the Northeast U.S.

Comment Date: February 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Algonquin Gas Transmission Company

[Docket No. CP88–192–000]

Take notice that on January 15, 1988, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston Massachusetts 02135, filed in Docket No. CP88–192–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Algonquin to (1) render a firm transportation service of up to 75,198 MMBtu equivalent of natural gas per day to seven companies which are purchasing service from PennEast Gas Services Company (PennEast) and other third party suppliers; (2) render a firm transportation service of up to 100,000 MMBtu equivalent per day to New England Power Company and up to 352,000 MMBtu equivalent per day to the shippers proposed to be served by Iroquois Gas Transmission System (Iroquois) in the application pending in Docket No. CP86–523, *et al.*; (3) render a firm transportation service of up to 59,777 MMBtu equivalent per day to Northeast Energy Associates (Northeast Energy); (4) render a firm transportation service of up to 30,395 MMBtu equivalent per day for Mid-Hudson Cogeneration Limited Partnership (Mid-Hudson); (5) render a firm transportation service of up to 15,198 MMBtu equivalent per day for Oxford Cogeneration Associates Limited Partnership (Oxford); and (6) construct and operate certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, Algonquin proposes to render transportation services totalling 655,668 MMBtu per day, including over 22,000 MMBtu per day of uncommitteed service. The following table shows the customers which Algonquin proposes to serve.

Customer	Transportation volume
PennEast CDS Shippers:	
Boston Gas Co	29,050
Central Hudson Gas & Electric Corp	4,980
The Connecticut Light and Power Co	2,075
Connecticut Natural Gas Corp	20,749
Fall River Gas Co	415
Town of Middleborough, MA	332
The Southern Connecticut Gas Co	16,601
Total	75,198
Iroquois Shippers:	
Brooklyn Union Gas Co	70,000
The Connecticut Light and Power Co	50,000
Connecticut Natural Gas Corp	50,000
New Jersey Natural Gas Co	40,000
The Southern Connecticut Gas Co	35,000
Long Island Lighting Co	35,000
Public Service Electric and Gas Co	20,000
Consolidated Edison Co. of New York	20,000
New York State Electric & Gas Corp	17,000
Central Hudson Gas & Electric Corp	10,000
Elizabethtown Gas Co	5,000
Total	352,000
New England Power	100,000
Northeast Energy Associates	59,777
Mid-Hudson Cogeneration Limited	30,395
Oxford Cogeneration Associated Limited	15,198

Algonquin proposes to transport for the PennEast CDS Shippers, which companies are purchasing service from PennEast and other third party suppliers, though its existing system expanded by pipeline loop pursuant to proposed Rate Schedule FTP to be filed as part of Algonquin's FERC Gas Tariff Second Revised Volume No. 1.

It is stated that the transportation service for the Iroquois shippers and New England Power would be through Algonquin's existing system and through exentions to its system to be constructed from Mendon, Massachusetts to Deerfield, Massachusetts, from Southbury, Connecticut to South Commack, Long Island, New York, and from Algonquin's existing G System to Brayton Point in Somerset, Massachusetts. It is stated that the transportation service would be rendered pursuant to proposed Rate Schedule AFTN.

Algonquin further states that the transportation service (1) for Northeast Energy Associates from Lambertville, New Jersey to Bellingham, Massachusetts would be pursuant to Rate Schedule X–35; (2) for Mid-Hudson from Lambertville, New Jersey to Somers, New York would be pursuant to Rate Schedule X–36; and (3) for Oxford from Lambertville, New Jersey to Mendon, Massachusetts would be pursuant to Rate Schedule X–37.

Algonquin states that it contemplates commencement of the firm transportation service for which authorization is requested on or about November 1, 1989.

Algonquin requests authorization to construct and operate certain facilities to render such service, including: (1) 81 miles of 30-inch pipeline from a new point of interconnection between Algonquin and a new pipeline to be constructed by Greater Northeast Pipeline Corp. located at or near Deerfield, Massachusetts, to existing facilities at the beginning of Algonquin's G System located near Mendon, Massachusetts; (2) 60.3 miles of 24-inch pipeline from Algonquin's mainline located near Southbury, Connecticut to a terminus point near South Commack, New York; (3) 11.0 miles of 20-inch pipeline from Dighton, Massachusetts to Somerset, Massachusetts; (4) 1.5 miles of 24-inch pipeline from a point on Algonquin's existing system in Medford, Massachusetts to Malden, Massachusetts; (5) a 12,600 horsepower compressor to be installed at the existing Stony Point, New York compressor station; (6) a 12,600 horsepower compressor to be installed at the existing Southeast, New York compressor station; (7) a 5,500 horsepower compressor to be installed at the existing Hanover, New Jersey compressor station; and (8) several meter stations and appurtenant facilities. It is stated that the estimated cost of such facilities is $306,419,000.

It is noted that Algonquin filed this application in response to, and within the time-frame of, the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Algonquin Gas Transmission Company

[Docket No. CP88–189–000]

Take notice that on January 15, 1987, Algonquin Gas Transmission Company (Algonquin), a Delaware corporation with its principal place of business in Boston, Massachusetts, filed pursuant to Section 7(c) of the Natural Gas Act and the rules and regualtions of the Federal Energy Regulatory Commission (Commission), an application for a certificate of public convenience and necessity authorizing Algonquin to (1) render a firm transportation service pursuant to proposed Rate Schedule AFT-PE to be filed as part of Algonquin's FERC Gas Tariff Second Revised Volume No. 1 and (2) construct and operate certain required facilities. Such service will be provided by Algonquin to PennEast Gas Services Company (PennEast), a general partnership organized by CNG Transmission Corporation and Texas Eastern Gateway, Inc. (an affiliate of Texas Eastern Transmission Corporation). Rate Schedule AFT-PE service is designed to provide transportation for PennEast, and Algonquin proposes to deliver up to

164,868 MMBTU of gas per day for PennEast, on behalf of others. Algonquin states that PennEast and Algonquin have signed a Letter of Intent wherein the parties agree to enter into a Precedent Agreement which contemplates long-term firm transportation service under Rate Schedule AFT-PE.

To render such service, Algonquin proposes to construct and operate certain facilities including 6.0 miles of 36-inch pipeline from Wanaque, New Jersey, to Montvale, New Jersey, 6.4 miles of 36-inch pipeline from Mahwah, New Jersey, to Suffern, New York, 10.6 miles of 36-inch pipeline from Southington, Connecticut to Cromwell, Connecticut, and 21.7 miles of 36-inch pipeline from Glastonbury, Connecticut to Mansfield, Connecticut. Algonquin's proposal would also include installation of a 12,600 horsepower compressor station near Wanaque, New Jersey, construction of meter stations at Rocky Hill and Southbury, Connecticut, and Southeast, New York and other miscellaneous system modifications. The estimated cost of such facilities is $113,000,000. Algonquin's proposal is described more fully in its application which is on file with the Commission and open to public inspection.

It is noted that Algonquin filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Greater Northeast Pipeline Corp.

[Docket No. CP88–190–000]

Take notice that on January 15, 1988, Greater Northeast Pipeline Corp. (Greater Northeast), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP88–190–000 an applicaiton pursuant to Executive Order Nos. 10485 and 12038 for a permit authorizing the construction, operation, maintenance, and connection of pipeline facilities on the international boundary between the United States and Canada at or near Waddington, New York, all as more fully set for in the applicaton which is on file with the Commission and open to public inspection.

Greater Northeast proposes to construct a 30-inch pipeline which would interconnect with the facilities of TransCanada PipeLines Limited (TransCanada) on the U.S. side of the St. Lawrence River near Waddington, New York. It is stated that, under Greater Northeast's proposal to the Commission, TransCanada would construct a pipeline across the international border to interconnect with Greater Northeast's proposed facilities on the U.S. side of the St. Lawrence River.

It is stated that, concurrently herewith, Greater Northeast has filed an application in Docket No. CP88–191–000 for authorization to construct and operate 274 miles of 30-inch mainline from a point of interconnection with the facilities of the TransCanada in the vicinity of the international border near Waddington, New York through New York and Massachusetts to a point of interconnection with Algonquin Gas Transmission Company (Algonquin) located near Deerfield, MA. It is further stated that Greater Northeast seeks authorization in that application to transport Canadian and domestic natural gas supplies for certain shippers through its proposed facilities.

It is noted that Greater Northeast filed this application in response to, and within the time-frame of, the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. National Fuel Gas Supply Corporation, Penn-York Energy Corporation

[Docket No. CP88–194–000]

Take notice that on January 15, 1988, National Fuel Gas Supply Corporation (National) and Penn-York Energy Corporation (Penn-York) filed in Docket No. CP88–194–000 a joint application, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity and related abandonment authorization, all as more fully set forth in the application on file with the Commission and open for public inspection.

Specifically, National seeks a certificate of public convenience and necessity authorizing National to transport on behalf of Transcontinental Gas Pipe Line Corporation (Transco) on a firm basis, up to 125,000 Mcf of natural gas per day which will be exported from Canada into the U.S. at the Niagara River border crossing. It is stated that the gas would be purchased in Canada by designated customers on the Transco system. National states that it would receive the gas from Tennessee Gas Pipeline Corporation (Tennessee) at their future interconnection at Lewiston, New York, and would deliver this gas at a point of interconnection between National's proposed new facilities and Transco's facilities at its Leidy storage field located in Pennsylvania. National would also deliver this gas to its interconnection with Penn-York at Ellisburg, Pennsylvania for storage injection.

National states that the above mentioned service would be performed pursuant to a separately exceuted Gas Transportation Agreement, dated November 30, 1987, with a term of fifteen years. National states that it would charge Transco the following initial rates: D1 monthly reservation of $1.4847, D2 monthly reservation of $0.0519, a commodity charge of $0.0815, and, at 100% load factor, a unit transportation charge of $0.1822 per Mcf for the entire haul from Niagara to Leidy.

In addition, National seeks authorization to construct and operate specific facilities to render the proposed firm transporation service. Specifically, National requests authorization to construct the following facilities, estimated to cost $46.5 million:

(a) Approximately 40 miles of new 24" pipeline between National's existing compressor station at Ellisburg in Potter County, Pennsylvania and Transco's pipeline at or near its Leidy Storage Field in Clinton County, Pennsylvania;

(b) 8,400 horsepower of compression at National's existing meter and regulator station at Gunnville, New York;

(c) 8,100 horsepower of compression at a new compressor station at East Eden, New York;

(d) New metering facilities at National's existing compressor station at Ellisburg, Pennsylvania; and

(e) Minor pipeline upgrading in Erie County, New York.

Penn-York requests a certificate of public convenience and necessity to provide an additional 11 Bcf of top gas storage service for Transco. Penn-York states that this storage service would be performed pursuant to Penn-York's Rate Schedule SS–1 and an Underground Storage Service Agreement dated November 30, 1987. Penn-York states that the maximum daily injection and withdrawal of volumes would vary depending on the percentage of Transco's 11 Bcf of annual storage volume occupied on the day gas is injected or withdrawn.

Penn-York further states that capacity for 1,891,257 Mcf of the above mentioned storage service would be provided by Penn-York from its existing storage fields and contractual entitlements. To provide this capacity, Penn-York seeks abandonment authorization to reduce the annual storage volume applicable to five of its existing storage customers, at their request. Penn-York proposes the following reductions:

Customer	Proposed reduction (Mcf)
Connecticut Natural	300,000
Delmarva	305,102
Penn Fuel Gas	711,165
Pennsylvania & Southern	71,275
U.G.I.	503,715
Total	1,891,257

In addition, National requests authority to provide Penn-York with additional storage service from National's existing storage facilities. National states that this service would allow Penn-York to render increased storage service to Transco. National proposes to provide top gas storage volumes of up to 9,108,743 Mcf, at a rate of $0.7634 per Mcf.

Finally, National requests certificate authority to provide firm transportation of up to 100,000 Mcf per day of storage injection and withdrawal volumes for Transco between the existing interconnection of National and Penn-York at Ellisburg, Pennsylvania and the new interconnection between National and the Leidy storage facilities of Transco. National states that it would charge Transco a one-part monthly demand rate of $1.8944 per Mcf of contract demand for this storage transportation service. National further states that this transportation is in conjunction with the storage service proposed by Transco for Penn-York.

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

8. PennEast Gas Service Company, CNG Transmission Corporation, Texas Eastern Transmission Corporation

[Docket No. CP88–182–000]

Take notice that on January 15, 1988, PennEast Gas Service Company (PennEast), a general partnership, P.O. Box 2521, Houston, TX 77252, CNG Transmission Corporation (CNG Transmission), 445 West Main Street, Clarksburg, WV 23601, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, TX 77525, filed a joint application in abbreviated form for certificates of public convenience and necessity, puruant to section 7(c) of the Natural Gas Act. Applicants seek authorization for: (1) PennEast to render alternative long-term firm transportation service under a new Rate Schedule T–5 and interruptible service pursuant to Rate Schedule T–2 for the proposed local distribution company customers of the Iroquois Gas Transmission System application, currently pending before the Commission in Docket Nos. CP86–344–000 et al., and to construct and operate related pipeline, compression, and metering facilities to be known as the St. Lawrence System; (2) CNG Transmission to render related gas compression and metering services for PennEast in support of the St. Lawrence system; (3) Texas Eastern to render related gas compression and metering services for the St. Lawrence system; and (4) a blanket certificate of public convenience and necessity pursuant to 18 C.F.R. 284.221 authorizing open-access, non-discriminatory transportation of natural gas, all as more fully described in the application which is currently on file with the Commission and open to public inspection.

PennEast states that the proposal described in its application is designed to provide comparable service to the customers previously identified in Iroquois Gas Transmission System's application in Docket Nos. CP86–523–000 et al. As such, the PennEast proposal is submitted as an alternative to the Iroquois project.

PennEast seeks authorization to render long-term firm transportation services on behalf of the following shippers:

Shipper	Nomination (Mcf/day)
The Brooklyn Union Gas Co	70,000
Connecticut Light and Power Co	50,000
Connecticut Natural Gas Corp	50,000
New Jersey Natural Gas Corp	40,000
Southern Connecticut Gas Co	35,000
Long Island Lighting Co	35,000
Public Service Electric and Gas Co	20,000
Consolidated Edison Co. of New York, Inc	20,000
Elizabethtown Gas Co	5,000
New York State Electric & Gas Corp	17,000
Central Hudson Gas & Electric Corp	10,000
	352,000

Penn East states it would accomplish the proposed transportation of gas by constructing the following facilities:

—83 miles of 24-inch pipeline from the northern terminus of CNG Transmission's Line No. TL–460 at Biddlecum Road to Point Vivian, New York, near the international border, to be known as Line No. PE–468;

—5,800 horsepower of compression to be located at CNG Transmission's

existing Sabinsville Compressor Station;
—13,500 horsepower of compression at a site on CNG Transmission's existing Line No. PL–1 near Doylesburg, Pennsylvania;
—8,000 Horsepower of compression to be located at CNG Transmission's existing Sabinsville Compressor Station;
—measuring and regulating facilities to be located at the existing interconnection between the facilities of CNG Transmission and Texas Eastern at Leidy Storage Pool;
—20.25 miles of 36-inch pipeline looping Texas Eastern's Leidy pipeline between PennEast's proposed Centre Hall compressor station and Texas Eastern's Perulack Station;
—8.50 miles of 36-inch pipeline loop on the discharge side of Texas Eastern's compressor station 23;
—3.93 miles of 36-inch pipeline replacing a like quantity of Texas Eastern's Line No. 2 between station No. 25 and station No. 26;
—38.70 miles of 30-inch pipeline from Texas Eastern's compressor station No. 27–A to Long Island, N.Y.;
—additional 4,800 horsepower gas turbine/compressor unit and upgrade the 3,500 horsepower unit to 4,800 horsepower, at PennEast's proposed Centre Hall compressor station;
—one 11,000 horsepower gas turbine/compressor unit at Texas Eastern's compressor station 22–A;
—two 11,000 horsepower gas turbine/compressor units at Texas Eastern's compressor station 24–A;
—two 11,000 horsepower gas turbine/compressor uints at Texas Eastern's compressor station 25;
—measuring and regulating facilities at Texas Eastern's measuring and regualting stations Nos. 087, 1075, 953, Perulack and Chambersburg compressor station and PennEast's proposed Long Island measuring and regulating station.

The proposed PennEast facilities, in conjunction with existing Texas Eastern and CNG Transmission facilities, would be sufficient to render the delivery of gas totaling 352,000 Mcf per day from the international border at the St. Lawrence River to the shippers at the proposed New York and New Jersey delivery points.

It is stated that upon completion of the previously mentioned facilities, PennEast proposes to receive gas for the shippers' accounts at a proposed point of interconnection between its St. Lawrence system and the system of TransCanada, located on the international border between the United States and Canada, at the St. Lawrence River near Point Vivian, New York. PennEast states it would deliver the gas either directly to the shippers or to Algonquin Gas Transmission Corporation (Algonquin), who, in turn, would transport the gas on behalf of PennEast to points of delivery on the Algonquin system.

It is stated that the gas would leave the PennEast system at the following existing points of interconnection:

Shippers	Deliver point
The Brooklyn Union Gas Co.	Long Island M&R.
Connecticut Light and Power Co.	Algonquin-Lambertville, N.J.
Connecticut Natural Gas Corp.	Algonquin-Lambertville, N.J.
New Jersey Natural Gas Co.	Texas Eastern M&R 953.
Southern Connecticut Gas Co.	Algonquin-Lambertville, N.J.
Long Island Lighting Co	Long Island M&R.
Public Service Electric and Gas Co.	Texas Eastern M&R 128.
Consolidated Edison Co. of New York, Inc.	Long Island M&R.
Elizabethtown Gas Co	Texas Eastern M&R 1075.
New York State Electric & Gas Corp.	Algonquin-Lambertville, N.J.
Central Hudson Gas & Electric Corp.	Algonquin-Lambertville, N.J.

It is stated that no capacity on either Texas Eastern's or CNG Transmission's existing facilities would be committed to this project, nor would anyone other than PennEast or its customers bear any costs associated with the proposed facilities.

PennEast proposes that the estimated cost of the proposed facilities would be $322,096,000. It is stated that PennEast proposes to finance the proposed facilities with a 75 percent/25 percent debt to equity structure.

It is noted that Applicant would file this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Los D. Cashell,

Acting Secretary.

[FR Doc. 88–2544 Filed 2–5–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–164–000 et al.]

Columbia Gas Transmission Corp., et al.; Natural Gas Certificate Filings

February 1, 1988.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP88–164–000]

Take notice that on January 14, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88–164–000 an application for authorization to construct certain replacement facilities and to operate such facilities at a higher maximum allowable operating pressure (MAOP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of approximately 27.6 miles of 20-inch pipeline in two segments, replacing a like amount of 20-inch pipeline, located in Lancaster and Chester Counties, Pennsylvania. The proposed replacement project has an estimated cost of $15,120,000, which would be financed with funds on hand. Applicant also proposes to increase the MAOP from 375 to 1,000 psig for this section of its pipeline system. Applicant asserts that the proposals herein are due to age and the deteriorated condition of the existing facilities. Applicant states that the existing pipeline proposed herein to be replaced will remain in service until the proposed replacement sections are constructed.

It is noted that the proposed increased in the MAOP is necessary in order for the Applicant to perform the firm sales and firm transportation services for Providence Gas Company as proposed in its Docket No. CP88–164–000, also filed on January 14, 1988. It is further noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP88–163–000]

Take notice that on January 14, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88–163–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of a firm sales service to a new wholesale customer and the construction and operation of facilities necessary to implement that service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to initiate a firm sales service to Providence Gas Company (Providence) of up to 10,000 dekatherms (dth) per day under Applicant's Rate Schedule CDS. Applicant further states that Providence has also requested firm natural gas transportation service under Applicant's Rate Schedule FTS of up to 40,000 dth per day. Applicant asserts that the transportation would be self-implemented pursuant to Part 284 of the Commission's Regulations. In order to provide these services, Applicant proposes to construct 19.1 miles of 16-inch lateral and one interconnecting measuring facility for a total estimated cost of $14,870,000. This proposed lateral would be an extension of Applicant's proposed lateral currently pending in Docket No. CP88–129–000 [1] and would extend from Flanders, Morris County, New Jersey to its eastern terminus which would interconnect with Algonquin Gas Transmission Company's (Algonquin) pipeline system, just north of Algonquin's Hanover Compressor Station in Morris County, New Jersey. Applicant explains that Algonquin would redeliver the subject volumes to Providence on its behalf.

The specific shippers, quantities, receipt and delivery points for which Tennessee seeks firm transportation authority are:

	Transportation quantity (Dth/Day)	Receipt point	Delivery point
(1) Colonial Gas Co	7,049	Niagara	Tewksbury and Mendon, MA.
(2) Essex County Gas Co	2,014	Niagara	Haverhill-Essex, MA.
(3) Boston Gas Co	17,119	Niagara	Beverly-Salem and Mendon, MA.
(4) Energy North, Inc	4,028	Niagara	Laconia, NH.
(5) Fitchburg Gas and Electric Light Company	504	Niagara	Fitchburg, MA.
(6) Valley Resources Incorporated	1,007	Niagara	Pawtucket, RI.

To provide the firm transportation service, Tennessee proposes to construct 40.79 miles of mainline loop, 14 miles of lateral line, and 1550 horsepower of compression. It is stated that all pipeline and compression facilities affected are located in Erie, Wyoming, Livingston, Ontario, Herriner, Otsego, Onardoga, and Columbia Counties, New York, Massachusetts; and Merrimack County, New Hampshire. The total project cost of Tennessee facilities is estimated to be $61,247,000.

Tennessee proposes to render the firm transportation service pursuant to proposed new Rate Schedule NET–LD, which provides for incremental rates to recover a portion of the transportation projects (NORTRAN ANE and NEP).

It is noted that Tennessee filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

Applicant notes that its ability to provide the proposed services is contingent upon an increase in the maximum allowable operating pressure on a certain part of its upstream system which is part of replacement project proposed in Docket No. CP88–164–000.[2]

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP88–129–000]

Take notice that on January 14, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP88–129–001 an amendment to its pending application filed on December 15, 1987, in Docket No. CP88–129–000 pursuant to Section 7(c) of the Natural Gas Act to construct and operate

[1] In Docket No. CP88–129–001 filed on January 14, 1988, Applicant proposes to construct 38.1 miles of a 16-inch lateral from Hellertown, Northampton County, Pennsylvania, to the vicinity of Flanders, Morris County, New Jersey. Applicant would utilize this facility to initiate a firm sales service to New Jersey Natural Gas Company and a firm transportation service to Elizabethtown Gas Company.

[2] Applicant filed Docket No. CP88–164–000 on January 14, 1988 requesting to replace 27.6 miles of 20-inch mainline pipe which would be located in Lancaster and Chester Counties, Pennsylvania.

natural gas facilities and to provide firm service to a new resale customer, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

Applicant requests authorization to initiate a firm sales service to New Jersey Natural Gas Company (NJN) of up to 10,000 dekatherms (dth) per day under Applicant's Rate Schedule CDS. Applicant states that Elizabethtown Gas Company (Elizabethtown) has requested firm natural gas transportation service under Applicant's Rate Schedule FTS of up to 20,000 dth per day and an interruptible transportation service under Rate Schedule ITS of up to 2,200 Mdth annually. Applicant further states that in order to provide the requested service, it proposes to extend its main transmission system from a point located near Hellertown, Northampton County, Pennsylvania, to the vicinity of Flanders, Morris County, New Jersey. It is further stated that the proposed extension would consist of the construction of approximately 38.1 miles of 16-inch pipeline and three interconnecting measuring facilities at a total estimated cost of $23,723,000.

Applicant notes that the amended application supersedes the request of Applicant filed in Docket No. CP88–129–000 on December 15, 1987, in that it now proposes the construction and operation of a 16-inch pipeline instead of a 12-inch pipeline to provide additional throughput capacity. In addition a minor change from the initial route has been proposed in order to avoid three wetland areas and two stream crossings and would result in an increase in the total length of the facility from 37.9 miles to 38.1 miles, it is further explained.

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88–171–000]

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee), a Division of Tenneco Inc., P.O. Box 2511, Houston, Texas 77252 filed an application pursuant to Section 7(c) of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission for a certificate of public convenience and necessity authorizing the transportation of the dekatherm equivalent of 200,000 Mcf per day of natural gas on a firm basis for National Fuel Gas Supply Corporation (National Fuel) and the construction and operation of new measurement facilities.

Tennessee would receive such quantities of gas at a point of receipt located at the existing interconnection between the facilities of Tennessee and TransCanada PipeLines Limited (TransCanada) on the international border between the United States and Canada near Niagara Falls, New York.

Tennessee would transport and deliver to National Fuel a thermally equivalent quantity of gas at a point to be located at the interconnection of a new pipeline to be constructed by National Fuel and new measurement facilities to be constructed by Tennessee at a mutually agreeable location on Tennessee's existing Niagara Spur Line near Lewistown, New York.

Tennessee seeks authority to construct and operate measurement facilities for approximately 302,100 dth per day of natural gas at the proposed delivery point near Lewistown, New York. It is stated that this represents the need for measurement of the quantities proposed in this application as well as 93,148 dth per day of "Boundary" quantities which Tennessee proposes to deliver to Natural Fuel at Lewistown. It is further stated that of the 93,148 dth per day of "Boundary" quantities, 90,630 dth per day represents quantities to be transported by National Fuel for Tennessee and 2,518 dth per day represents quantities to be delivered to National Fuel by Tennessee. Tennessee states that Tennessee and National Fuel would individually file for the appropriate authorization for transportation of the "Boundary" quantities. The cost of these measurement facilities is estimated to be $1,497,000 of which one-third will be paid by Tennessee and the remainder by National Fuel.

Tennessee states that in consideration of certain transportation services to be performed by National Fuel for Tennessee at no cost to Tennessee, Tennessee would provide the transportation proposed in this application at no cost to National Fuel, with the exception that National Fuel would provide to Tennessee, at no cost to Tennessee, a daily quantity in dekatherms of gas for Tennessee's system fuel and uses and gas lost and unaccounted for equal to one-half of one percent (0.5%) of the quantities received from National Fuel on any day.

It is noted that Tennessee filed this application within the timeframe of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: Feberary 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88–176–000]

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee) a Division of Tenneco Inc., P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee (1) to provide firm natural gas transportation to six shippers in Massachusetts, Rhode Island and New Hampshire in an aggregate daily maximum quantity of 31,721 Dth; and (2) to construct and operate the facilities necessary to transport and deliver these quantities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

6. Texas Eastern Transmission Corporation

[Docket No. CP88–179–000]

Take notice that on January 15, 1988, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP88–179–000 an application pursuant to section 7(c) of the Natural Gas Act requesting a certificate of public convenience and necessity authorizing Texas Eastern to transport natural gas for CNG Transmission Corporation (CNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to transport on a firm basis for CNG a Maximum Daily Transportation Quantity (MDTQ) of 80,000 dekatherms of natural gas per day and such additional quantities on an interruptible basis as Texas Eastern and CNG may mutually agree upon.

Specifically, Texas Eastern would receive from CNG the above stated quantities of natural gas at the existing point of interconnection with CNG located at the Oakford Storage Field in Westmoreland County, Pennsylvania and would transport and redeliver equivalent quantities of gas, less applicable shrinkage, to CNG at the existing interconnection between CNG's pipeline PL–1 and Texas Eastern's compressor station located at Chambersburg, Pennsylvania. The agreement stipulates a primary term beginning upon commencement of

service and would continue for twenty years.

The facilities required for the proposed transportation are found in an amended application in Docket No. CP87–92–002 (Capacity Restoration Program) filed by Texas Eastern on January 15, 1988. This amended application seeks authorization for the construction, replacement, and operation of a significant portion of its major pipeline facilities. Texas Eastern alleges that consolidation of the proposed transportation facilities with the major construction proposed in Docket No. CP87–92–002 would result in economies of scale and cost savings for both projects.

Based upon the annual cost of service of the required facilities included in Texas Eastern's amended application in Docket No. CP87–92–002, Texas Eastern estimates an initial monthly demand charge of $3.348 per dekatherm and an excess charge of $0.1101 per dekatherm.

It is noted that Texas Eastern filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88–177–000]

Take notice that on January 15, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77252, filed in Docket No. CP88–177–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction and operation of natural gas pipeline and related facilities and authorizing the transportation and storage of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco would provide firm transportation of up to the dekatherm equivalent of 125 MMcf of natural gas per day on behalf of potential customers from the United States/Canadian border to a point of delivery for injection into storage or to points of delivery for transportation on Transco's system. Transco states that it has already received nominations for transportation service substantially in excess of the 125 MMcf dekatherms per day which would be offered. Transco further states that it would transport the gas in accordance with the individual transportation agreements in substantially the same form as Transco's *pro forma* Gas Transportation Agreement, a copy of which is included in the complete application. Transco states that it would charge the modified fixed variable rate D–1, D–2 reservation rate and commodity rate.

Transco would also provide storage service for potential customers of up to 11 Bcf storage capacity with a maximum daily delivery capability of 100 MMcf at the facilities of Penn-York Energy Corporation in Wharton County, Pennsylvania. Transco states that it has already received nominations for storage demand that would require storage capacity in excess of the 11 Bcf that is being offered. Transco further states that although the proposed storage and transportation services are being offered as a joint project Transco would offer the storage and/or transportation service in an unbundled fashion. Transco would offer its potential customers the storage service under the proposed Rate Schedule SS–2.

Transco further states that it would construct 25.52 miles of pipeline loop in Monroe and Clinton Counties PA. and in Middlesex and Gloucester Counties NJ. Transco would also add 12,500 horse power of compression at its existing Compressor Station No. 520 in Lycoming County PA.

In addition, Transco would construct, install, and operate additional transportation facilities incremental ranging from 60 to 460 MMcf per day in excess of the above proposed 225 MMcf per day. The incremental service would supply the Northeast markets which are capable of receiving service through Transco's facilities to the extent that the Commission determined that the market need exists and that the public convenience and necessity would be served. Transco states that it has the capability to develop incremental transportation capacity to deliver a significant volume of natural gas from the Leidy Hub area to Northeast U.S. markets in a cost-effective manner. Transco submits therefore that, as an applicant and active participant in the Commission's "open season" proceeding, by its instant application Transco is proposing to expand its Leidy Line and market area facilities to provide additional transportation capacity to serve such markets.

It is noted that Transco filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2545 Filed 2–5–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–4–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 3, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 29, 1988, tendered for filing to its FERC Gas Tariff, Second Revised

Volume No. 1 the tariff sheets listed on Appendix A.

Algonquin states that Twenty Fourth Revised Sheet No. 201 is being filed pursuant to Algonquin's Purchased Gas Adjustment Provisions as set forth in Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, to reflect the following:

(i) An adjustment to amortize the December 31, 1987 balance in Algonquin's Unrecovered Purchased Gas Cost Account

(ii) An Adjustment to reflect a change in purchased gas cost to be charged by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern").

Algonquin also states that as required by Order No. 478, Algonquin is filing to remove all Incremental Pricing language from its FERC Gas Tariff in conjunction with its first PGA filing after January 1, 1988. Algonquin tendered for filing, as part of its FERC Gas Tariff, six (6) copies each of the affected tariff sheets as listed in the attached Appendix A reflecting the following changes:

(a) The cancellation of Sheet No. 231, "Index of Projected Incremental Pricing Surcharges";

(b) The removal of Section 17.7, "Incremental Pricing Surcharge Billing", from the General Terms and Conditions of Algonquin's FERC Gas Tariff; and

(c) Minor editing changes to eliminate any reference to Incremental Pricing Surcharges throughout the tariff.

The proposed effective dates of the tariff sheets listed in Appendix A is March 1, 1988 for Twenty-fourth Revised Sheet No. 201 and January 1, 1988 for all others.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

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., Washingto, DC 20426, in accordance with Ruels 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

Appendix A

Tariff Sheet Being Filed Pursuant to the Purchased Gas Adjustment Provisions

Proposed to be effective March 1, 1988

Twenty Fourth Revised Sheet No. 201

Docket No. RM87-28-000

List of Tariff Sheets Filed Related to Incremental Pricing Surcharges

Proposed to be effective Janaury 1, 1988

Ninth Revised Sheet No. 200
Tenth Revised Sheet No. 231
Fourth Revised Sheet No. 325
Fourth Revised Sheet No. 600
Second Revised Sheet No. 629
First Revised Sheet No. 630
Fourth Revised Sheet No. 631
Third Revised Sheet No. 631-A
Second Revised Sheet No. 632
First Revised Sheet No. 633
Second Revised Sheet No. 634
First Revised Sheet No. 635
First Revised Sheet No. 636
First Revised Sheet No. 637
Third Revised Sheet No. 638

[FR Doc. 88-2580 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-308-002]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co.; Application for Extension

February 2, 1988.

Take notice that on January 22, 1988, ARCO Oil and Gas Company, Division of Atlantic Richfield Company (ARCO), P.O. Box 2819, Dallas, Texas 75211-2819, filed an application requesting the Federal Energy Regulatory Commission (Commission) to extend its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates, issued March 31, 1987, to provide for an extension of all current authorizations to at least March 31, 1991, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 17, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2569 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1858]

Beaver City Corp.; Intent To File an Application for a New License

February 3, 1988.

Take notice that on December 14, 1987, Beaver City Corporation, the existing licensee for the Beaver City Power Project No. 1858, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 807, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub.L. 99-495, has filed a notice of intent to file an application for a new license. The original license for Project No. 1858 was issued effective July 31, 1943, and expires on July 31, 1993.

The project is located on the Beaver River in Beaver County, near Beaver City, Utah, and occupies U.S. lands within the Fish Lake National Forest. The principal works of the Beaver City Power Project include a 17-foot-high diversion dam; a 2-mile-long, 30-inch-diameter penstock; a powerhouse with an installed capacity of 625 kW; and a 4.1-mile-long, 69-kV transmission line. For further information concerning this project please contact the licensee at P.O. Box 271, 60 West Center Street, Beaver, Utah 84713, telephone (801) 438-2451.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 1991.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the

licensed project. See Docket No. RM87–7–000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87–7–000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2566 Filed 2–5–88; 8:45 am]

BILLING CODE 6717-01

[Project No. 5422–003]

Blind Canyon Aquaranch, Inc.; Surrender of Exemption From Licensing

February 3, 1988.

Take notice that the Blind Canyon Aquaranch, Inc., exemptee for the Ten Springs Power Wells Project No. 5422, requested by letter filed December 3, 1987, that its exemption be terminated. No construction of hydroelectric project works has been performed.

The exemption for Project No. 5422 shall remain in effect through the thirtieth day after issuance of this notice unless that is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2572 Filed 2–5–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88–9–000]

Conoco, Inc.; Petition for Declaratory Order

February 3, 1988.

Take notice that on January 19, 1988, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, Conoco, Inc. (Conoco) petitioned the Commission to clarify the applicability of the take-or-pay crediting provisions of Order Nos. 500 [1] and 500–B [2] to the transportation of natural gas produced from Conoco's working interests over the facilities of ANR Pipeline Company (ANR).

Conoco states that it is an independent producer, seller, and processor of natural gas and is subject to regulation by the Commission under the Natural Gas Policy Act of 1978. Conoco states that on October 8, 1987, after the effective date of the interim regulations under Order No. 500, Conoco and ANR entered into an Omnibus Agreement under which ANR and Conoco agreed: (1) To settle in their entirety the take-or-pay, gas purchase, and pricing disputes which had arisen under all 29 gas purchase and sales agreements between the parties, and (2) to mend, modify, and supersede the quantity and pricing provisions of those agreements.

Conoco asserts that the Omnibus Agreement constitutes a post-June 23, 1987 gas purchase agreement for the purposes of the application of the Order No. 500 take-or-pay crediting provisions and, therefore, that ANR may not apply any take-or-pay credits against its take-or-pay obligations under the Omnibus Agreement. However, Conoco states that ANR contends that any and all natural gas moving over ANR's pipeline system which is produced from Conoco's working interests and which is not subject to the Omnibus Agreement or destined for a facility of Conoco or its affiliates will generate take-or-pay credits pursuant to Order No. 500. ANR also allegedly asserts that it can apply these credits against the take-or-pay obligations agreed to in the Omnibus Agreement.

Given the controversy between Conoco and ANR regarding the applicability of take-or-pay credits under Order Nos. 500 and 500–B, Conoco requests that the Commission issue an order (1) declaring that ANR may not apply any further take-or-pay credits against the take-or-pay obligations contained in the October 8, 1987 Omnibus Agreement, except to the extent provided in the Omnibus Agreement, and (2) ensuring that Conoco receives the full economic and other benefits agreed upon by ANR and Conoco in the Omnibus Agreement.

Within thirty days of publication in the **Federal Register**, any person may file a protest or a motion to intervene with the Federl Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. 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 proeeding. If you wish to become a party, you must file a motion to intervene. See Rules 214 and 211.[3]

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2586 Filed 2–5–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF87–2011–017 and EF87–2021–004]

Department of Energy, Bonneville Power Administration; Filing

February 2, 1988.

Take notice that on January 13, 1988, Bonneville Power Administration (BPA), pursuant to section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 839e(a)(2), tendered for filing proposed charges under the Pacific Northwest Coordination Agreement (PNCA). Pursuant to Commission regulation 300.21, 18 CFR 300.21, BPA seeks confirmation and approval of the proposed charges, effective July 1, 1986. BPA requests that the approval remain in effect until a PNCA party requests Commission approval of revised charges pursuant to the PNCA.

The PNCA, executed in 1964, is an agreement providing for the coordinated operation of the electric systems of 16 utilities, including BPA, in order to make the maximum possible use of hydroelectric capacity in the Pacific Northwest. In its "Order Setting Matter for Investigation and Hearing," issued in *City of Tacoma, Washington v. The Washington Water Power Company et al.*, Docket No. EL85–18, 34 FERC ¶61,341 (1986), the Commission directed BPA to file its PNCA charges and "elaborate on its view of the interrelationship between the PNCA and the Northwest Power Act requirements as pertinent to the criteria for Commission review." This filing is submitted in compliance with that Order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

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[1] Order No. 500, 3 FERC Stat. & Regs. ¶ 30,761 (August 7, 1987).

[2] Order No. 500–B, 3 FERC Stat. & Regs. ¶ 30,772 (October 16, 1987).

[3] 18 CFR 385.214 or 385.211 (1984).

not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2576 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2395]

Flambeau Paper Corp.; Existing Licensee's Intent To File an Application for New License

February 3, 1988.

Take notice that on October 26, 1987, Flambeau Paper Corporation, licensee for the Pixley Project No. 2395 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Pixley Project No. 2395 will expire on December 31, 1993. The project is located on the North Fork of the Flambeau River in Price County, Wisconsin, a navigable waterway of the United States.

The principal project works currently licensed for Project No. 2395 are: (1) An earth-concrete dam with adjacent earth embankments; (2) a reservoir, about 4.5 miles long with a gross storage capacity of approximately 1,760 acre-feet; (3) a powerhouse containing two generating units with a total installed capacity of 960 kW; and (4) appurtenent facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2562 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2640]

Flambeau Paper Corp.; Existing Licensee's Intent To File an Application for New License

February 3, 1988.

Take notice that on October 26, 1987, Flambeau Paper Corporation, licensee for the Upper Hydro Project No. 2640 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Upper Hydro Project No. 2640 will expire on December 31, 1993. The project is located on the North Fork of the Flambeau River in Price County, Wisconsin, a navigable waterway of the United States.

The principal project works currently licensed for Project No. 2640 are: (1) A concrete gravity dam; (2) a reservoir with a gross storage capacity of about 3,300 acre-feet; (3) a power canal; (4) a powerhouse containing two generating units with a total capacity of 900 kW; and (5) appurtenant facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE, Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2563 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2473]

Flambeau Paper Corp.; Existing Licensee's Intent To File an Application for New License

February 3, 1988.

Take notice that on October 26, 1987, Flambeau Paper Corporation, licensee for the Crowley Project No. 2473 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Crowley Project No. 2473 will expire on December 31, 1993. The project is located on the Flambeau River in Price County, Wisconsin, a navigable waterway of the United States.

The principal project works currently licensed for Project No. 2473 are: (1) A concrete gravity dam and adjacent earth embankment; (2) a reservoir with a surface area of about 250 acres and a gross storage capacity of about 3,500 acre-feet; (3) a powerhouse containing two generating units with a total installed capacity of 1,500 kW; (4) a substation; and (5) appurtenant facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE, Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2564 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-30-001]

Interstate Power Co.; Filing

February 3, 1988.

Take notice that on January 20, 1988, Interstate Power Company (Interstate) tendered for filing Original Sheet No. 19 and First Revised Sheet No. 5 replacing Original Sheet No. 5 to its FERC Gas Tariff, First Revised Volume No. 2, to be effective as proposed.

Interstate states that these tariff sheets are filed in compliance with the Commission's order issued January 6, 1988, in Docket No. RP88-30-000. Interstate states that in accordance with the Commission's order the effective date of Sheet No. 19 has been changed to December 7, 1987 and the interest rate of Paragraph 11(b) to Sheet No. 5 conforms with Section 154.67(c) of the Commission's Regulations.

Interstate states that copies of this filing have been mailed to all parties on the official service list in Docket No. CP86-679-000 plus those added to the revised service list as parties to Rate Schedule GT-2.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commissioin, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such protests or motions should be filed on or before February 10, 1988. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2582 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-353-001]

Kenrell Petroleum Resources, Inc.; Application for Extension

February 2, 1988.

Take notice that on January 25, 1988, Kenrell Petroleum Resources, Inc. (Kenrell), of 4545 Post Oak Place, Suite 250, Houston, Texas 77027, filed an application pursuant to Section 7 of the Natural Gas Act (NGA) and § 157.30 of the Commission's Regulations (18 CFR 157.30 (1987)), for a three-year extension of its limited-term blanket abandonment for initial sales and a three-year extension of its pregranted abandonment for subsequent sales, for which the original authorizations were issued in Docket No. CI87-353-000. Both types of sales would be made under its small producer certificate exemption in Docket No. CS87-48-000. Kenrell's current authorization is due to expire March 31, 1988.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 17, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2570 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-259-000]

Marathon Oil Co.; Application

February 3, 1988.

Take notice that on January 22, 1988, Marathon Oil Company (Marathon), P.O. Box 3218, Houston, Texas 77253, filed an application for a three-year limited-term blanket certificate authorizing Marathon to sell for resale in interstate commerce natural gas produced from Marathon's interests in uncommitted reserves located in the Outer Continental Shelf. Marathon also requests pregranted abandonment of any sales made under the limited-term authority requested in its application. Marathon also requests waiver of any filing or reporting requirements which may be inconsistent with the authority sought in its application.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 18, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2567 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER 88-209-000]

Metropolitan Edison Co. and Pennsylvania Electric Co.; Filing

February 3, 1988.

Take notice that on December 14, 1987, Metropolitan Edison Compnay (Met-Ed) and Pennsylvania Electric Company (Penelec) tendered for filing a change in the wholesale rate gross receipts tax from 4.5% to 4.4% pursuant to the automatic gross receipts tax change provision of Met-Ed's and Penelec's affected rate schedules. The following rate schedules contain the referenced automatic gross receipts tax clause:

Met Ed FPC Electric Tariff No. 1 and FPC No. 43.

Penelec FPC Electric Tariff No. 1 and FPC No. 70.

Copies of this filing have been served upon all affected customers and the Pennsylvania Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2583 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-324-001 et al.]

Natural Gas Clearinghouse Inc., et al. Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

February 3, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to Section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 18, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI87-324-001, 1-21-88.	Natural Gas Clearinghouse Inc.	3 years
CI87-481-001, 1-26-88.	Colony Natural Gas Corp.	3 years
CI87-547-011, 1-26-88.	Enron Gas Marketing, Inc.	2 years
CI87-581-001, 1-26-88.	Prior Energy Corporation.	Unlimited
CI87-806-001, 1-19-88.	Shell Gas Trading Company.	1 year
CI88-53-001, 1-22-88.	LOUTEX Energy Inc	3 years

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[FR Doc. 88-2577 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-52-000]

Natural Gas Pipeline Co. of America; Compliance Filing

February 3, 1988.

Take notice that on January 27, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 2, to be effective as proposed.

Natural states that the purpose of the tariff sheets is to revise the transportation rates to reflect the rate levels under Natural's Rate Schedule FTS and ITS, which rate schedules were accepted for filing (as part of Natural's FEDC Gas Tariff, First Revised Volume No. 1A) and January 1, 1988, designated as the effective date by OPPR letter order issued January 1, 1988, at CP86-582-016.

Natural respectfully requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1988, the date certificate authorization accepting Natural's FTS and ITS Rate Schedules was granted by this Commission.

Pursuant to § 381.204 of the Commission's Regulations Natural submits its check under protest to the extent, if any, a protest is required to preserve the right of Natural to the refund of any amount thereof which may subsequently be determined to have been lawfully collected as a result of any administrative or judicial proceeding.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such protests or motions should be filed on or before February 10, 1988. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2584 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-26-000]

Natural Gas Pipeline Co. of America; Filing

February 3, 1988.

Take notice that on January 28, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing Second Substitute Sixty-Ninth Revised Sheet No. 5 and Thirty-fifth Revised Sheet No. 5A to its FERC Gas Tariff, Third Revised Volume No. 1, to become effective February 1, 1988.

Natural states that the current decrease of 3.42 cents brings the total reduction since September 1, 1987, in the gas cost component of Natural's DMQ-1 commodity rate to 18.78 cents. The current decrease is possible because of decreases in the cost of spot market supplies available to Natural.

Natural continues to seek a waiver of Paragraph 18.7 of its Tariff dealing with the computation of the unit adjustment for pipeline and producer supplier cost changes. Such waiver was previously granted by Commission Order issued August 27, 1987, in Docket No. TA87-3-26. Such waiver permitted Natural to utilize its projected purchase and sale volume to compute a more accurate commodity charge for gas cost recovery. Natural recently filed a revised PGA tariff provision to incorporate this procedure with its semi-annual PGA filing to be effective March 1, 1988.

Natural states that a copy of this filing is being mailed to its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 10,

1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2585 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC88-9-000]

New England Power Co.; Filing

February 2, 1988.

Take notice that on January 28, 1988, New England Power Company (NEP) tendered for filing an application seeking authorization, pursuant to section 203 of the Federal Power Act (FPA), to lead a right-of-way and related facilities to an affiliate, New England Hydro-Transmission Corporation (NH Hydro). NEP will continue to make use of the existing transmission facilities that are located on the right-of-way but the transfer will enable NH Hydro to construct additional facilities required in connection with Phase 2 of the agreement between Hydro-Quebec and a large group of facilities. A settlement agreement covering all of the agreements required to implement Phase 2 was accepted by the Commission on January 21, 1988. The present application seeks specific authorization for the lease, as required by Section 203 of the FPA.

A copy of the filing has been served upon the State of New Hampshire and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2568 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-28-000]

Panhandle Eastern Pipe Line Co.; Change in Tariff

February 3, 1988.

Take notice that on January 29, 1988 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Third Revised Sheet No. 3-A
Fortieth Revisd Sheet No. 3-B

The proposed effective date of these revised tariff sheets is March 1, 1988.

Panhandle states that these revised tariff sheets reflect a commodity rate increase of 1.63¢ per Dt, which includes:

(1) A (53.51¢) per Dt decrease in the projected purchased gas cost component;

(2) A 59.95¢ per Dt increase in the surcharge to recover the Current Deferred Account Balance at December 31, 1987 and related carrying charges; and

(3) A 0.19¢ per Dt increase pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that these revised tariff sheets filed herewith reflect the following changes to Panhandle's D_1 and D_2 demand rates:

(1) A decrease of ($0.09) cents for D_1, pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) An increase of $.08 for D_1 and no change for D_2, to reflect an increase in the Section 18.4 pipeline supplier demand costs.

Additionally, Panhandle is filing herewith six (6) copies of the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Eighteenth Revised Sheet No. 3-C.1
Fifteenth Revised Sheet No. 43-2
Fifth Revised Sheet No. 43-2.1
First Revised Sheet No. 43-7

The proposed effective date of these revised tariff sheets is March 1, 1988.

Panhandle states that these revised tariff sheets reflect revisions to Section 18 and the cancellation of Section 21 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1 to eliminate all incremental pricing provisions effective March 1, 1988, pursuant to Congress' repeal of Title II of the NGPA and the Commission's Order No. 478 issued July 27, 1987 in Docket No. RM87-28-000, *et al.*, which revoked Incremental Pricing regulations effective January 1, 1988 (40 FERC ¶61,095).

Panhandle states that Fifteenth Revised Sheet No. 43-2 reflects a change to Section 18 (Purchased Gas Cost Rate Adjustment (PGA)) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1. Specifically, Panhandle is proposing to revise Section 18.23 to permit Panhandle to compute the PGA Surcharge Adjustment, i.e. the deferred account surcharge, and the Carrying Cost Surcharge Adjustment on an annual recovery period basis.

To the extent required, if any, Panhandle requests that the Commission grant such waivers as may be necessary for the acceptance of these tariff sheets submitted herewith, to become effective March 1, 1988, as previously described.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North 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 February 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2581 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9717-001]

Pat Landers; Surrender of Exemption

February 3, 1988.

Take notice that Pat Landers, exemptee for the proposed Snowy Ranch Project No. 9717, requested by letter dated January 6, 1988, that his exemption be terminated. The exemption was issued on February 19, 1987. The project would have been located on the East Fork Mill Creek in

Park County, Montana. No construction had been undertaken.

The exemptee filed the request on Janaury 15, 1988, and the exemption for Project No. 9717 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2573 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI86-370-003 and CI86-373-003]

Texas Gas Transmission Corp.; Applications of Texas Gas Transmission Corp. on Behalf of Producer-Suppliers for Amendment of Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate of Public Convenience and Necessity

February 3, 1988.

Take notice that on January 20, 1988, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in this proceeding applications pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and the Commission's Regulations thereunder for extension of its LTA authorization on behalf of its producer-suppliers,[1] all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Specifically, by these applications, Texas Gas requests Commission authorization to extend the effective date of the authorization from April 1, 1988 to April 1, 1989.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 18, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2571 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-868-000]

Tucker Drilling Co., Inc.; Application for Permanent Abandonment With Three-Year Limited-Term Pregranted Abandonment for Sales Under Small Producer Certificate

February 2, 1988.

Take notice that on August 31, 1987, as supplemented on January 6 and 25, 1987, Tucker Drilling Company, Inc. (Tucker), P.O. Box 1876, San Angelo, TX 76902 filed an application in Docket No. CI87-868-000 requesting permanent abandonment of sales of gas to El Paso Natural Gas Company (El Paso) from Tucker's interest in certain gas producing properties located in the Sawyer (Canyon) Field, Sutton County, Texas, with pregranted abandonment for sales for resale in interstate commerce of the released gas to other purchasers under Tucker's small producer certificate issued in Docket No. CS66-3.

Tucker states expedited relief is sought for the reason that it is subject to substantially reduced takes without payment under the terms of the Gas Purchase Contracts dated November 27, 1969, June 2, 1970 and January 17, 1972. In June 1987, the parties negotiated a comprehensive settlement agreement under which Tucker agreed to forego all outstanding take-or-pay claims under these contracts and the contracts were canceled effective June 1, 1987. In addition, the settlement agreement requires Tucker to seek permanent abandonment authority for gas covered by the NGA contracts and provides that El Paso will support such request for abandonment. Deliverability is approximately 1,940 Mcf per day. The gas is NGPA section 104 minimum rate gas (28.9%) and certain Permian Basin small producer gas (7.7%), section 107(c)(5) gas (51.5%) and section 108 gas (11.9%). Tucker requests that its application be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[1]

Since Tucker has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tucker to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2574 Filed 2-5-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3325-3]

Fuels and Fuel Additives; Waiver Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 211(f) of the Clean Air Act, the Administrator of EPA is conditionally granting an

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[1] Order was issued in *ANR Pipeline Company, et al.*, Docket No. CI86-637-000, *et al.*, 36 FERC ¶ 61,046, and was amended by Commission order issued in *Odeco Oil & Gas Company, et al.*, Docket No. CI85-29-007, *et al.*, 38 FERC ¶ 61,343.

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in Section 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to Section 2.76. On August 7, 1987, the Commission issued Order No. 500 which promulgated interim regulations in response to the court's remand (40 FERC ¶ 61,172 (1987)). These interim regulations became effective on September 15, 1987.

application for a fuel waiver involving methanol and cosolvent alcohols submitted by the Texas Methanol Corporation.

ADDRESS: Copies of documents relevant to this waiver application, including the Administrator's decision document, are available for inspection in public docket EN-87-06 at the Central Docket Section (LE-131) of the EPA, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460, (202)382-7548, between the hours of 8:00 a.m. and 3:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202)475-8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38528 (July 28, 1981).

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application (in this case, February 3, 1988), the statute provides that the waiver shall be treated as granted.

The Texas Methanol Corporation submitted a waiver application for a gasoline-alcohol fuel blend, referred to as OCTAMIX, such that the resultant fuel is composed of a maximum of 3.7 percent by weight fuel oxygen, a maximum of 5 percent by volume methanol, a minimum of 2.5 percent by volume cosolvents and 42.7 milligrams/liter (mg/l) of Petrolite TOLAD MFA-10 corrosion inhibitor or an appropriate concentration of other corrosion inhibitor such that the fuel will pass the National Association of Corrosion Engineers' test TM-01-72 (NACE Rust Test). *See* 52 FR 33262, September 2, 1987. With the exceptions of the allowance for higher molecular weight alcohols (C5 through C8) in the cosolvent mix, the allowance for any corrosion inhibitor which would pass the NACE Rust Test, and an allowance for 2 percent by volume methyl tertiary butyl ether (MTBE) in the base fuel (if present as a result of unintentional commingling during transport or storage), the application specified that OCTAMIX would meet the same conditions specified in the waiver granted to E.I. DuPont de Nemours and Company, Inc., as revised on October 31, 1986, at 51 FR 39800 (the DuPont blend).

For reasons specified in the decision document (available as described above), EPA has decided to conditionally grant Texas Methanol's waiver application, provided the production of the gasoline-alcohol fuel is done in accordance with the requirements stipulated by Texas Methanol, with the exception that the NACE Rust Test not be allowed as the sole criterion for selection of an alternative corrosion inhibitor. Instead the blend will be subject to the alternative condition specified in the waiver request, that Petrolite TOLAD MFA-10 at a concentration of 42.7 mg/l be used. Some commenters indicated that the NACE Rust Test was not adequate in determining the suitability of a corrosion inhibitor. Since enough questions remain as to the adequacy of this corrosion test as the sole criterion for alternative corrosion inhibitors, EPA has determined that this one criterion is not enough to reach a conclusion on the adequacy of a corrosion inhibitor at a given concentration. Therefore, as was the case with the DuPont blend (51 FR 39800, October 31, 1986), the Agency invites other corrosion inhibitor manufacturers to submit test data to the Agency to establish, on a case-by-case basis, whether their formulations are acceptable as an alternative to TOLAD MFA-10.

This decision is based on the determination that Texas Methanol has demonstrated that the gasoline-alcohol fuel, when used as specified in the decision document, will not cause or contribute to a failure of 1975 or subsequent model year vehicles or engines to comply with the emission standards with respect to which such vehicles or engines were certified under section 206 of the Act. Thus, the waiver request is granted provided the following conditions are met:

(1) The final fuel consists of a maximum of 5 percent by volume methanol, a minimum of 2.5 percent by volume cosolvent in unleaded gasoline. The cosolvents are any one or a mixture of ethanol, propanols, butanols, pentanols, hexanols, heptanols and octanols within the following constraints: the ethanol, propanols and butanols or mixtures thereof must compose a minimum of 60 percent by weight of the cosolvent mix, whereas a maximum limit of 40 percent by weight of the cosolvent mix is placed on the pentanols, hexanols, heptanols and octanols or mixtures thereof. Furthermore, the heptanols and octanols are limited to a maximum 5 percent by weight of the higher molecular weight alcohol mix (pentanols, hexanols, heptanols and octanols);

(2) A maximum concentration of up to 3.7 percent by weight oxygen in the final fuel is observed;

(3) Petrolite,s proprietary corrosion inhibitor formulation, TOLAD MFA-10, is blended in the final fuel at 42.7 milligrams/liter;

(4) The final fuel must meet ASTM D439-85a Standard Specifications for Automotive Gasoline (a copy of which is in the docket), with the qualification that Test Method D323 for RVP be replaced by the "dry" test method described in ASTM D-2 Proposal P-176, Proposed Specification for Automotive Spark Ignition Fuel, Annex A.3 or by automatic apparatus described in Annex A.4 of the D-2 Proposal 176 (attached to the decision document as Appendix B);

(5) The final fuel must meet the maximum temperature for phase separation as specified in ASTM D-2 Proposal P-176, Table 4 using the test method for water tolerance contained in Annex A.5 (attached to the decision document as Appendix C);

(6) The fuel manufacturer must take all reasonable precautions, including identification and description of the product on shipping manifests, to ensure that the finished fuel is not used as a base gasoline to which other oxygenated materials are added, provided, however, that up to two percent by volume of methyl tertiary butyl ether (MTBE) will be allowed in the base stock to which the alcohols are added if the MTBE is present only as a result of commingling in transport and storage, not purposefully added as an additional component to the alcohol blend;

(7) Specifications for alcohol purity attached to the decision document as Appendix D are met.

EPA has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because EPA has not published, and is not required to publish, a Notice of Proposed Rulemaking under the Administrative Procedure Act, 5 U.S.C. 553(b), or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small entities.

This is a final Agency action of national applicability. Jurisdiction to review this action lies exclusively in the U.S. Court of Appeals for the District of Columbia Circuit. Under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of February 8, 1988. Under section 307(b)(2) of the Act, today's action may not be challenged later in separate judicial proceeding brought by the Agency to enforce the statutory prohibitions.

Dated: February 1, 1988.

A. James Barnes,

Acting Administrator.

[FR Doc. 88-2558 Filed 2-5-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0031.

Title: Federal Crime Insurance Program.

Abstract: Application forms are used by homeowners, tenants, and business owners to obtain affordable crime insurance under the federally-subsizided Federal Crime Insurance Program. Insureds are required to submit proof of loss forms to be paid for financial losses from burglary and robbery.

Type of Respondents: Individuals, Business and other for-profit, Non-profit institutions, Small businesses or organizations.

Number of Respondents: 7,380.

Burden Hours: 4,870.

Frequency of Recordkeeping or Reporting: Other.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: February 1, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-2559 Filed 2-5-88; 8:45 am]

BILLING CODE 6718-21-M

[FEMA-805-DR]

Amendment To Notice of a Major Disaster Declaration; Puerto Rico

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-805-DR), dated December 17, 1987, and related determinations.

DATED: January 28, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice: The notice of a major disaster for the Commonwealth of Puerto Rico, dated December 17, 1987, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 17, 1987:

The Municipality of Loiza for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 88-2560 Filed 2-5-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

National City Corp.; Correction of Previous Document

This notice corrects a previous **Federal Register** notice (FR Doc. 88-1345) published at page 1938 of the issue for Monday, January 25, 1988.

Under the Federal Reserve Bank of Cleveland, the entry for National City Corporation is revised to read as follows:

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation,* Cleveland, Ohio; to acquire National City Finanical Corporation, Cleveland, Ohio, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for NCFC's account or the account of others as permitted under § 225.25(b)(1); acting as investment of financial advisor pursuant to § 22.525(b)(4); providing management consulting advice pursuant to § 225.25(b)(11); and performing appraisals of real estate and tangible and intangible personal property pursuant to § 225.25(b)(13); and underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Comments on this application must be received by February 12, 1988.

Board of Governors of the Federal Reserve System, February 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2532 Filed 2-5-88; 8:45 am]

BILLING CODE 6210-01-M

West Coast Bancorp, Inc., 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 26, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *West Coast Bancorp, Inc.*, Cape Coral, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Southwest Florida, Cape Coral, Florida, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Commercial National Financial Corporation*, Ithaca, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial National Bank, Alma, Michigan.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Fremont Bank and Fremont Bancorporation Employee Profit Sharing Plan*, Fremont, California; to become a bank holding company by increasing its ownership of Fremont Bancorporation, Fremont, California, to above 25 percent, and thereby indirectly acquire Fremont Bank, Fremont, Califorina.

Board of Governors of the Federal Reserve System, February 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2531 Filed 2-5-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orphan Products Board; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the Office of the Assistant Secretary for Health are announcing that a public meeting of the Orphan Products Board will be held on March 11, 1988, in Washington, DC, to receive information and views from interested persons on the issue of orphan products development. The meeting will be chaired by Robert E. Windom, Assistant Secretary for Health and Chairman of the Orphan Products Board (Board). The meeting will begin at 9 a.m., in Rm. 800, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201.

ADDRESS: Written requests to participate should be sent to Neil Abel, Executive Secretary, Orphan Products Board (HF-35), Food and Drug Administration, Rm. 12A-40, 5600 Fishers Lane, Rockville, MD 20857, and should be received by March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Neil Abel, Orphan Products Board (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: An orphan drug is a drug for the treatment of a rare disease or condition which either (1) has a prevalence in the United States of under 200,000 affected persons or (2) has a higher prevalence and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. The Orphan Drug Act (the act), Pub. L. 97-414 enacted on January 4, 1983, and amended by Pub. L. 99-91 enacted on August 15, 1985, established a number of incentives to encourage the development and production of orphan drugs.

The act also established an Orphan Products Board to promote the development of drugs and devices for rare diseases or conditions and to assure appropriate coordination among all interested Federal agencies, manufacturers, and organizations representing patients with rare diseases.

The Orphan Products Board is chaired by the Assistant Secretary for Health. The Board is composed of representatives from the Department of Health and Human Services (DHHS), the Veterans Administration (VA), the National Institute of Defense (DOD). Within DHHS, representatives from the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the Centers for Disease Control (CDC), FDA, the Health Care Financing Administration (HCFA), the National Institute of Health (NIH), and the Office of the Assistant Secretary for Health (OASH) serve on the Board.

This public meeting will have three purposes:

1. An update will be provided on the activities of the Orphan Products Board, and members of the Board from ADAMHA, CDC, FDA, and NIH will discuss their agency's recent orphan product development activities. The chairperson of the National Commission on Orphan Diseases will also provide an update.

2. A ceremony will be held to honor the recipients of the Public Health Service Award for Exceptional Achievement in Orphan Products Development. This award recognizes the efforts of individuals who have contributed to the development of drugs for rare diseases or conditions. The awards will be presented by the Assistant Secretary for Health.

3. An opportunity will be given by the Board for the public to make presentations on issues involving the development and availability of orphan products; this opportunity is in keeping with the mandate of DHHS to facilitate the research, development, and approval of orphan products, and to coordinate government activities with the private sector.

Those persons wishing to make a presentation at the meeting on the third topic should submit a written request for a time slot to the Executive Secretary of the Orphan Products Board. The request for participation should be submitted before March 4, 1988, and should include:

1. Name, address, and telephone number of the person wanting to make a presentation;

2. Affiliation, if any;

3. A summary of the presentation; and

4. The approximate amount of time required for the presentation (no more than 10 minutes, unless more time can be justified).

Individuals and organizations with common interests or proposals are urged to coordinate or consolidate their presentations. Joint presentations may be required of persons or organizations with a common interest. The time available will be allocated among the individuals who request an opportunity for a presentation. Formal written statements or extensions of remarks (preferably five copies) may be presented to the chairman on the day of the meeting for inclusion in the record of the meeting. At the discretion of the chairman, and as time permits, any person in attendance may be heard. This time will, most likely, be at the end of the schedule session.

For those unable to attend the meeting, comments may be sent to the Executive Secretary of the Orphan Products Board at the address listed above.

Dated: February 1, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88-2609 Filed 2-5-88; 8:45 am]

BILLING CODE 4160-01-M

Public Workshop; Used of R-DNA Derived and Synthetic Peptide Antigens for HIV Detection

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), the Centers for Disease Control, and the National Heart, Lung, and Blood Institute of the National Institutes of Health have planned a public workshop to discuss the application of recombinant-derived and synthetic peptide antigens in human immunodeficiency virus (HIV) antibody detection tests designed for clinical use. Because of limited seating space and the limited time before the meeting, advance telephone registration and confirmation are requested by February 19, 1988. If space is not filled, telephone registration will be accepted through February 25, 1988.

DATES: March 1 and 2, 1988, 8:30 a.m. to 6 p.m.

ADDRESS: Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT:

Registration for Attendance: Prospect Associates, Conference Registrar, 301–468–6338 between the hours of 8:30 a.m. and 5 p.m.

For program information: Gene Murano, or Leslie Abelson, Center for Biologics Evaluation and Research (HFN–830), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–496–0455, or 301–496–0456.

SUPPLEMENTARY INFORMATION: Among the major topics to be discussed are:

(1) Issues in clinical product development.

(2) Regulatory concerns.

(3) Industry and other experience with investigational products.

(4) Basic scientific issues.

Dated: February 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–2537 Filed 2–5–88; 8:45 am]

BILLING CODE 4160–01–M

Office of Human Development Services

Child Abuse and Neglect Prevention Activities; Availability of Funds

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (HHS).

ACTION: Notice of the availability of Federal funds to support child abuse and neglect prevention activities.

SUMMARY: FY 1988 Federal funds ("challenge grants") are now available to those States that in the previous State or Federal Fiscal Year, FY 1987, had established or maintained trust funds or other funding mechanisms (including appropriations) available only for child abuse and neglect prevention activities. "States" are defined as the several States, the District of Columbia, and the Commonwealth of Puerto Rico. This Notice sets forth the application and other requirements for these grants.

DATES: A signed original and two copies of the application must be received by April 8, 1988.

ADDRESS: Address applications to: Challenge Grants, National Center on Child Abuse and Neglect, Attention: Josephine Reifsnyder, P.O. Box 1182, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Josephine Reifsnyder (202) 245–2860.

SUPPLEMENTARY INFORMATION:

A. Background

On October 12, 1984, Pub. L. 98–473, the continuing appropriations bill for FY 1985, was enacted. In enacting this legislation the Congress found that since 1980 some States began to recognize the critical need for prevention efforts and collected funds through an established trust fund or had established significant funds through direct appropriations to support child abuse and neglect prevention activities. (Section 402(a) (5) and (6)). The purpose as described in sections 402 through 409 of that bill is, by providing Federal "challenge grants", to encourage States to establish and maintain trust funds or other funding mechanisms including appropriations to support child abuse and neglect prevention activities. Forty-four States were awarded grants totaling $5 million from the FY 1987 appropriation.

At the time this legislation was enacted, Congress estimated that approximately 20–25 States had set up trust funds or other funding mechanisms to support child abuse and neglect prevention activities. The most recent data available indicate that approximately 44 States have established trust funds or other funding mechanisms to support such activities.

Child abuse and neglect prevention activities include the activities specified in section 405:

(1) Providing Statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the problems of child abuse and neglect;

(2) Encouraging professional persons and groups to recognize and deal with the problems of child abuse and neglect;

(3) Making information about the problems of child abuse and neglect available to the public and to organizations and agencies which deal with problems of child abuse and neglect; and

(4) Encouraging the development of community prevention programs including:

(A) Community-based educational programs on parenting, prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, coping with family stress, personal safety and sexual abuse prevention training for children, and self-care training for latchkey children; and

(B) Community-based programs relating to crisis care, aid to parents, child abuse counseling, peer support groups for abusive or potentially abusive parents and their children, lay health visitors, respite or crisis child care, and early identification of families where the potential for child abuse and neglect exists.

B. Eligibility

States are eligible to apply for a FY 1988 grant under this announcement if the State had established and maintained in the previous State or Federal Fiscal Year (FY 1987) a trust fund or other funding mechanism, including appropriations, available only for child abuse and neglect prevention activities. The term "State" as defined in section 403(2) means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico. We want to emphasize that, based on section 405 which refers to State activities "in the previous fiscal year," these FY 1988 funds can be made available only based on FY 1987 activities.

C. Funds Available and Fiscal Requirements

In FY 1988, $4,787,000 is available for these grants. Section 406(a)(1) of Pub. L. 98–473 provides that any grant to an eligible State shall be the lesser of two amounts:

(1) Twenty-five percent of the total amount made available by such State for child abuse and neglect prevention activities and collected in the previous State or Federal Fiscal Year (1987) in a trust fund or other funding mechanism. This amount can include appropriations but cannot include interest income from the principal of such a fund or funding mechanism.

or

(2) An amount equal to 50 cents times the number of children residing in the State according to the most current data available to the Secretary. (Section 406(a)(2) defines "children" as individuals who have not attained the State's age of majority.)

In computing a State's allocation, we will use the Bureau of the Census population statistics contained in its publication "Current Population Reports" (Series P–26, No. 86–A, issued August 1987), which is the most recent satisfactory data available from the Department of Commerce.

If the amount appropriated is insufficient to fund each State in full, the grants awarded to eligible States will be reduced proportionately.

All FY 1988 grant funds awarded under this program must be obligated by September 30, 1989 and expended by September 30, 1990.

D. Application Requirements

The application requirements for these grants do not go beyond the requirements of the statute but do require minimum documentation in order to assure compliance. We have cited each requirement to the specific section of the law and suggest that this notice be read in conjunction with the statute. No application forms or other materials will be needed in order to prepare an application. A State may submit its application in any format it chooses.

The Secretary will approve any application that meets the requirements of section 406(b) and will not disapprove an application unless the State has been given an opportunity to correct any deficiencies (section 406(b)(2)). Any additional materials required to satisfy the requirements of section 406(b) must be submitted within 10 days of the date when the State is notified by telephone of the deficiency.

An application can be based on the total amount of FY 1987 funds made available (only for child abuse and neglect prevention activities) in either a trust fund or other funding mechanism, including appropriations. In some States not all funds collected in a trust fund are available because of statutory or administrative limitations. This statutory or administrative limitation must be applied by the State when claiming funds to be considered for Federal Challenge Grant match.

Section 406(b)(1)(A) provides that either the trust fund advisory board or, in States without a trust fund mechanism, the State liaison agency to the National Center on Child Abuse and Neglect will be responsible for administering these funds.

A State submitting an application based on a combination of funds collected in both a trust fund and other funding mechanism must coordinate the development of its application between the trust fund advisory board and the State liaison agency and must include the name and address of a contact person. It is up to the State to determine the basis of its application, to establish its process for the development and submission of the State's single application, and to designate the agency responsible for administering this program. *Only one application per State will be considered.*

Except for States submitting applications based on a combination of funds, the application must be prepared by the agency specified in paragraph one below. The application must be signed by the individual authorized to act for the State in administering these funds, and must contain the following information and assurances:

1. The name and address of the trust fund advisory board responsible for administering and awarding these grants to eligible recipients within the State to carry out child abuse and neglect prevention activities, and the name and address of a contact person (section 406(b)(1)(A)),

or

In States that do not have trust funds, the name and address of the State liaison agency to the National Center on Child Abuse and Neglect (established by section 2 of the Child Abuse Prevention and Treatment Act) and the name and address of a contact person (section 406(b)(1)(A)).

2. A copy of the State law or legal authority:

(a) Establishing the trust fund or other funding mechanism (section 405);

(b) Documenting that the proceeds of the trust fund or other funding mechanism are used only for child abuse and neglect prevention activities (section 405);

Clarification: Some States have established trust funds for both child abuse and neglect and domestic violence prevention activities. In such cases, Federal funds under this program are available based only on the funds available for the child abuse and neglect prevention activities; and

(c) Defining the State's age of majority (section 406(a)(2) and (b)(1)), if the State's age of majority is other than 18 years.

Clarification: Some states, under various circumstances, define the legal age of majority to be other than eighteen. Where a State has more than one legally supportable age of majority, we will apply the age that we determine is more closely related to the goals of the Challenge Grant program.

3. Documentation that the trust fund (or other funding mechanism) was in operation during FY 1987 (section 405).

Clarification: Applications may be based on either the Federal Fiscal Year 1987, October 1, 1986 through September 30, 1987, or the State Fiscal Year 1987. Applications based on the State's Fiscal Year must specify the months and years encompassed.

4. Documentation of the total amount of funds collected or allotted for child abuse and neglect prevention activities and made available in Fiscal Year 1987 in the trust fund or other funding mechanism, including appropriations. This total may not include interest income from the principal of such fund (section 406(a)(1)(A)).

Clarification: Documentation of the total amount of funds collected and made available must be based only on those funds collected and made available during FY 1987. In some States not all funds collected in a trust fund are available for expenditures because of statutory or administrative limitations. In addition, unexpended funds collected in prior years may not be used as the basis of a State's application. In determining the total amount of funds, a State may not include any Federal funds it may have received (e.g., Federal funds received under the Federal Challenge Grant, Title IV–B, or title XX programs), even though those funds may have been made available only for child abuse and neglect prevention activities. Finally, a State may not include any funds it has designated as the State's matching funds for other Federal programs.

Documentation submitted must be sufficient to show that a clearly identifiable amount of funds from a new or an established trust fund, or other funding mechanism, was collected and made available only for child abuse and neglect prevention activities in FY 1987. Documentation must be labeled as to its source, signed by a duly authorized individual, and dated. Documentation that merely provides a retrospective review of FY 1987 activities will not be acceptable. Documentation will be reviewed in accordance with standard audit procedures acceptable under generally approved accounting practices.

5. An assurance that any funds received under this statutory authority will not be used to meet the non-Federal matching requirement of any other Federal law (section 406(b)(1)(B)).

6. An assurance that the State will comply with Departmental

recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Part 74, and that the Comptroller General of the United States and his authorized representatives will have access to these records for purposes of audit and examination (section 406(b)(1)(C) and section 408).

7. An assurance that the State will submit a final Program Performance Report to the Director, National center on Child Abuse and Neglect, on the purposes for which the funds were spent, including a description of the specific programs, projects, and activities funded (section 406(b)(1)(C) and section 409).

8. The Employer Identification Number (EIN) of the applicant organization as assigned by the Internal Revenue Service.

9. A brief description of the intended use of these funds (section 406(b)(1)).

E. Notification under Executive Order 12372

The "challenge grant" program has been excluded from the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities" (see the **Federal Register** of January 2, 1987 (52 FR 161)).

F. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements in this Notice have been approved through April 30, 1989 by the Office of Management and Budget under OMB Control No. 0980–0181.

(Catalog of Federal Domestic Assistance Program Number 13.672, Child Abuse and Neglect Prevention Activities)

Dated: January 27, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Approved: February 2, 1988.

Sydney Olson,

Deputy Assistant Secretary for Human Development Services.

[FR Doc. 88–2595 Filed 2–5–88; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Advisory Committees; Notice of Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of March 1988:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: March 17–18, 1988, 1:00 p.m.

Place: Linden Hill Hotel, Forest Hills Room, 5400 Pooks Hill Road, Bethesda, Maryland.

Open March 17, 1:00 p.m. to 2:00 p.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing to do analysis of data derived from experiments and demonstrations designed to test the cost-effectiveness or efficiency of particular methods of health services delivery and financing, for the research grants program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting of March 17 from 1:00 p.m. to 2:00 p.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these later sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Name: Health Services Research Review Subcommittee.

Date and Time: March 10–11, 1988, 8:00 a.m.

Place: Holiday Inn—Crowne Plaza, Woodmont Room, 1750 Rockville Pike, Rockville, Maryland.

Open March 10, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charge with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting on March 10 from 8:00 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Room 18A80, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Name: Health Care Technology Study Section.

Date and Time: March 7–8, 1988, 8:30 a.m.

Place: Linden Hill Hotel, Forest Hills Room, 5400 Pooks Hill Road, Bethesda, Maryland.

Open March 8, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the effects of health care technologies and procedures, including those in the area of information sciences, as well as those addressing the process of diffusion and adoption of new technologies and procedures.

Agenda: The open session from 8:30 a.m. to 9:30 a.m. on March 8 be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed sessions of the meeting will be devoted to a review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject tc change as priorities dictate.

Date: January 29, 1988.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87-2608 Filed 2-5-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-08-4212-13; A-22677]

La Paz and Mohave Counties, AZ; Realty Action; Land Exchange With Private Party

January 26, 1988.

AGENCY: Bureau of Land Management.

ACTION: Correction of Realty Action—Land Exchange with Private Party, La Paz and Mohave Counties, Arizona.

SUMMARY: This Notice of Realty Action amends the Notice of Realty Action published August 27, 1987. The private lands that will be received by the United States in exchange for public lands under Private Exchange A-22677 are amended as follows to include:

Gila and Salt River Meridian, Arizona

T. 12 N., R. 19 W.,
Correct sec. 11 to SW¼SE¼.
T. 14 N., R. 18 W.,
Add sec. 13, all.
T. 15 N., R. 18 W.,
Add sec. 13, lot 1,
T. 15 N., R. 19 W.,
Add sec. 23, parcel 3,
Delete S½ in sec. 25, and add NW¼SW¼, S½SW¼, SE¼.
Correct total acres to 5,078.93.

DATES: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to Mike Ford, Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, or Bill Childress, Area Manager, Lower Gila Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who sustain, vacate, or modify this reality action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602-855-8017.

Date: January 25, 1988.

J. Darwin Snell,

District Manager.

[FR Doc. 88-2530 Filed 2-5-88; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; Diamond Shamrock Offshore Partners Limited Partnership

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Diamond Shamrock Offshore Partners Limited Partnership has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5697 and 4913, Blocks 124 and 125, respectively, Main Pass Area. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on January 20, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 25, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-2529 Filed 2-5-88; 8:45 am]

BILLING CODE 4310-MR-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 certificate of registration for certain foreign carriers.
OMB Form No.: 3120-0124.
Agency Form No.: OP-2.
Frequency: Annually.
Respondents: Foreign Motor Carriers of Property.
No. of Respondents: 75.
Total Burden Hrs.: 75.
Brief Description of the need &

proposed use: Information is evaluated to determine whether the applicant is a foreign motor carrier or foreign motor private carrier and has complied with the highway safety, financial responsibility and federal tax requirements.

Noreta R. McGee,

Secretary.

[FR Doc. 88-2539 Filed 2-5-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52; Sub-No. 55X]

The Atchison, Topeka and Santa Fe Railway Co., Abandonment Exemption; Lawrence, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the Atchison, Topeka and Santa Fe Railway Company of a 1.95-mile line of railroad between milepost 0.00 and milepost 1.95, in Lawrence, Douglas County, KS, subject to standard employee protective conditions.

DATES: This exemption is effective on March 9, 1988. Petitions to stay must be filed by February 23, 1988, and petitions for reconsideration must by filed by March 4, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-52 (Sub-No. 55X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Michael Blaszak, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

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 (202) 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: February 1, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-2538 Filed 2-5-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 225X)]

CSX Transportation, Inc.; Abandonment Exemption; Clinch and Echols Counties, GA and Hamilton County, FL

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F, *Exempt Abandonments*, to abandon its 31.7-mile line of railroad between milepost AR-622.36 near Dupont, GA and milepost AR-654.06 near Jasper, FL, a distance of 31.7-miles.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective March 9, 1988 (unless stayed pending reconsideration). Petitions to stay must be filed by February 18, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by February 29, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water St., Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from the discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by February 15, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: January 29, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-2406 Filed 2-5-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA; Manville Sales Corp. Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Manville Sales Corporation, Inc.* 88 C 630, was lodged with the United States District Court for the Northern District of Illinois on January 22, 1988. The proposed consent decree resolves a judicial enforcement action brought by the United States against the Manville Sales Corporation, Inc., to compel the implementation of remedial action at Manville's building materials production facility in Waukegan, Illinois, pursuant to section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606(a).

The proposed consent decree requires the defendant to implement and fund the remedial action at the site to abate the imminent and substantial endangerment arising from the release or threat of a release of hazardous substances present at the site. The proposed consent decree also requires defendant to pay the past and future response costs of the United States Environmental Protection Agency and the State of Illinois.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, or until March 3, 1988, comments relating to the proposed consent decree. Comments must be addressed to and received by that date by the Assistant Attorney General of the Land and Natural Resources Division,

Department of Justice, Washington, DC 20530, and should refer to *United States v. Manville Sales Corporation, Inc.*, D.J. Ref. 90–11–1–7.

The proposed consent decree may be examined at the office of the United States Attorney, Room 1500, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, IL 60604, and at the Office of Regional Counsel, U.S. Environmental Protection Agency Region V, Third Floor, 111 W. Jackson Street, Chicago, IL 60604.

Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States. In requesting a copy, please refer to the referenced case name and D.J. Ref. number.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–2614 Filed 2–5–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Judgment Pursuant to the Clean Air Act; Wayne County Department of Health

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that on January 28, 1988 a proposed Consent Order in *United States and the Wayne County Department of Health v. State of Michigan, Department of Mental Health*, Civil Action No. 87–CV–71399DT, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Order concerns the control of air pollution from boilers at the Northville Regional Psychiatric Hospital, located at 41001 West Seven Mile Road, Northville, Michigan, which is a facility owned by the State of Michigan and operated through the Michigan Department of Mental Health. The proposed Consent Order requires the city: To achieve, demonstrate, and maintain compliance with the Clean Air Act and Rules R336.1301 and R336.1331 of the federally approved Michigan State Implementation Plan by converting its three coal-fired boilers to natural gas/No. 2 fuel oil-fired boilers by December 31, 1987; to pay stipulated penalties for specified failures to meet the terms of the Consent Order; and to pay a total civil penalty of $9,500.00, of which $7,125.00 will be paid to the United States and $2,375.00 will be paid to the Wayne County Department of Health.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America and the Wayne County Department of Health v. State of Michigan Department of Mental Health* D.J. Ref. 90–5–2–1–995.

The proposed Consent Decree may be examined at the office of the United States Attorney, 817 Federal Building, 231 W. Lafayette, Detroit, Michigan, and at the Region 5 Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Depatrment of Justice. In requesting a copy, please enclose a check in the amount of $1.30 payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–2615 Filed 2–5–88; 8:45 am]

BILLING CODE 4410–01–M

Office of Juvenile Justice and Delinquency Prevention Office

Changed Meeting Time of the Coordinating Council

The first quarterly meeting for the 1988 calendar year of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held on February 18, 1988, from 11:00 until 12:45 p.m.—not from 10:00 a.m. until 12:00 p.m. as previously announced in the **Federal Register** on January 7, 1988. (Vol. 53, No. 4, Page 458). The meeting will take place in Room 5111 of the Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

Seating for this meeting has been reserved in advance pursuant to the requirements of the previous notice.

Questions concerning this meeting may be referred to Roberta Dorn (202) 724–7655.

Approved:

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–2616 Filed 2–5–88; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Museum Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions Section) the National Council on the Arts, will be held on February 22–26, 1988 from 9:00 a.m.—5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

January 29, 1988.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–2590 Filed 2–5–88; 8:45 am]

BILLING CODE 7537–01–M

Meeting of the Ad Hoc Challenge III Committee

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Ad Hoc Challenge III Committee (Appreciation)

to the National Council on the Arts, will be held on February 22, 1988 from 9:00 a.m.—5:30 p.m. in room M0–7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determiantion of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

January 29, 1988.

[FR Doc. 88–2591 Filed 2–5–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–538]

Memphis State University (The Memphis State University AGN–201); Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated November 10, 1986, as supplemented, Memphis State University (the licensee) requested authorization to dismantle the AGN–201 reactor facility, License No. R–127, located in Memphis, Shelby County, Tennessee and to dispose of the component parts, in accordance with the plan submitted as part of the application. A notice of "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on February 13, 1987 (52 FR 4693). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of the findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact, dated January 20, 1988, for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, the licensee is hereby authorized to dismantle the AGN–201 reactor facility covered by License No. R–127, as amended, and dispose of the component parts in accordance with its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it has performed to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. R–127.

For further details with respect to this action, see (1) the licensee's application for authorization to dismantle the facility, dispose of component parts, and terminate Facility License No. R–127, dated November 10, 1986, as supplemented, (2) the Commission's Safety Evaluation dated, and (3) the Environmental Assessment and Finding of No Significant Impact, dated January 20, 1988. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Bethesda, Maryland, this January 26, 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–2547 Filed 2–5–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–87]

Westinghouse Electric Corp., (Nuclear Training Reactor); Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated July 8, 1987, as supplemented, the Westinghouse Electric Corporation (Westinghouse or the licensee) requested authorization to dismantle the Nuclear Training Reactor, Facility Operating License No. R–119, located in Zion, Illinois, and to dispose of the component parts, in accordance with the plan submitted as part of the application. A "Proposed Issuance of Orders Authorizing Disposition of Component Parts, and Terminating Facility License" was published in the **Federal Register** on September 14, 1987 (52 FR 34732). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact, dated January 20, 1988, for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an Environmental Impact Statement need not be prepared.

Accordingly, Westinghouse is hereby ordered to dismantle the reactor facility and dispose of the component parts in accordance with its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, Westinghouse will submit a report on the radiation survey it wil'

perform to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility Operating License No. R–119.

For further details with respect to this action, see: (1) The Westinghouse application for authorization to dismantle the facility and dispose of component parts, dated July 8, 1987, as supplemented, (2) the Commission's related Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Bethesda, Maryland, this 29th day of January 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–2548 Filed 2–5–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–6754, File No. S7–2–88]

Securities Uniformity; Annual Conference on Uniformity of Securities Law

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at a conference concerning uniformity of securities laws, announcing a hearing and requesting written comments.

SUMMARY: In conjunction with a conference to be held on April 18–19, 1988, the Commission and the North American Securities Administration, Inc. today announced public hearings and published a request for comments on the proposed agenda for the conference. This inquiry is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and federal regulation of securities, maximize the effectiveness of securities regulation in promoting investor protection, and reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: The conference will be held on April 18–19, 1988. A public hearing will be held on February 26, 1988 commencing at 10:00 a.m. All witnesses are requested to submit 15 copies of their prepared statements no later than February 19, 1988. Written comments not prepared in connection with an oral presentation must be received on or before April 6, 1988 in order to be considered by the conference participants.

ADDRESSES: The public hearing will be held at the headquarters of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, Room 1C–35, on February 26, 1988. All witnesses should notify Richard K. Wulff or John D. Reynolds in writing of their desire to testify as soon as possible and submit 15 copies of their prepared statements by February 19, 1988 to Richard K. Wulff or John D. Reynolds, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Written comments not prepared in connection with an oral presentation should be submitted in triplicate by April 6, 1988 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington DC 20549. Comments should refer to File No. S7–2–88. All written submissions, including the written texts submitted in connection with oral presentations and the transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or John D. Reynolds, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, (202) 272–2644.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of a federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[1] Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with federal securities laws as well as all applicable state regulations. In recent years, it has been recognized that there is a need to increase uniformity between federal and state regulatory systems and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980 (the "Investment Incentive Act").[2] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The declared policy of the section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and to diminish the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The 1988 conference will be the fifth annual conference.

II. 1988 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA")[3] are planning the 1988 Conference on Federal-State Securities Regulation (the "Conference") to be held April 18–19, 1988, in Washington, DC. At the Conference, representatives from the Commission and NASAA will divide into working groups in the areas of corporation finance, investment management, market regulation, and enforcement and discuss methods of enhancing cooperation in securities matters in order to improve the

[1] 15 U.S.C. 77a et seq.

[2] Pub. L. 96–77 (October 21, 1980).

[3] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

efficiency and effectiveness of federal and state securities regulation. Generally, attendance will be limited to representatives from the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhibited discussion. However, each working group, in its own discretion, may decide to invite certain self-regulatory organizations to attend and participate in its morning session of April 19, 1988.

Representatives from the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments or by making oral presentations to a panel of Commission and NASAA representatives at a public hearing on February 26, 1988 on the issues set forth below. In addition, comment is requested on other appropriate subjects that commenters wish to be included in the Conference agenda. All comments will be considered by the Conference attendees.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight and enforcement.

(1) Corporation Finance Issues

a. Uniform Limited Offering Exemption

Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. Working with the states, the Commission developed Regulation D, the federal exemption governing exempt limited offerings. Regulation D was adopted by the Commission in March 1982. On September 21, 1983, NASAA endorsed a revised form of the Uniform Limited Offering Exemption ("ULOE") that is intended to coordinate with Regulation D.

ULOE provides a uniform exemption from state registration for certain issuers. An issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. To date, more than half of the states have adopted some form of ULOE. Both the Commission and NASAA continue to make a concerted effort toward the universal adoption of ULOE.

Because Regulation D provides the framework for ULOE, NASAA's assistance in developing proposals to change Regulation D is invaluable. During 1986, the Commission, with NASAA's cooperation, adopted several changes to Form D, the notice used to report offerings pursuant to Regulation D, and revised Rule 503 to delete six-month updates and final filings on Form D.[4] At its 1987 Spring meeting, NASAA adopted these revisions as part of ULOE. In January 1987, the Commission proposed several additional changes to Regulation D.[5] Such changes were reviewed by representatives of the NASAA Small Business Finance Committee before the proposals were made. The Commission is discussing these proposals and other possible revisions to Regulation D. The Commission understands that any changes which may be made in Regulation D will be considered by NASAA with a view to recommending parallel changes to ULOE.

The Commission and NASAA hope to achieve the goal of uniformity envisioned by the statute. Comment is requested on approaches to achieve this goal and on other issues relating to uniformity of exemptions.

b. Disclosure Policy and Standards

The Commission has an ongoing program of considering, reviewing and revising its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. Coordination with the states has been beneficial. For example, such cooperation was helpful in the development of guidelines for real estate offerings.

The Commission in 1986 amended several rules to increase the total assets threshold for registration and reporting under the Securities Exchange Act of 1934 (the "Exchange Act") to $5 million.[6] As a result, issuers are now required to register classes of their equity securities pursuant to section 12(g) of the Exchange Act only when such securities are held of record by at least 500 security holders and the issuer has at least $5 million in total assets.[7] At the time these rule amendments were adopted, the Commission also issued a separate release seeking information and suggestions as to other appropriate criteria for entry into and exit from the Exchange Act reporting system which would complement or substitute for the present size criteria of 500 shareholders and $5 million total assets.[8] The University of Southern California currently is conducting a study to provide the Commission with data to evaluate whether additional and/or different criteria are appropriate. Comment is specifically requested on whether changes in the present criteria should be adopted, and if so, which approaches would further both federal and state regulatory objectives. This topic is of importance since certain states exempt offerings by issuers which are in the Exchange Act reporting system.

Another matter of current interest is the disclosure of offering rankings and securities ratings in registration statements and sales materials. At its 1987 annual meeting, NASAA resolved to develop guidelines for the use of rankings and ratings in offering materials. Participants will consider the appropriateness of furnishing this information and discuss what explanatory disclosure and/or other conditions should be imposed on the use of ratings.

Commenters are invited to discuss other areas where federal-state cooperation could be of particular significance as well as any ways in which federal-state cooperation could be improved.

c. Takeover Regulation

Recent developments in the area of corporate tender offers and takeover techniques make discussion of state and federal issues relating to takeovers appropriate at the Conference.

This area involves consideration of the appropriate federal and state roles in the regulation of changes of corporate control. The constitutionality of state takeover statutes was recently addressed by the U.S. Supreme Court in the context of a case involving challenges to the validity of Indiana's takeover statute.[9] The Court upheld the Indiana statute which provides that a purchaser of a controlling block of stock does not have voting rights for the acquired shares unless a majority of

[4] Release No. 33-6663 (October 2, 1986) [51 FR 36385].

[5] Release No. 33-6683 (January 16, 1987) [51 FR 3015].

[6] Release No. 33-6652, 34-23406, 39-2022 (July 8, 1986) [51 FR 25360].

[7] Registration may be terminated if securities are held of record by less than 30 persons or by less than 500 persons where the total assets of the issuer have not exceeded $5 million for three consecutive years. 17 CFR 240.12g-4.

[8] Release No. 34-23407 (July 9, 1986) [51 FR 25369].

[9] CTS Corp. v. Dynamics Corp. of America 107 S. Ct. 1637 (1987).

disinterested shareholders approves the acquisition. The appropriate federal and state roles in the regulation of corporate takeovers have been the subject of recent Congressional hearings, and proposed legislation that would reform tender offer regulation has been introduced in Congress. Members of NASAA have been working with certain members of the American Bar Association's Committee on the State Regulation of Securities to develop a draft of a proposed model state control share acquisition act which is being released for public comment.

In another development, the Commission recently published proposed rules that would regulate certain acquisitions of securities made during and shortly after a conventional tender offer and related activities.[10] One proposed rule would require that purchases undertaken during such period that would increase a person's ownership of the class of securities subject to the tender offer by 10 percent or more of the class be made in compliance with the statutory provisions and rules applicable to tender offers. Another proposed rule would regulate a bidder's acquisition activities with respect to 10 percent or more of the class from the time a tender offer is publicly announced until either a tender offer is formally commenced or 30 days after withdrawal of the announcement. Comments received on the release will be discussed by the participants.

The public is invited to comment on state and federal regulation in the context of these and other corporate takeover topics.

d. Multinational Securities Offerings

The Commission published a release in 1985 soliciting comments on methods of harmonizing disclosure and distribution practices for multinational offerings by non-governmental issuers.[11] At that time, the Commission published for comment two conceptual approaches to facilitating such offerings—a "common prospectus" approach and a "reciprocal prospectus" approach. The Commission's staff is currently in the process of developing the reciprocal prospectus approach which involves reciprocal recognition and use of home country disclosure documents. It is likely that initially the proposal will focus on debt offerings of certain issuers, limited rights offerings and exchange offers.

Any approach in this area requires consideration of state securities statutes. Comment is specifically requested on ways to coordinate federal and state treatment of multinational offerings.

e. Other Rulemaking Initiatives

Participants at the Conference will consider rulemaking proposals of the Commission initiated over the past year, including new Rule 701 which would provide an exemption from registraiton for the offer and sale of securities pursuant to certain employee benefit plans or compensation contracts.[12] Participants also will discuss rulemaking initiatives currently under consideration by the Division of Corporation Finance.

(2) Investment Management Issues

a. Investment Companies

At the 1987 Conference, representatives from NASAA met with staff of the Commission and discussed the possibility of finding a method by which the Commission and as many states as possible could accept the same disclosure documents from investment company registrants. This result could be achieved by either harmonizing the federal and state disclosure requirements, as was done with Form ADV, the investment adviser registration form, or by providing a way to organize into one filing disclosure that meets all state requirements even if the Commission or some states would not alone require those disclosures. With respect to open-end management investment companies and unit investment trusts, it is important to note that many states use the currently existing uniform application forms, Forms U–1 and U–2. Streamlining uniform state filing procedures would have the added advantage of facilitating eventual one-stop electronic filing meeting both federal and state requirements. Commenters are invited to address this matter and any other issues that should be addressed with respect to the regulation of investment companies.

b. Investment Advisers

(i) *Possible Federal Registration Exemptions.* In March, 1986, the Commission authorized its staff to seek NASAA's views on possible rulemaking to exempt certain smaller investment advisers from most federal adviser regulation, other than antifraud prohibitions, if the advisers were registered in all states in which they do business. The purpose of the exemptions would be to place primary regulatory responsibility for certain smaller advisers with states that actively regulate advisers. Although it authorized the staff to discuss specific drafts of possible exemptive rules, the Commission has reached no conclusions about the desirability or feasibility, or appropriate conditions, of any such rules. In December 1987, NASAA's Board of Directors endorsed the concept of the staff's draft exemptive rules, with certain changes.

The drafts under discussion, which include both an inter- and an intrastate exemption, would determine eligibility for the exemptions by reference to the size of the adviser's business, whether the adviser has custody of clients' funds or securities, and whether the adviser is registered as an adviser in either the state or states in which it does business.

(ii) *Central Registration Depository.* The Central Registration Depository ("CRD") is a computerized system that was developed by NASAA and the National Association of Securities Dealers, Inc. ("NASD") and is used to register securities industry personnel with the NASD and the states. In October 1985, NASAA and the Commission adopted a uniform adviser registration form for advisers registering with the Commission and the states that register advisers. At that time NASAA and the Commission indicated that a clearing house procedure, such as the CRD, would be considered to process adviser registration filings. Last summer the CRD, in a pilot test, began registering investment adviser agents for the state of Virginia, which had just begun to require registration of advisers and their agents.

The conferees will discuss how a central registration system for advisers can be developed, whether it should be developed in connection with the Commission's Edgar system, what cost savings to advisers and regulatory benefits would result from a central registration processing system, what the experience is of the Virginia agent registration pilot, and whether cost-effective means can be developed for Commission participation in any central processing system using the CRD. As discussed below, participants in the sessions on market regulation issues will discuss the use of the CRD in connection with broker-dealer registration.

(iii) *Investment Adviser Registration Updates.* Because the Commission stores all filings and amendments to

[10] Release No. 34–24976 (October 1, 1987) [53 FR 37472].

[11] Release No. 33–6568 (February 28, 1985) [50 FR 9281].

[12] Release No. 33–6726 (July 30, 1987) [52 FR 29033]; and Release No. 33–6683 (January 16, 1987) [52 FR 3015].

filings on microfiche, it is often difficult to quickly assemble a complete investment adviser registration that includes all amendments. To resolve this problem, the Commission has discussed with NASAA representatives the possibility of requiring all advisers amending their Form ADV to file a complete Form ADV rather than just a cover page and the page containing the amended information. To ease the filing burden on advisers, Form ADV–S, the annual supplement for advisers, would not be required for any year that an adviser has amended its registration. However, because of possible storage problems for state regulators that store these filings on paper, which might result from such an updating requirement, the conferees will discuss possible alternative solutions. These alternatives could include requiring advisers to file a complete Form ADV only with the Commission on an annual basis.

(iv) *Inspections.* The conferees also expect to discuss the ongoing cooperative efforts of the Commission and the states to increase routine surveillance of investment advisers. A joint Commission-state inspection and training program was instituted in 1984 to coordinate regulatory efforts by sharing registration and examination information, thereby increasing the overall regulatory coverage of the investment adviser industry. To date this program has provided training to more than 100 inspectors from 30 states. In addition, the conferees will discuss whether regional offices should work more closely with the states on small enforcement cases that are more intrastate in nature. The criteria for identifying those cases and the mechanics of such a procedure will be specifically discussed.

(v) *Financial Planners.* The Commission expects to transmit shortly to Congress the report on investment advisers and financial planners that has been requested by the House of Representatives Energy and Commerce Committee's Subcommittee on Telecommunications, Consumer Protection and Finance. The report will contain, among other things, a discussion of the pilot program of the NASD to become a self-regulatory organization for those planners or advisers that are members or associated with members of the NASD. The conferees will discuss how federal-state cooperation with respect to financial planners can reduce any duplicative regulation.

(3) Market Regulation Issues

a. October 1987, Market Break

During October 1987, the U.S. securities markets experienced an unprecedented surge of price volatility and volume. The market statistics for October 1987 indicate the magnitude of the decline in stock prices which occurred during this period. The leading indicator of the U.S. stock market's movements, the Dow Jones Industrial Average ("DJIA") index of 30 bellweather New York Stock Exchange ("NYSE") stocks, had declined by its low point mid-day on October 20, 1987 to 1712.70, or more than 1000 points (37 percent) below its all-time high of 2722.42 on August 25, 1987. Even with its erratic recovery over the next few trading sessions, by October 30, 1987, the DJIA still was below the 2000 level (at 1994), down more than 26 percent from its August highpoint. Broader indices such as the Standard & Poor Industrial Index of 500 stocks also declined 21.8 percent during the month of October 1987. Composite indexes for the nation's three principal securities markets, the NYSE, American Stock Exchange, and the National Association of Securities Dealers Automated Quotation System ("NASDAQ") for over-the-counter stock trading experienced declines of 21.9%, 27% and 27.2%, respectively.

In response to the enormous price volatility experienced in October 1987 and the strains on market systems resulting from the tremensous volume, Chairman Ruder directed the staff of the Division of Market Regulation to conduct a comprehensive study of the market break and to report its analysis to the Commission. The staff is in the process of completing that study and expects to report its results at the end of January 1988.

In addition to the SEC staff study, a number of other studies of the October 1987 market break are underway or have been completed. President Reagan has appointed a Task Force on Market Mechanisms ("Brady Task Force"), headed by former Senator Nicholas Brady, to study the events of October 1987 and report its findings in January 1988. The Brady Task Force released its report publicly on January 8, 1988. In addition to the Brady Task Force report, studies are also underway by the Commodity Future Trading Commission, the Chicago Board of Trade, the Chicago Mercantile Exchange and the NYSE. Finally, several committees in the Congress also have underway their own independent reviews of the October 1987 market break.

In response to the market break, NASAA instituted an Investor Hotline on November 9, 1987. In addition to establishing the Investor Hotline, NASAA produced a 23-page consumer handbook, "Coping with the Crash: A Step-by-Step Guide to Investor Rights" which details investors' rights in problems experienced during the October 1987 market break.

To date, more than 8,000 investors have contacted the Hotline, which has been staffed by more than a dozen securities examiners and enforcement attorneys volunteered by NASAA member states securities offices. A detailed report, *The NASAA Investor Hotline: Reforms are Needed to Prevent a Repeat of Serious Problems Faced by Individual Investors in the October 1987 Market Crash,* was released by NASAA in mid-December in connection with testimony by James C. Myer, NASAA president, before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce. The report analyzed the data from 6,962 calls made to the Hotline between November 9 and December 4, 1987. Of that number, 2,562 calls (or 38 percent) identified specific complaints.

The conferees will discuss the results of the various studies completed or underway and possible suggestions for regulatory or legislative action which may emerge from those studies. The conferees will also discuss the results of the NASAA consumer complaint hotline. Commenters are invited to address any aspect of the October 1987 market break which relates to federal-state regulatory issues.

b. Central Registration Depository ("CRD")

As indicated above, certain aspects of the CRD will be discussed under investment management issues. The CRD will also be discussed by the market regulation working group. The NASD, forty-nine states, the District of Columbia, Puerto Rico and the New York Stock Exchange presently approve or register broker-dealer agents by means of the CRD. Persons filing applications for agent registration file a Form U–4 and any required fees with the CRD, which disseminates the information contained on the forms and fees electronically to the appropriate jurisdictions. This agent phase of CRD, known as Phase I, similarly provides for the filing of U–4 amendments and for the transfer of agent registration under certain circumstances. Work is proceeding on the implementation of the final stage of Phase II, which, when completed, will enable the CRD to effect

the initial registration of a broker-dealer upon the filing of a Form BD with CRD and to update the information on the Form BD when the broker-dealer files Form BD amendments.

During the sessions, participants will focus on the present efficacy of the CRD, future uses of the CRD by the states and the relationship of the Commission to the CRD (including the possible processing of broker-dealer registrations with the Commission through the system).

Commenters are requested to address the effectiveness and efficiency of the CRD (including any suggestions for improving the system) as well as the future direction of the system.

c. National Market System Exemption From Registration

Most state securities laws currently provide an exemption from their securities registration requirements to issuers that list on the New York ("NYSE") or American ("Amex") Stock Exchanges, or, in some cases, certain regional stock exchanges. Recently, some states have extended these exemptions to include over-the-counter ("OTC") securities designated as National Market System ("NMS") securities, while other states and legislatures have rejected such proposals. The Commission recently amended Rule 11Aa2-1 to designate as NMS securities all listed and OTC equity securities for which real time last sale reporting is required by a transaction reporting plan. At the same time the Commission approved proposed amendments to the NASD's transaction reporting plan that add corporate governance standards for OTC NMS securities. The effect of these amendments is to designate as NMS securities all NYSE and Amex-listed equity securities and all equity securities listed on regional exchanges that meet Amex's listing standards and that are reported pursuant to a transaction reporting plan. In addition, all current OTC NMS securities would continue to be designated as NMS securities if they satisfy the new corporate governance standards. The Commission also recently granted the NYSE, Amex and NASD the authority to waive their corporate governance standards for certain foreign issuers and is considering an NYSE proposal to relax its one share, one vote requirement. Commenters are asked to address whether the states generally should continue to exempt certain securities from registration, particularlly in light of the possible changes to company listing standards on corporate governance and foreign issuers. Commenters are also requested to address whether NASAA should develop objective exemptive standards to replace the "status" exemptions in light of increasing competition between NASDAQ and the exchanges, the Commission's amendments to its NMS Designation Rule and the NASD's proposed corporate governance standards.

d. Forms Revisions

During 1987 the Commission and NASAA proposed changes to Form BD, the form used to register as a broker-dealer. These changes were intended to include in Form BD an explicit consent to service of process at the address identified on the form on behalf of the Commission and the self-regulatory organizations. This consent was approved by NASAA at its Fall Conference, and adopted by the Commission in January 1988. At the time the Commission also proposed expanding the beneficiaries of this consent to include the Securities Investor Protection Corporation.

e. Internationalization of the Securities Markets

The implications of multinational securities offerings are being discussed in the corporation finance working group with a particular focus on the development of a reciprocal prospectus for certain offerings. The Market Regulation Task Force will also discuss internationalization with the resulting development of the global securities markets. During 1987, the Commission hosted a Roundtable at which the Commission, self-regulatory organization representatives and numerous market participatants discussed issues that have arisen because of the globalization of the markets. In addition the Commission's staff prepared a comprehensive study of the internationalization of the markets last summer. The Commission continues to follow closely these developments and, to that end, requests comment on the direction of the internationalization of the trading markets. Commenters are asked to address steps that would be useful on the national and state levels to facilitate international markets while protecting investors and maintaining fair and orderly markets in the United States.

(4) Enforcement Issues

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

(5) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include Edgar, the Commission's pilot electronic disclosure system, the coordination of Commission rulemaking procedures with the states, training and educating staff examiners and analysts, and sharing of information. These topics may be discussed in the working groups or at a general session.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other topics in which the existing scheme of state and federal regulation can be made more uniform while high standards of investor protection are maintained.

By the Commission.

Jonathan G. Katz,

Secretary.

February 2, 1988.

[FR Doc. 88-2610 Filed 2-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16246; 812-6552]

Cenvill Investors, Inc.; Notice of Application

February 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Cenvill Investors, Inc.

Relevant 1940 Act Sections: Order requested under Section 6(c).

Summary of Application: Applicant seeks a conditional order exempting certain subsidiaries it may form from all provisions of the 1940 Act in connection with such subsidiaries' proposed issuance of mortgage-backed securities and sale of equity interests as described below.

Filing Date: The application was filed on December 3, 1986, and amended on January 12, 1988. A second amendment will be filed during the notice period, the substance of which is included herein.

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 26, 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. Cenvill Investors, Inc., Century Village Administration Building, North Haverhill Road, West Palm Beach, Florida 33417.

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 may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, a real estate investment trust ("REIT") incorporated in Delaware, invests primarily in real estate mortgage notes, and intends to continue to operate as such in the future. Applicant intends to form direct, limited purpose finance subsidiaries (the "Subsidiaries"), all of whose common stock will be owned by the Applicant, and to cause each Subsidiary to be a REIT or a "qualified REIT subsidiary" within the meaning of Section 856 of the Internal Revenue Code of 1986 ("Code"). If the Applicant chooses to cause a Subsidiary to be a qualified REIT subsidiary, all of the common stock and all of the voting stock of such Subsidiary will be owned by the Applicant. If the Applicant chooses to qualify a Subsidiary as a REIT, the Code requires that the Subsidiary must have 100 or more shareholders. Therefore, each Subsidiary which is established as a REIT will sell additional equity interests ("Equity Interests") in the form of preferred stock to additional persons in order to meet the requirements of the Code, pursuant to the conditions described below.

2. Applicant seeks relief in connection with the organization of Subsidiaries to issue and sell one or more series ("Series") of collateralized mortgage obligations ("Bonds") and Equity Interests in the Subsidiary as described below. The Bonds will be issued pursuant to an Indenture ("Indenture") between each Subsidiary and an independent trustee ("Trustee"), which will be supplemented by one or more supplemental indentures, each of which will correspond to a separate Series. Each Series will consist of one or more classes, which may have fixed or variable rates of interest. The Bonds will be sold to institutional or retail investors through one or more investment banking firms. The Indenture and the supplemental indentures will be subject to the provisions of the Trust Indenture Act of 1939.

3. Each Series of Bonds will be separately secured primarily by "Mortgage Collateral" consisting of a combination of the following: (i) Mortgages that are first liens on single (one-to-four) family residences ("Mortages Loans"); (ii) mortgage certificates evidencing an undivided interest in pools of mortgages that are first liens on single (one-to-four) family residences ("Private Mortgage Certificates"); and (iii) "fully modified pass-through" mortgage backed certificates ("GNMA Certificates") guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA"); mortgage participation certificates ("FHLMC Certificates") issued and guaranteed as to timely payment and ultimate payment of principal by the Federal Home Loan Mortgage Corporation ("FHLMC"); and guaranteed mortgage pass-through certificates ("FNMA Certificates") issued and guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA"). (Such GNMA Certificates, FHLMC Certificates, and FNMA Certificates are referred to herein as "Federal Mortgage Certificates"). (Private Mortgage Certificates and Federal Mortgage Certificates are referred to herein as "Mortgage Certificates"). Each Series of Bonds may also be secured by monthly distributions received on such Mortgage Collateral, by the reinvestment income derived from such distributions, and reserve funds, if any, distributed to the Trustee (Mortgage Collateral, distributions and reserve funds collectively, "Bond Collateral"). The Trustee will have a first priority perfected security or lien interest in the Bond Collateral pledged to secure the Bonds.

4. At the date of issuance, each portfolio of Mortgage Collateral will have an outstanding principal balance in excess of the principal amount of the related Series of Bonds. Scheduled distributions on the Mortgage Collateral together with the reinvestment earnings on such distributions (at the assumed rate of return specified in the Indenture) will be sufficient to make timely payments of interest and principal on the related Series. The assumed rate of interest for a Series of Bonds will be the maximum rate permitted by rating agency rating such Series. The Mortgage Collateral pledged as security for one Series of Bonds will serve as collateral only for that Series.

5. In addition to the issue and sale of the Bonds, a Subsidiary established as a REIT will sell Equity Interests in the form of preferred stock to one or more banks, savings and loan associations, pension funds, insurance companies or other investors which customarily engage in the purchase of mortgage loans or mortgage-related securities in transactions not constituting a public offering under Section 4(2) of the Securities Act of 1933 ("1933 Act"). However, at all times the Applicant will own one hundred percent (100%) of the common stock of such REIT Subsidiary. The Articles of Incorporation of each REIT Subsidiary will prohibit the transfer of any stock if there would be more or less than one hundred (100) owners of such stock at any time. Mortgage Collateral held by REIT Subsidiaries selling Equity Interests will be limited to Federal Mortgage Certificates.

6. Neither the Equity Interestholders, the Subsidiaries, nor any Indenture Trustee will be able to impair the security afforded by the Mortgage Collateral to Bondholders because, without the consent of each Bondholder to be affected, neither the Equity Interestholders, the Subsidiaries, nor the Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount or the rate of interest on any Bond; (3) change the priority or payment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Collateral securing a Series; (5) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Collateral; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

7. The interests of the Bondholders will not be compromised or impaired by the ability of a Subsidiary to sell Equity Interests, and there will not be a conflict of interest between the Bondholders and the Equity Interestholders of a Subsidiary for several reasons: (a) The Mortgage Collateral will not be speculative in nature; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; (c) the

relevant Indenture subjects the Mortgage Collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders.[1]

8. Except to the extent permitted by the limited right to substitute collateral, it will not be possible for the Equity Interestholders of a Subsidiary to alter the collateral initially deposited with respect to any Series of Bonds, and in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Although it is possible that any collateral initially pledged may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the Equity Interestholders, which market conditions are likely to affect all Mortgage Collateral or similar payment terms and maturities in a similar fashion; and (b) the interests of the Equity Interestholders are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience.

Applicant's Legal Conclusions

The requested order is necessary and 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 because: (a) The Subsidiaries should not be deemed to be entities to which the provisions of the 1940 Act were intended to be applied; (b) the Subsidiaries may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Subsidiaries' activities are intended to serve a recognized and critical public need in facilitating available funds for residential mortgages; (d) the Bondholders will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Trustee representing their interests under the Indenture; (e) the common stock of the Subsidiaries will be held entirely by the Applicant; and (f) the sale of Equity Interests to not more than than 35 accredited individual investors is consistent with the limitations of Regulation D under the 1933 Act.

Applicant's Conditions: Applicant agrees that the requested order may be expressly conditioned upon the following:

A. Conditions Relating to the Bond Collateral

1. Each Series of Bonds will be registered under the 1933 Act unless offered in a transaction exempt from registration pursuant to Section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Collateral underlying the Bonds will be limited to Mortgage Loans, Private Mortgage Certificates, and Federal Mortgage Certificates. Mortgage Collateral held by Subsidiaries selling Equity Interests will be limited to Federal Mortgage Certificates.

3. New Mortgage Loans may be substituted for Mortgage Loans initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. New Private Mortgage Certificates may be substituted for Private Mortgage Certificates initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. If new Mortgage Collateral is substituted, the substitute collateral must: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in paragraphs 2, 4 and 6 of Condition A. In addition, new collateral may not be substituted for more than 20% of the aggregate face amount of the Mortgage Loans initially pledged as collateral for a Series, or more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

4. All Mortgage Loans, Mortgage Certificates, funds, accounts or other collateral securing a Series will be held by the Trustee or on behalf of the Trustee by an independent custodian ("Custodian"). The Trustee or Custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 of the 1933 Act, 17 CFR 230.405) of the Applicant, the Subsidiary or of the master servicer or originating lender of any Mortgage Loans that are pledged as Mortgage Collateral. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Custodian. The Trustee will have a first priority perfected security or lien interest in and to all Bond Collateral.

5. Each Series will be rated in the one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant or Subsidiary issuer of the securities. The Bonds will not be redeemable securities within the meaning of Section 2(a)(32) of the 1940 Act.

6. The master servicer of any Mortgage Loans pledged as collateral for a Series will not be an affiliate of the Trustee. If there is no master servicer, no servicer of those Mortgage Loans my be an affiliate of the Trustee. Any master servicer and servicer of such Mortgage Loans will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to the Mortgage Loans as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by the VA or eligible for purchase by FNMA or FHLMC.

7. No less often than annually, an independent public accountant will audit the books and records of the Subsidiary and, in addition, will report on whether the anticipated payments of principal and interest on the Bond Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the reports will be provided to the Trustee.

B. Conditions relating to Variable-Rate Bonds

1. Each Series of adjustable or floating interest rate bonds will have a set maximum interest rate.

2. At the time of deposit of the Bond Collateral and during the life of the Bonds, the scheduled payment of principal and interest to be received by the Trustee on all Mortgage Collateral plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the Application)

[1] The Indenture will also provide that no amounts may be released from the lien of the Indenture to be remitted to the Subsidiary (and any Equity Interestholder thereof) until (i) the Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, and (iii) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds.

will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each Series of adjustable or floating interest rate Bonds. Such Bond Collateral will be reduced as the mortgages underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

C. Conditions Relation to the Sale of Equity Interests

1. Any Equity Interests in a Subsidiary will be offered and sold to (i) institutions or (ii) non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have sufficient knowledge and experience in financial and business matters as to be capable to evaluate the risks of purchasing Equity Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 35, will purchase at least $200,000 of such Equity Interest and will have net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing an Equity Interest in such Subsidiary and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Equity Interestholders will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts and other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgage and mortgage-related securities.

2. Each sale of an Equity Interest will qualify as a transaction not involving any public offering within the meaning of Section 4(2) of the 1933 Act.

3. Each sale of an Equity Interest will provide that no future transfer of such Equity Interest will be permitted if, as a result thereof, there would be more or less than one hundred (100) beneficial holders of Equity Interests in the Subsidiary at any time.

4. Each sale of an Equity Interest will require each purchaser thereof to represent that it is purchasing for investment and not for distribution and that it will hold such Equity Interest in its own name and not as nominee for undisclosed investors.

5. Each sale of an Equity Interest in a Subsidiary will provide that (i) no holder of such Equity Interest may be affiliated with the Trustee for that Subsidiary and (ii) no holders of a controlling (as that term is defined in Rule 405) Equity Interest in that Subsidiary may be affiliated with either the Custodian of the Bond Collateral or the agency rating the Bonds of the relevant Series.

6. If the sale of the Equity Interests rsults in the transfer of control (as the term "control" is defined in Rule 405) of a Subsidiary from the Applicant, the relief afforded by any Commission order granted on the application would not apply to subsequent Bond offerings by that Subsidiary.

D. Condition Relating to REMICs

If a Subsidiary elects to be treated as a REMIC, it will provide for the payments of administrative fees and expenses as set forth in the application. The Subsidiary will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

E. Special Conditions

All of the common stock and a majority of the voting stock of each Subsidiary will be owned by the Applicant. The Applicant undetakes to secure each Subsidiary consent to comply with all of the applicable representations and conditions set forth above and more specifically described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2612 Filed 2-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16248; File No. 812-7996]

Integrated Resources Series Trust; Mixed and Shared Funding

February 2, 1988.

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Integrated Resources Series Trust.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 9(a) 13(a), 15(a), 15(b) and Rules 6e-2(b) (15) and 6e-3(T)(b)(15).

Summary of Application: Applicant requests an exemption permitting it to offer its shares to a class of life insurers ("Participating Insurance Companies") in conjunction with variable annuity contracts and variable life insurance policies offered by the Participating Insurance Companies. Participating Insurance Companies may or may not be affiliated with each other. The transactions are more fully described below.

Filing Date: The application was filed on November 5, 1987.

Hearing or Notification: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on February 26, 1988. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Applicant should be served with a copy of the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Integrated Resources Series Trust, 666 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa, (202) 272-2058, or Special Counsel Lewis B. Reich, (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's Commercial Copier at (800) 231-3282 (in Maryland (301) 285-4300).

Applicant's Representations

1. Applicant is registered under the Investment Company Act of 1940 as an open-end diversified management investment company of the series type. It currently has ten Portfolios: IR Growth Portfolio, IR Aggressive Growth Portfolio, IR Foreign Securities Portfolio, IR Convertible Securities Portfolio, IR Money Market Portfolio, IR Government Securities Portfolio, IR Fixed Income

Portfolio, IR High Yield Portfolio, IR Multi-Asset Portfolio and IR Aggressive Multi-Asset Portfolio.

2. Applicant proposes to offer its shares to the separate accounts of Participating Insurance Companies which issue either variable annuity contracts or scheduled or flexible premium variable life insurance contracts (together, "variable life insurance"). The use of a common investment management company as the investment medium of both variable annuities and variable life insurance is referred to herein as "mixed funding." The use of a common investment management company as the investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

3. Rules 6e-2 and 6e-3(T) under the Act provide certain exemptions from the Act in order in permit insurance company separate accounts to issue variable life insurance. Rule 6e-2(b)(15), however, precludes mixed and shared funding and Rule 6e-3(T)(b)(15) precludes shared funding. Applicant has requested exemptive relief to the extent necessary to permit shares of the Applicant to be sold for mixed funding and shared funding. Applicant proposes that the requested relief extend to a class consisting of life insurers and variable life separate accounts investing in Applicant (and principal underwriters and depositors of such separate accounts) which would otherwise be precluded from investing in Applicant by virtue of the Applicant offering its shares to variable annuity separate accounts or unaffiliated separate accounts.

4. Applicant asserts that granting the request for relief to engage in mixed and shared funding will benefit variable contract owners by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies; and (3) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract charges. Applicant asserts that the Portfolios will not be managed to favor or disfavor any particular insurer or type of insurance product.

Disqualification

5. Applicant requests relief from section 9(a) and Rules 6e-2(b)(15) and 6e-3T(b)(15) to the extent necessary to permit mixed and shared funding. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in section 9(a)(1) or (2). Applicant proposes that the relief granted by paragraph (b)(15) and Rules 6e-2 and 6e-3(T) from section 9(a) be extended to Participating Insurance Companies and variable life separate accounts that may use Applicant as an investment medium to find variable life insurance contracts, subject to the conditions regarding conflicts set out below.

6. In support of this request for relief, Applicant asserts that the same policies that led the Commission to limit the provisions of section 9(a) to those employees of an insurance company engaged in managing the separate account are applicable to insurance companies and their separate accounts that are funded by a fund offering mixed and shared funding. Thus, Applicant states that it would serve no regulatory purpose to apply the provisions of section 9(a) to the many employees of the Participating Insurance Companies whose separate accounts may utilize Applicant as a funding medium for variable life insurance contracts. Moreover, Applicant submits that applying the requirements of section 9(a) in such cases would increase the costs of monitoring for compliance with that section, which would reduce the net rates of return realized by contractowners. Under the relief requested, section 9 would still be in effect and would insulate Applicant from those individuals who are disqualified under the Act.

Voting

7. Applicant requests relief from sections 13(a), 15(a), and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding: i.e., Applicant proposes that the relief granted by paragraph (b)(15) of Rules 6e-2 and 6e-3(T) from sections 13(a), 15(a) and 15(b) be extended to the Participating Insurance Companies and their variable life separate accounts which use Applicant as an investment medium to fund variable life contracts subject to the conditions regarding conflicts set out below.

8. In support of this request for relief, Applicant states that all variable annuity and variable life contract owners will be provided pass-through voting rights with respect to shares of the Applicant. Because paragraphs (b)(15) are both rules 6e-2 and 6e-3(T) permit the insurance company to disregard these voting instructions in certain limited circumstances, Applicant acknowledges that this may cause an irreconcilable conflict to develop among the separate accounts. Applicant proposes to resolve these potential conflicts through certain undertakings it proposes as conditions to receipt of exemptive relief set out below. Thus, according to Applicant, if a particular Participating Insurance Company's disregard of voting instructions conflicted with the voting instructions of a majority of the contractowners, or precluded a majority vote, the insurer may be required, at Applicant's election, to withdraw its separate account's investment in Applicant. The Participating Insurance Companies will vote shares, for which they have not received voting instructions, as well as shares attributable to them, in the same proportion as they vote shares for which they have received instructions.

Applicant's Conditions

Applicant states that it will comply with the following conditions:

1. A majority of the Board of Trustees of Applicant ("Board") shall consist of persons who are not interested persons of Applicant, as defined by the 1940 Act.

2. The Board will monitor Applicant for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in Applicant. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners or by contractowners of different Participating Insurance Companies; or (f) a decision by an insurer to disregard the voting instructions of contractowners.

3. Participating Insurance Companies and the Investment Adviser will report any potential or existing conflicts to Applicant's Board. Participating Insurance Companies will be responsible for assisting the Board in carrying out its responsibilities by providing the Board with all information reasonably necessary for the Board to

consider any issues raised, including information as to a decision by an insurer to disregard voting instructions of contractowners. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all insurers investing in Applicant under their agreements governing participation in Applicant.

4. If it is determined by a majority of the Board of Applicant or a majority of its disinterested Trustees that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense, take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from Applicant or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio of Applicant, or submitting the question of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any particular group (i.e. annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, a Participating Insurance Company may be required, at Applicant's election, to withdraw its separate account's investment in Applicant, and no charge or penalty will be imposed against a separate account as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in Applicant and those responsibilities will be carried out with a view only to the interests of their contractowners. For purposes of this condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable conflict, but in no event will Applicant be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of affected contractowners.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all Participating Insurance Companies.

6. Participating Insurance Companies shall provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the 1940 Act to require pass-through voting privileges for variable contractowners. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts participating in applicant calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in Applicant shall be a contractual obligation of all present and future Participating Insurance Companies under their agreements governing participation in Applicant. Participating Insurance Companies will vote shares, for which they have not received voting instructions, as well as shares attributable to them, in the same proportion as they vote shares for which they have received instructions.

7. All reports received by the Board of potential or existing conflicts, determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedied a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 88-2611 Filed 2-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16247; 812-6883]

Stuart-James Venture Partners I, L.P.; Notice of Application

February 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: Stuart-James Venture Partners I, L.P. (the "Partnership"), Stuart-James Venture Management Inc. (the "Management Company") and SJVPI Co., L.P. (the "Managing General Partner").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from certain provisions of Sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an order determining that: (i) The Independent General Partners of the Partnership are not "interested persons" of the Partnership solely by reason of being general partners ("General Partners") thereof; and (ii) persons who become limited partners ("Limited Partners") of the Partnership who own less than 5% of the units of limited partnership interest ("Units") will not be "affiliated persons" of the Partnership or its other partners solely by reason of their status as Limited Partners.

Filing Date: The application was filed on October 1, 1987, and amended on January 5, and February 1, 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 25, 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, N.W., Washington, D.C. 20549. Applicants, 805 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney (202) 272-3024 or Karen L. Skidmore, Special Counsel (202) 272-3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a newly formed business development company organized as a Delaware limited partnership on September 3, 1987 pursuant to a Certificate of Limited Partnership dated September 3, 1987. The Partnership has elected to be a business development company and therefore will be subject to Sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by Section 59 thereof. The investment objective of the Partnership is to seek long-term capital appreciation by making venture capital investments. The Partnership is to terminate in ten years (unless extended for up to two additional two-year terms in order to permit an orderly liquidation) and thus will be an investment vehicle of limited duration which will have definite stages of development.

2. The Partnership filed a registration statement under the Securities Act of 1933, as amended, on Form N–2 (File No. 33–16891) with respect to a proposed public offering of up to 50,000 Units at a price of $1,000 per Unit. These proceeds will be invested in 15 to 25 venture capital investments ("Portfolio Securities") over a period of up to three to four years. Each of these investments will be liquidated once it reaches a state of maturity when disposition can be considered, which typically will be four to eight years from the date of investment. Proceeds from the sale of Portfolio Securities will not be reinvested except in limited circumstances, but will be distributed to the partners.

3. The Managing General Partner of the Partnership, a Delaware limited partnership, will be responsible for its venture capital investments, subject to the supervision of the individual general partners ("Individual General Partners"). Pursuant to a management agreement with the Partnership, the Management Company, a Delaware corporation, which is the general partner of the Managing General Partner, will perform the management and administrative services necessary for the operation of the Partnership according to the terms of the Agreement of Limited Partnership ("Partnership Agreement").[1] The Managing General Partner and the Management Company will be registered investment advisers under the Investment Advisers Act of 1940 ("Advisers Act"). The Management Company is under common control with Stuart-James Company Incorporated ("Stuart-James") which will be the selling agent of the Units on a "best efforts" basis.

4. The General Partners of the Partnership will consist of five persons, four Individual General Partners and the Managing General Partner. Only natural persons may serve as Individual General Partners. The Individual General Partners will include three Independent General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of the 1940 Act) and one Individual General Partner who is an affiliated person of the Managing General Partner and Management Company and/or any individual who becomes a successor or additional Individual General Partner as provided in the Partnership Agreement. It at any time, however, the number of Independent General Partners is reduced to less than a majority, the remaining Individual General Partners shall, within 90 days, designate one or more successor Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners.

5. The Partnership Agreement provides that the General Partners are elected at annual meetings of the Limited Partners and serve for annual terms. It also provides that the Individual General Partners may be removed either (i) For cause by the action of two-thirds of the remaining Individual General Partners; (ii) by failure to be re-elected by the Limited Partners; or (iii) with the consent of Limited Partners holding a majority of the Units then outstanding. The Managing General Partner may be removed either by (i) A majority of the Independent General Partners with or without cause, which removal shall be confirmed within 60 days thereafter by Limited Partners holding a majority of the Units outstanding; (ii) by failure to be re-elected by the Limited Partners; or (iii) with the consent of Limited Partners holding a majority of the Units outstanding.

6. The Managing General Partners may withdraw from the Partnership only upon 60 days notice, which notice must name a successor Managing General Partner. The proposed Managing General Partner must represent that it is experienced in performing functions that the Managing General Partner is required to peform under the Partnership Agreement; that it has the net worth required such that the Partnership retains its treatment as a partnership for tax purposes; and that it is willing to serve as Managing General Partner on the terms provided in the Partnership Agreement. Finally, a majority in interest of the Limited Partners must consent to the appointment of any successor Managing General Partner.

7. The Individual General Partners solely will manage the Partnership except that the Managing General Partner, subject to the guidance and supervision of the Individual General Partners, is responsible for the management of the Partnership's venture capital investments and the admission of additional, assignee or substitute Limited Partners to the Partnership. The General Partners will otherwise act by majority vote of the Individual General Partners. The Individual General Partners will perform the same functions the 1940 Act imposes on directors of a "a business development company" organized in corporate form and the Independent General Partners will assume the responsibilities and obligations that are imposed by the 1940 Act and the regulations thereunder on non-interested directors of a "business development company."

8. The Limited Partners have no right to control the Partnership's business, but may exercise certain rights and powers under the Partnership Agreement, including voting rights and the giving of consents and approvals provided for in the Partnership Agreement and as required by the 1940 Act. It is the opinion of counsel for the Partnership that the existence of exercise of these voting rights does not subject the Limited Partners to liability as general partners under the Delaware Revised Uniform Limited Partnership Act.

In addition, the Partnership Agreement obligates the General Partners of the Partnership to take all action which may be necessary or appropriate to protect the limited liability of the Limited Partners. The Partnership does not presently have an errors and omissions insurance policy; however, the General Partners will periodically review the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

Applicants' Legal Conclusions

1. By virtue of their status as partners of the Partnership, the Independent General Partners could be deemed to be "affiliated persons" of the Partnership within the meaning of Section 2(a)(3) of the 1940 Act and, consequently, "interested persons" of the Partnership. The Independent General Partners could

[1] The Partnership Agreement will be amended during the notice period of this application to make the Partnership Agreement consistent with the statements in the application.

be construed to be "interested persons" of an investment adviser and principal underwriter to the Partnership by virtue of their status as "co-partners" (and, consequently, "affiliated persons") with the Managing General Partner in the Partnership. The Managing General Partner could be construed to be an investment adviser of the Partnership. Furthermore, the Managing General Partner is under "common control" with the Management Company, an investment adviser to the Partnership, and Stuart-James, the principal underwriter with respect to the sale of the Units, which makes the Managing General Partner an "affiliated person" of the Management Company and Stuart-James. Each person who becomes a Limited Partner will be a partner of the Partnership and of each other Limited and each General Partner. Thus, each Limited Partner could be deemed to be an "affiliated person" of the Partnership as well as of each other Limited Partner and General Partner merely by virtue of having purchased a Unite and become a Limited Partner.

2. Applicants request that the Partnership and its Independent General Partners be exempted from the provisions of Section 2(a)(19) of the 1940 Act to the extent that the Independent General Partners would be deemed to be "interested persons" of the Partnership, the Managing General Partner, the Management Company and/or Stuart-James solely because such Independent General Partners are general partners of the Partnership and co-partners of the Managing General Partner in the Partnership. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested person" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exemption for partners of an investment company.

3. Applicants request further that under Section 2(a)(3)(D) of the 1940 Act any Limited Partner owning less than 5% of the Units not be deemed an "affiliated person" of the Partnership, any other Limited Partner, and any of the Individual General Partners, the Managing General Partner, or the Management Company solely because such Limited Partner is a partner of the Partnership or a partner with any of such other persons in the Partnership. Since such Limited Partners have no exclusion under the 1940 Act comparable to that provided under Section 2(a)(3) to corporate shareholders with less than a 5% ownership interest, the requested relief will place investments in the Partnership on a footing more equal with investments in business development companies organized as corporations.

4. Applicants submit that it is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act to grant the requested exemption from the provisions of Sections 2(a)(19) and 2(a)(3)(D).

5. The profits and losses of the Partnership will be determined annually. Under the Partnership Agreement, if the aggregate of investment income and net realized gains and losses from venture capital investments is positive, calculated on a cumulative basis, the Managing General Partner will receive an allocation of income and capital gains or losses for such year so that it will receive 20% of the aggregate of such income and gains or losses calculated on a cumulative basis over the life of the Partnership through such year. It should be noted that the foregoing "Managing General Partner Allocation" has been included in the Partnership Agreement on the basis exclusively of an opinion of legal counsel to the Partnership that such allocation would not violate the provisions of Section 205 of the Advisers Act. Applicants have not requested Commission review or approval of such opinion letter and the Commission expresses no opinion as to counsel's interpretation that Section 205 of the Advisers Act permits the aforementioned allocation.

Applicant's Conditions: If the requested order is granted, the Applicants agree to the following conditions:

1. The Partnership will be structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company.

2. Under the Partnership Agreement, the Partnership is authorized to make in-kind distributions of its Portfolio Securities to its Limited Partners. However, the Partnership agrees not to make any in-kind distributions of Portfolio Securities to its partners during its operation or upon liquidation until it has obtained either a "no-action letter" from the staff of the Commission confirming the Partnership's interpretation of Section 205 of the Advisers Act (i.e., that unrealized gains or losses attributable to securities distributed in-kind to partners are properly deemed realized upon such distribution) or, in the alternative, the Partnership has obtained an exemption from Section 205 by Commission order issued pursuant to Section 206A of the Advisers Act, permitting the Partnership to deem such gains or losses to be realized upon in-kind distribution.

3. The Partnership will not commence operations until the Managing General Partner and the Management Company are registered as investment advisers under the Advisers Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2613 Filed 2-5-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-008]

Meeting of the Subcommittee on Marine Occupational Safety and Health, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Marine Occupational Safety and Health of the Chemical Transportation Advisory Committee (CTAC). The meeting will be held on Tuesday, March 15, 1988 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to begin at 9:30 a.m. and end at 4:00 p.m. In addition to subcommittee discussions concerning old and new business, the agenda for the meeting will include industry presentations. Presentation topics include critical reviews of Coast Guard reports summarized in earlier meetings, existing industry programs, identification of potential problem areas, and descriptions of corporate scenarios.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joseph Ocken or Mr. Mike Morrissette, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC 20593, (202) 267-1217.

Dated: January 29, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-2587 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Proposed Advisory Circular 25.803-XX; Emergency Evacuation Demonstrations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.803-XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to emergency evacuation demonstrations. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before June 7, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 432-2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 25.803-XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

The proposed AC was prepared in response to a recommendation in the "Task Force Report on Emergency Evacuation of Transport Airplanes." The proposal provides guidance for determining when an evacuation demonstration or formal evacuation analysis is required for a new or revised interior configuration. Additionally, guidance is provided for showing compliance with the evacuation demonstration requirements of § 25.803(c) and the analysis requirements of § 25.803(d).

Issued in Seattle, Washington, on July 22, 1987.

Darrell M. Pederson,

Acting Manager, Aircraft Certification Division, ANM-100.

[FR Doc. 88-2521 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-13-M

Proposed Advisory Circular 25.807-X, Uniform Distribution of Exits

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25.807-X, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to uniform distribution of exits. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATE: Comments must be received on or before June 7, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 431-2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.807-X and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

The proposed AC provides guidance for demonstrating compliance with the requirement that emergency exits be distributed as uniformly as practicable taking into account passenger distribution. This AC proposes a methodology which examines two aspects of the passenger cabin exit arrangement: (1) The number and location of passengers in the cabin, and (2) the proximity of the exits to each other, taking into account the ratings of the exits.

Issued in Seattle, Washington, on July 22, 1987.

Darrell M. Pederson,

Acting Manager, Aircraft Certification Division, ANM-100.

[FR Doc. 88-2522 Filed 2-5-88; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held February 17, 1988, in Room 600, 301 4th Street SW., Washington, DC from 11:00 a.m. to 12:30 p.m.

The Commission will meet with Dr. Mark Blitz, Associate Director, Bureau of Educational and Cultural Affairs, USIA, for a review of the Bureau's policies and programs.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: February 3, 1988.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 88-2553 Filed 2-5-88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The

department of staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filed out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: January 27, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits
2. Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant
3. VA Form 26-4555
4. This information is used to gather the necessary information to determine the veteran's eligibility for specially adapted housing or for a special home adaption grant.
5. On occasion
6. Individuals or households
7. 1,800 responses
8. 300 hours
9. Not applicable

Reinstatement

1. Department of Medicine and Surgery
2. Former Prisoner of War Medical Follow-up
3. VA Form 10-20844a-d[NR]
4. This information will be gathered from former POWs and a control group of combat veterans and will be used to help meet the health care needs of these veterans.
5. Non-recurring
6. Individuals or household
7. 3,200 responses
8. 12,800 hours
9. Not applicable

[FR Doc. 88-2589 Filed 2-5-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 25
Monday, February 8, 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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, February 9, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: OPEN TO THE PUBLIC.

MATTERS TO BE CONSIDERED:

1. Disposable Diapers Labeling Petition, HP 86-1

The staff will brief the Commission on a petition from the Coalition of Concerned Parents requesting that all disposable diapers and boxes or packages be required to be labeled to warn against suffocation and flammability hazards.

2. Emerging Hazards Program Status Briefing

The staff will brief the Commission on the emerging hazards program, which consists of new project identification, product safety assessment and petitions.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800

Sheldon D. Butts,

Deputy Secretary.

February 3, 1988.

[FR Doc. 88-2618 Filed 2-4-88; 9:05 am]

BILLING CODE 6355-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Monday, February 8, 1988, 2:00 p.m..

PLACE: 1776 G Street NW., Washington, DC, Conference Room 4G.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan Hausman, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759-8405.

MATTERS TO BE CONSIDERED: .

CLOSED—Minutes of November 20, 1987 Board of Directors' Meeting
CLOSED—President's Report
CLOSED—1988 Corporate Plan & Budget
CLOSED—Financing Authorizations
CLOSED—Capitalization Standards for Freddie Mac
CLOSED—Financial Report

Date sent to **Federal Register:** February 4, 1988.

Maud Mater,

Secretary.

[FR Doc. 88-2698 Filed 2-4-88; 2:18 pm]

BILLING CODE 6719-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Vote to Close Meeting

At its meeting on February 1, 1988, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for March 7, 1988, in Washington, DC. The members will consider the Postal Rate Commission's recommended decision in Docket No. R87-1.

The meeting is expected to be attended by the following persons: Governors Griesemer, Hall, McConnell, Nevin, Pace, Peters, Ryan and Setrakian; Postmaster General-designate Frank; Deputy Postmaster General Coughlin; Secretary to the Board Harris; and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act, [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under chapter 36 of Title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code. The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5; section 410(c)(4) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 88-2701 Filed 2-4-88; 2:43 pm]

BILLING CODE 7710-12-M

TENNESSEE VALLEY AUTHORITY

Meeting No. 1399

TIME AND DATE: 10:00 a.m. (est), Wednesday, February 10, 1988.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on January 13, 1988.

Action Items

A—Budget and Financing

A1. Modification of the Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—Replace Secondary Superheater Crossover Tubes in Unit 8 at Widows Creek Fossil Plant.

A2. Revision to the Fiscal Year 1988 Operating Budget Financed from Power Revenues.

A3. Fiscal Year 1988 Operating Budget Financed from Appropriations.

A4. Fiscal Year 1988 Budget Financed from Nonpower Proceeds.

B—Purchase Awards

*B1. Proposal JC-74391A—Replacement tubes for the Unit 2 Main Condenser at Browns Ferry Nuclear Plant.

B2. Amendment to Indefinite Quantity Term Contract 80P68-171173 with Chem-Nuclear Systems, Inc., for Radioactive Waste Disposal Services.

C—Power Items

*C1. Amendment to Contract No. TV-54456A with Tennessee Valley Public Power Association To Provide for Relinquishment of TVA Sublicensing Rights to an Invention Developed with Funding provided under the Contract.

C2. Renewal Power Contract with Benton County, Tennessee.

C3. Expansion of the Economy Surplus Power Program to Distributor-Served General Power Customers.

D—Personnel Items

*D1. Recommendation for Changes to the Within-Grade Progression Plan for Represented Salary Policy Employees.

D2. Personal Services Contract with American Technical Associates, Inc., Knoxville, Tennessee, for General Engineering, Design, and Architectural Services Related to TVA's Fossil and Hydro Plants, Electrical Transmission and Distribution Systems and Communications Systems, Requested by the Office of Power.

D3. Personal Services Contract with Midwest Technical, Inc., Oak Ridge, Tennessee, for General Engineering, Design, and Architectural Services Related to TVA's Fossil and Hydro Plants, Electrical Transmission and Distribution Systems and Communications Systems, Requested by the Office of Power.

D4. Supplement to Personal Services Contract No. 72370A with Gilbert/Commonwealth, Inc., Green Hills, Pennsylvania for Engineering Services at Sequoyah Nuclear Plant, Requested by the Office of Nuclear Power.

D5. Supplement to Personal Services Contract No. TV-70547A with Manpower Temporary Services, Chattanooga, Tennessee, for Temporary Clerical Services in the TVA Service Area, Requested by the Office of Corporate Services.

D6. Supplement to Personal Services Contract No. TV-61664A with Massachusetts Institute of Technology, Cambridge, Massachusetts, for Groundwater Transport Study, Requested by the Office of Natural Resources and Economic Development.

D7. Supplement to Personal Services Contract No. TV-71472A with Tarica & Company, Certified Public Accountants, Atlanta, Georgia, for Professional Auditing Services, Requested by the Office of the Inspector General.

D8. Supplement to Personal Services Contract No. TV-71473A with O'Neal and Saul, P.A., Atlantia, Georgia, for Professional Auditing Services, Requested by the Office of the Inspector General.

D9. Personal Services Contract with Coopers & Lybrand for Professional Auditing Services, Requested by the General Manager.

E—Real Property Transactions

E1. Land Use Allocation Change and Sale of 19-Year Lease for the Development, Operation, and Maintenance of Commercial Recreation Facilities, Affecting Approximately 8 Acres of Guntersville Reservoir Land Located in Marshall County, Alabama-Tract No. XTGR-153L.

E2. Grant of Permanent Easement to the Tennessee Wildlife Resources Agency for the Management and Operation of a Fish Nursery, Affecting Approximately 57.8 Acres of Norris Reservoir Land in Campbell County, Tennessee—Tract No. XTNR-108FP.

E3. Filing of Condemnation Cases.

F—Unclassified

*1. Amendment to Administrative Cost Recovery Regulations Providing for Recovery of Certain Administrative Costs in Processing Quota Turkey Hunt Permit Applications at Land Between the Lakes.

F2. Supplement to Contract No. TV-67998A with City of Benton, Kentucky, Covering Arrangements for Performance by TVA of Certain Monitoring Activities Related to the City's Artificial Wetlands Wastewater Treatment System.

F3. New Investment Management Agreements Between the Tennessee Valley Authority Retirement System and Five Investment Managers (Mellon Capital Management Corporation; Capitoline Investment Services, Inc.; Intech/Paribas Asset Management, Inc.; Lord Abbett & Co.; and Citibank N.A.) and Amendments to Two Existing Investment Management Agreements (D F G Investments, Inc., and Aetna Capital Management, Inc.).

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: February 3, 1988.

W.F. Willis,

General Manager.

[FR Doc. 88-2647 Filed 2-4-88; 2:17 pm]

BILLING CODE 8120-01-M

*This item approved by individual Board members.

This would give formal notification to the Board's action.

Federal Register

Monday
February 8, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 723 et al.

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Individual Civil Penalties; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 750, 845, 846, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Individual Civil Penalties

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is amending its Initial and Permanent Regulatory Program procedures to provide for the assessment of individual civil penalties against officers, directors and agents of corporate permittees in accordance with section 518(f) of the Surface Mining Control and Reclamation Act of 1977.

DATES: Effective March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202/343-5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background

This rule establishes a regulatory scheme for imposing individual civil penalties under section 518(f) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.* The proposed rule was published on December 24, 1986 (51 FR 46638). On April 8, 1987 (52 FR 11287) the comment period was reopened and extended until May 8, 1987. Those documents should be consulted for additional background information.

Section 518 of the Act authorizes the Secretary of the Interior to assess civil and criminal penalties for violations of the Act. Under section 518(a) any person who violates any permit condition or any other provision of Title V of the Act may be assessed a civil penalty, not to exceed $5,000 per violation for each day the violation continues. Section 518(a) requires the Secretary to consider the following criteria in determining the amount of the penalty: (1) The permittee's history of previous violations at the particular surface coal mining operation; (2) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; (3) whether the permittee was negligent; and (4) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation. Under section 518(h) if a violation is not abated within the period set in a notice of violation (NOV) or cessation order, the assessment of a minimum penalty of $750 for each day during which the violation remains unabated is mandatory.

Under section 518(f) if a violation is committed by a corporate permittee or if a corporate permittee fails or refuses to comply with certain specified orders, then any director, officer or agent of the corporate permittee who willfully and knowingly authorized, ordered or carried out such violation, failure or refusal is subject to the same civil penalties as may be imposed upon the corporate permittee under section 518(a). Section 518(f) of the Act reads in part as follows:

> Whenever a corporate permittee violates a condition of a permit * * * or fails or refuses to comply with any order issued under section 521 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act * * * any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

In order to distinguish between a penalty assessed against a corporate permittee under section 518(a) and one assessed against a corporate officer, director or agent under section 518(f), OSMRE refers to the former penalty as a "civil penalty" and to the latter as an "individual civil penalty."

The current regulations in 30 CFR Parts 723 and 845 prescribe a point system by which OSMRE calculates the amount of the penalty to be assessed under section 518(a). The assessment system is based on the four criteria set forth in section 518(a), and provides for a waiver of the formula upon a determination by the Director that there are exceptional factors which render the penalty demonstrably unjust. The regulations permit OSMRE to assess separately a civil penalty for each day of a continuing violation, from the date of issuance of an NOV or cessation order to the date set for abatement. Whenever a violation resulting in an NOV or cessation order has not been abated within the prescribed abatement period, OSMRE assesses an additional penalty of not less than $750 for each day the violation remains unabated. The minimum $750 penalty is assessed pursuant to section 518(h) and is in addition to the daily civil penalty that may be assessed under the point system pursuant to section 518(a). Under 30 CFR 723.15(b) and 845.15(b), penalties under section 518(h) of the Act may not be assessed for more than 30 days.

Sections 723.15(b) and 845.15(b) further provide that if a violation is not abated within 30 days after issuance of the failure to abate cessation order, OSMRE must take appropriate action pursuant to sections 518(e) (criminal penalties), 518(f) (individual civil penalties), 521(a)(4) (permit suspension or revocation for a pattern of violations), or 521(c) (requests for temporary or permanent injunctions).

On January 31, 1985, Judge Barrington D. Parker of the United States District Court for the District of Columbia issued an order (Revised Parker Order) in the case of *Save Our Cumberland Mountains, Inc., et al.* v. *Clark, et al.*, No. 81-2134 (D.D.C. 1985). The Revised Parker Order resulted from a settlement agreement entered into by the Secretary. Among other matters, the Revised Parker Order addresses the circumstances under which the Secretary would use his authority under section 518(f) of the Act to impose individual civil penalties on officers, directors and agents of corporate permittees. The Revised Parker Order also requires OSMRE to consider the use of authority under section 518(a) to assess individual civil penalties for each day of a continuing violation, and to propose a regulation governing the use of such authority. The December 24, 1986 rule was proposed in accordance with the Revised Parker Order.

As a result of the Revised Parker Order, OSMRE has examined its existing rules and policies related to the assessment of civil penalties. Most civil penalties are assessed based upon the point system set forth in 30 CFR 723.13 to 723.14 and 30 CFR 845.13 to 845.14. The use of this point system does not appear practical for, nor strictly applicable to, the assessment of individual civil penalties. The point system does not give the Secretary sufficient flexibility to assess a penalty which fairly considers the particular actions or inactions of an individual. For example, §§ 723.13(b)(1) and 845.13(b)(1) consider the history of the permittee's previous violations without respect to the individual's involvement with them.

This rule establishes a regulatory scheme for imposing individual civil penalties under section 518(f) of the Act. It is modeled in part on the regulations of the Mine Safety and Health Administration (MSHA), U.S. Department of Labor. The legislative history of the Act indicates that the enforcement provisions in the Act, including those in section 518(f), were modeled after similar provisions in the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. 91–173). *See* S. Rep. No. 128, 95th Cong., 1st Sess. 58 (1977). Section 109(c) of the Federal Coal Mine Health and Safety Act of 1969 is the predecessor of section 110(c) of the Federal Mine Safety and Health Act of 1977 (Pub. L. 95–164), which is administered by MSHA.

Both sections 109(c) and 110(c) provide for the imposition of an individual civil penalty in language nearly identical to that found in section 518(f) of the Act. Consequently, OSMRE has reviewed the regulations of MSHA at 30 CFR Part 100 for guidance in developing Parts 724 and 846, which set forth the manner in which OSMRE will assess individual civil penalties under section 518(f) of the Act.

II. Discussion of the Rule and Public Comments

Sections 723.1 and 845.1 Scope.

The rule makes certain conforming changes to §§ 723.1 and 845.1 to indicate that the assessment of an individual civil penalty under section 518(f) of the Act is covered by Parts 724 and 846.

No comments were received on the proposed revisions to these sections. OSMRE has adopted them as proposed.

Sections 723.18 and 845.18 Extension of time to request a conference.

The rule amends §§ 723.18 and 845.18 to extend the time within which a person may request a conference to review a proposed assessment or reassessment of a civil penalty under section 518(a). The time is extended from the present 15 days from the date a notice or order of proposed assessment or reassessment is mailed to 30 days following the receipt of a notice or order of proposed assessment or reassessment.

No comments were received on the proposed revisions. OSMRE has adopted them as proposed.

Sections 724.1 and 846.1 Scope.

Under the rule, Parts 724 and 846 will govern the assessment of individual civil penalties against officers, directors and agents of corporate permittees in accordance with section 518(f) of the Act. Under section 518(f), OSMRE may assess an individual civil penalty against any officer, director or agent of a corporate permittee who willfully and knowingly authorized, ordered, or carried out a violation of a condition of a permit issued pursuant to a Federal Program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act, or who failed or refused to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under sections 518(b) or 703 of the Act.

No comments were received on these sections. OSMRE has adopted them as proposed.

Sections 724.5 and 846.5 Definitions.

An individual civil penalty under section 518(f) requires knowing and willful conduct on the part of the individual. Neither the Act nor the legislative history define the terms "knowingly" and "willfully." This rule defines the terms in order to provide guidance to the individuals who may be subject to penalty assessments as well as to those who assess individual civil penalties. The rule also contains a definition for the phrase "violation, failure or refusal."

Knowingly: Under the definition, an individual acts "knowingly" if he/she knew or had reason to know that he/she authorized, ordered or carried out some act or omission of the corporate permittee which constituted a violation, failure or refusal specified in section 518(f). A person has "reason to know" when he/she has such information as would lead a person exercising reasonable care in his or her position to acquire knowledge of the facts in question or to infer their existence. For example, if a corporate official with responsibility for an operation received a copy of a failure to abate cessation order issued to the operator at the mine site, it would be reasonable to expect that he would investigate to ascertain if the violation had been abated. A corporate officer without responsibility for the operation would not necessarily be expected to find out such details.

This definition is based in part upon the assumption that persons holding the position of officer, director or agent are responsible for the actions which they have authority to control by virtue of the position they hold. OSMRE has adopted the definition as proposed.

Several comments were received on the proposed definition of the term "knowingly." Some commenters objected to the inclusion in the definition of the phrase "had reason to know" and argued that this phrase would incorporate into the definition the concept of imputed or constructive knowledge. The commenters argued that this was not intended by the Congress and stated that in earlier statutes where the Congress intended that knowledge be imputed to parties, it has seen fit to provide specific statutory implementation.

OSMRE disagrees with the commenters and believes its definition of "knowingly" is consistent with its intended use in section 518(f). The definition of "knowingly" contained in this rule is also consistent with the prevailing interpretation of the same term in the individual civil penalty provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(c), and its predecessor the Federal Coal Mine Health and Safety Act of 1969 (Mine Safety Act).

In *Secretary of Labor* v. *Kenny Richardson*, 2 MSHC 1114, 1120 (1981), *aff'd, Richardson* v. *Secretary of Labor*, 689 F.2d 632 (6th Cir. 1982), the Federal Mine Safety and Health Review Commission (the Commission) discussed the question of whether the term "knowingly" as used in the Mine Safety Act should be construed as requiring a showing of actual knowledge. The Commission in affirming the decision of an administrative law judge held that the term "knowingly" is properly construed to mean "knowing or having reason to know," and that a person would have reason to know when he has such information as would lead a person exercising reasonable care to acquire knowledge of the fact in question or infer its existence. The Commission reasoned that the Mine Safety Act has certain humanitarian objectives and that a broad construction of the term "knowingly" is consistent with the remedial intent of the Mine Safety Act. If a person in a position to protect health and safety fails to act on the basis of information that gives him knowledge or reason to know of the existence of a violative condition, he has acted knowingly and in a manner contrary to the remedial nature of the statute.

OSMRE believes that this same reasoning is also valid when construing the meaning of the term "knowingly" as used in section 518(f) of the Act. If a showing of actual knowledge were required, OSMRE would be applying an extremely strict standard to a civil statute whose remedial purpose as stated in section 102(a) of the Act is to

"establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations."

Another commenter argued that the "had reason to know" standard conveys the impression that OSMRE assumes that any officer, director, or agent of the corporate permittee should know all the facts arising in the day-to-day operations of a mine. The commenter argued that many corporate officials have prescribed duties relating to specific functions of the corporation and therefore OSMRE cannot assume that all corporate officers or directors have "reason to know."

OSMRE disagrees that the rule is based upon the assumption stated by the commenter. Merely being an officer, director or agent of a corporation will not result in a finding that the officer, director or agent knew or had reason to know. Every officer, director or agent is not required to know every detail of the mining operation. However, he or she is responsible for exercising due care with regard to his or her functions, and for finding out the relevant facts necessary to the performance of those functions. Thus under the definition, an officer, director or agent would have reason to know when he or she has such information as would lead a person exercising reasonable care in his or her position to acquire knowledge of the fact in question or to infer its existence.

Violation, failure, or refusal: This term is defined because it is used in the rule in a number of places. Under the definition, violation means a violation of a condition of a permit issued pursuant to a Federal program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act. Failure or refusal means a failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under sections 518(b) or 703 of the Act. The exceptions for sections 518(b) and 703 are required by section 518(f) of the Act.

Section 518(f) specifically prohibits the Secretary from assessing penalties for failure to comply with an order incorporated in a civil penalty decision rendered under section 518(b), presumably because it would be counter-productive to assess an individual civil penalty for the nonpayment of the original civil penalty assessed against the corporate permittee. In addition, pursuant to section 518(f), the Secretary may not assess an individual civil penalty for failure to obey a decision of the Secretary issued pursuant to section 703 of the Act. Section 703 of the Act prohibits retaliation against any employee who has filed or caused to be filed any proceeding under the Act or against anyone who has or will testify in any such proceeding.

No comments were received on this proposed definition. OSMRE has adopted it as proposed.

Willfully: Under the definition an individual acts willfully if he/she does so either "intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements." OSMRE believes that this definition will provide OSMRE maximum flexibility in enforcing the individual civil penalty provision of the Act while keeping well within the bounds of sound statutory construction. In civil statutes the term "willfully" generally refers to an act or omission which is intentional, knowing, voluntary and conscious, as distinguished from an act which is merely accidental or negligent. *See, e.g., Messina Construction Corp. v. OSHA,* 505 F.2d 701 (1st Cir. 1974). Also, the courts have consistently construed "willfully" in civil statutes to encompass conduct which is plainly indifferent to statutory or regulatory requirements. *See, e.g., Alabama Power Co. v. FERC,* 584 F.2d 750, 752 (5th Cir. 1978).

Taken together, the terms "willfully" and "knowingly" do not include conduct or omissions which are honest mistakes or which are merely inadvertent. They include, but are not limited to, conduct or omissions which result from a criminal or evil intent or from a specific intent to violate the law. The knowing and willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or the terms and conditions of a permit. A consistent pattern of performance or failure to perform may also be sufficient to establish the knowing and willful nature of the conduct, where such consistent pattern is neither the result of honest mistake nor mere inadvertency.

Several comments were received on the proposed definition of the term "willfully." Two commenters argued that the phrase "with intentional disregard or plain indifference to legal requirements" should be deleted. They argued that the phrase "intentional disregard" adds an element of knowledge to the definition of "willful" and blurs the distinction between the terms "willfully" and "knowingly". The same commenters also argued that by incorporating the phrase "plain indifference to legal requirements," the meaning of "willful" is expanded into areas of negligent, accidental, or involuntary action, and that when "willful" is used in statutes it is generally intended that such actions are to be distinguished from negligent, accidental or involuntary action.

OSMRE disagrees with the comment that the phrase should be removed. However, to clarify that accidental or unintentional conduct is not willful, OSMRE has modified the proposed definition of "willfully" by changing an "or" to an "and". The effect of the change is to require the conduct to be intentional, voluntary or conscious *and* that the person acted with intentional disregard or plain indifference to legal requirements.

This definition is consistent with case law on the subject. The term "willfully" as used in civil statutes ordinarily denotes an action or omission which is intentional, knowing, voluntary and conscious, as distinguished from one which is inadvertent, merely negligent, or accidental. The term "willfully," as used in civil penalty statutes, refers to something more than an unwitting failure to comply with a statutory requirement. *Alabama Power Co. v. FERC,* 584 F.2d 750, 754 (5th Cir. 1978). "Willfully" in this context denotes an action taken knowledgeably by someone subject to the statutory provision on civil penalties in disregard of the action's legality. *Prino v. Simon,* 606 F.2d 449, 451 (4th Cir. 1979). Thus, in civil penalty cases, willfulness requires a determination that the individual, knowing that he had a responsibility, acted with intentional disregard for or plain indifference to the requirements established by the statute. *See Alabama Power, supra,* 584 F.2d at 752–753; *Prino, supra,* 606 F.2d at 451.

In civil penalty actions, the existence of a "willful" statutory violation turns on the defendant's knowledge of his responsibilities at the time he allegedly disobeyed or ignored the statute's provisions. *See, e.g., Alabama Power, supra,* at 754. Generally anyone who acts with knowledge that his behavior is illegal is acting "willfully" for purposes of civil penalty sanctions. *See Mawod & Co. v. SEC,* 591 F.2d 588, 595–96 (10th Cir. 1979).

Another commenter pointed out that the discussion in the preamble to the proposed rule was inconsistent with the rule language that was proposed and converted the knowing and willful standard into one of simple negligence. In the preamble it was stated that an "individual acts willfully if he/she does so either intentionally, voluntarily,

consciously, or with *careless* disregard or plain indifference to legal requirements." The definition of "willfully" at 30 CFR 724.5 and 846.5 uses the phrase "intentionally, voluntarily or consciously, and with *intentional* disregard or plain indifference to legal requirements." The use of the term "careless" in the proposed preamble discussion was incorrect. The discussion in the preamble did correctly indicate, however, that in civil statutes the term "willfully" generally refers to an act or omission which is *intentional*, knowing, voluntary and conscious, as distinguished from an act which is merely accidental or negligent.

Two commenters objected to the fact that in their view the definition is broader than the definition of "willful violation" currently found in 30 CFR 701.5 and 843.5. In §§ 701.5 and 843.5, "willful violation" is defined as an act or omission by a person who intends the result which actually occurs. OSMRE's definition of "willfully" was selected after reviewing the above cited decisions. Although the definition at §§ 723.5 and 846.5 is narrower than the definition of "willful violation" at §§ 701.5 and 843.5, it is well within the bounds of sound statutory construction.

One commenter argued that a permittee's inability to prevent or remedy a violation should never be considered "knowing and willful." OSMRE believes that a mere inability to prevent or to remedy a violation for reasons beyond the control of a corporate officer, director, or agent would lack the requisite intent necessary for "knowing and willful" conduct.

Another commenter argued that the definition of willfully should reflect that a "violation, failure, or refusal" which arises from a good faith dispute over the appropriate interpretation of a legal requirement, or as to the adequacy of a permittee's efforts to comply with a legal requirement, or to remedy a violation, is not a "knowing and willful" violation. The same commenter also argued that good faith reliance on the advice of legal counsel (as to legal requirements) or competent technical staff (as to the adequacy of measures taken) should negate the "knowing and willful" element.

OSMRE believes that under the definition adopted today, good faith reliance on legal counsel or the advice of technical staff can be introduced as evidence to rebut a charge of a knowing and willful violation, failure or refusal. Any dispute concerning the propriety of the NOV or cessation order should be resolved by petitioning the Department's Office of Hearings and Appeals (OHA) for review pursuant to 43 CFR Part 4. The permittee may also petition OHA for temporary relief from the requirements of the notice of violation or cessation order pursuant to 43 CFR 4.1260. However, if a stay is denied, the permittee must comply with the terms of the notice of violation or cessation order.

One commenter argued that an individual civil penalty should be assessed only if a violation, failure or refusal is *both* knowingly and willfully authorized, ordered or carried out. OSMRE agrees. Section 518(f) of the Act specifies that the conduct must be "willfully and knowingly authorized, ordered, or carried out."

One commenter argued that the rule should define the term "agent." The commenter argued that while *officer* and *director* are well understood legal terms as applied to corporations, "agent" has a wide range of meanings. In its narrowest sense "agent" denotes someone having authority to act on behalf of the corporation in a particular situation, while in its broadest sense it would include everyone who in fact acts on behalf of the corporation without respect to his or her authority. In the former sense "agent" might not include all officers of the corporation while in the latter it could include all employees. The commenter further argued that in the context of section 518(f), "agent" appears to be used in its narrower sense to mean a person who is not an elected officer or director of the corporation, but exercises authority and control over its business as though he or she were.

OSMRE agrees with the commenter that the term "agent" as used in section 518(f) should be interpreted to mean a person who exercises authority and control over a surface coal mining operation, such as a foreman or supervisor, as opposed to an employee who merely acts on behalf of the corporation without respect to his or her actual authority.

The term "agent" has already been decisionally defined in *United States v. Dix Fork Coal Co., et al.*, 692 F.2d 336 (6th Cir. 1982) for the purposes of section 521(c) of SMCRA. In that case the U.S. Court of Appeals for the Sixth Circuit addressed the issue of who should be considered an agent of a corporate permittee under the Act. The Court held that an "agent includes that person charged with the responsibility for protecting society and the environment from the adverse effects of the surface coal mining operation and particularly charged with effectuating compliance with environmental performance standards during the course of a permittee's mining operation." While the rule does not include a definition of the term "agent," OSMRE will apply the Court's analysis to determinations under section 518(f) as to whether an individual is an "agent" of a corporate permittee.

Sections 724.12 and 846.12 When a civil penalty may be assessed.

Under §§ 724.12(a) and 846.12(a) of this rule, the Secretary may assess an individual civil penalty whenever a director, officer or agent of a corporate permittee knowingly and willfully authorized, ordered or carried out a violation, failure or refusal as defined in §§ 724.5 and 846.5. Under §§ 724.12(b) and 846.12(b) this penalty will not be assessed against the individual until a cessation order is issued to the corporate permittee for the underlying violation and the cessation order has remained unabated for 30 days. Such a procedure is consistent with the requirements of paragraphs 9 and 12 of the Revised Parker Order, and also with OSMRE's policy of using the assessment of an individual civil penalty as an alternative enforcement mechanism. See 30 CFR 723.15(b)(2) and 845.15(b)(2).

As originally proposed, paragraph (a) stated that an individual civil penalty would be assessed against a corporate official who knowingly and willfully authorized, ordered or carried out (1) the violation by the corporation of any condition of the permit or of any requirement of the Act or implementing regulation; or (2) the failure or refusal by the corporate permittee to comply with any order issued under section 521 of the Act or other order incorporated in a final decision issued by the Secretary under the Act. OSMRE has substituted for paragraphs (a)(1) and (a)(2) the phrase "violation, failure or refusal," which is defined in sections 724.5 and 846.5. The definition of "violation, failure, or refusal" parallels the opening language of section 518(f), which specifies what conduct would justify the issuance of an individual civil penalty. This substitution was suggested by a commenter and is responsive to the commenter's concerns discussed in the next paragraph.

Several comments were received on this section objecting to the language of proposed paragraph (a)(1). As proposed, paragraph (a)(1) provided that an individual civil penalty would be assessed for the violation by the corporation of any condition of the permit or of any requirement of the Act or implementing regulations. The commenters argued that the provisions of proposed paragraph (a)(1) were

broader than the requirements of section 518(f) of the Act authorizing the imposition of an individual civil penalty. Section 518(f) of the Act authorizes the imposition of an individual civil penalty only for specific violations which are (1) a violation of a permit condition, (2) failure to comply with an order issued under section 521, and (3) failure to comply with an order in a final decision issued by the Secretary.

OSMRE has modified the rule to account for the commenter's concerns. As previously stated, OSMRE has deleted proposed paragraph (a)(1) from the rule and has substituted the phrase "violation, failure or refusal." The definition of this phrase parallels the language of section 518(f). The result is that the rule as adopted authorizes the imposition of an individual civil penalty only for the reasons specified in section 518(f) of the Act.

As originally proposed, paragraph (a) referenced exceptions which were specified in paragraph (b). Paragraph (b)(2) specified that OSMRE would not assess an individual civil penalty for an order incorporated in a final decisison of the Secretary issued pursuant to sections 518(b) or 703 of the Act and the implementing regulations.

The exception in paragraph (b)(2) has not been included in the final §§ 724.12 and 846.12 because it was redundant. Proposed paragraph (b)(2) mirrored the language of section 518(f) and exempted from the issuance of an individual civil penalty a failure to comply with an order incorporated in a final decision of the Secretary issued pursuant to sections 518(b) or 703 of the Act and the implementing regulations. Sections 724.12(a) and 846.12(a) state that an individual civil penalty may be assessed against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal. The phrase "violation, failure or refusal" is defined in the rule at §§ 724.5 and 846.5 and already contains an exception for "an order incorporated in a decision issued under section 518(b) or section 703 of the Act." Thus inclusion of proposed paragraph (b)(2) would duplicate the limit inherent in paragraph (a).

Two commenters stated that the regulations should provide guidelines for the exercise of OSMRE's discretion to assess individual civil penalties in particular cases. One commenter suggested that an individual civil penalty be assessed only where the Act's basic enforcement mechanisms—the NOV, cessation order and civil penalty assessment—are inadequate to ensure protection of public health and safety and the environment. Another commenter specifically asked if an individual civil penalty would be assessed in all situations where a cessation order had been issued to a corporate permittee and remained unabated for 30 days.

OSMRE considers the issuance of an individual civil penalty an alternative enforcement mechanism to be used when the basic enforcement mechanisms have not resulted in the abatement of a violation. If a notice of violation or cessation order has not been abated within the abatement period specified in the notice or order, then under §§ 723.15(b) and 845.15(b), OSMRE is required to assess a civil penalty of not less that $750 for each day the failure to abate continues. Under OSMRE's rules, this penalty may be assessed for up to 30 days. If the violation still remains unabated, then under §§ 723.15(b)(2) and 845.15(b)(2) OSMRE is required to take appropriate alternative enforcement action within 30 days. OSMRE has discretion under §§ 723.15(b)(2) and 845.15(b)(2) to use the alternative enforcement mechanism it considers most appropriate to ensure that abatement occurs or that there will not be a reoccurrence of the failure to abate. OSMRE may file criminal charges (section 518(e)), suspend or revoke a permit (section 521(a)(4)), request an injunction (section 521(c)), and/or assess an individual civil penalty (section 518(f)). OSMRE may use more than one alternative enforcement mechanism, but is not required to do so. In exercising its discretion OSMRE will review each situation on a case-by-case basis to determine the most effective alternative enforcement mechanism to use. Because of the innumerable factual situations that may arise, OSMRE has concluded that the rules should establish the procedures and basic principles for issuing individual civil penalties and that further guidance will be developed over time.

One commenter requested clarification as to whether it is the intent of OSMRE to assess individual civil penalties against a corporate director or officer when the corporation is operating pursuant to a State program and there has been no Federal enforcement of that program pursuant to section 521 of the Act. The commenter stated that as proposed, §§ 724.12(b) and 846.13(b) could be read to allow OSMRE to assess individual civil penalties without first undertaking such Federal enforcement. The commenter suggested that OSMRE modify the language of §§ 724.12(b)(1) and 846.12(b)(1) to indicate clearly that in such instances an individual civil penalty may be assessed only pursuant to Federal enforcement action pursuant to section 521 of the Act.

In situations involving violations of State-issued permits OSMRE will consider assessing an individual civil penalty under §§ 724.12(b) and 846.12(b) only when OSMRE is exercising its enforcement authority under section 521 of the Act and 30 CFR 722.11, 722.13, or 843.11. OSMRE has added the phrase "by the office" to §§ 724.12(b) and 846.12(b) to respond to the commenter's suggestion and to clarify OSMRE's policy that the cessation order which has been issued is one OSMRE issued.

The same commenter also argued that the language in proposed §§ 724.12(a)(1) and 846.12(a)(1) would be unnecessary if the limitation in paragraph (b)(1) were applied to prevent the assessment of an individual civil penalty until after the issuance of a cessation order. The commenter argued that if the intent under the regulations was to issue an individual civil penalty only after a cessation order had been issued to the corporate permittee and it remained unabated for 30 days, then the language of §§ 724.12(a)(2) and 846.12(a)(2) was sufficient. As originally proposed, paragraph (a)(1) would have authorized the assessment of an individual civil penalty against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out the violation by the corporation of any condition of the permit or of any requirement of the Act or implementing regulation. Paragraph (a)(2) covered violations that arose from the failure or refusal by the corporate permittee to comply with any order issued under section 521 of the Act or other order incorporated in a final decision issued by the Secretary under the Act.

As previously stated, OSMRE has deleted proposed paragraphs 724.12 (a)(1) and (a)(2) and 846.12 (a)(1) and (a)(2), and has substituted the phrase "violation, failure or refusal" which is defined at §§ 724.5 and 846.5. Paragraphs 724.12(a) and 846.12(a), as modified in the final rule, read in conjunction with paragraphs 724.12(b) and 846.12(b), as modified in the final rule, clearly establish OSMRE's policy of assessing an individual civil penalty as an alternative enforcement mechanism which OSMRE will consider using when a cessation order has been issued to the corporate permittee for an underlying violation and the cessation order has remained unabated for 30 days. This limitation on the exercise of OSMRE's discretion is intended to emphasize the nature of an individual

civil penalty as an alternative enforcement mechanism.

One commenter requested clarification as to which corporate representatives may be assessed an individual civil penalty. The commenter argued that penalties should be limited to those persons who were corporate officers, directors, or agents at the time the cessation order was issued to the corporate permittee, or who have since been appointed. The commenter argued that an individual civil penalty should not be assessed against a person who has ceased to be an officer, director or agent of the corporate permittee prior to the issuance of a cessation order.

It is OSMRE's intent to limit the issuance of an individual civil penalty to those directors, officers or agents of a corporate permittee who knowingly and willfully authorized, ordered or carried out (1) a violation by the corporation; or (2) the failure or refusal by the corporate permittee to comply with any order issued under section 521 of the Act or other order incorporated in a final decision issued by the Secretary under the Act.

A corporate officer, director or agent who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal will not be allowed to insulate himself from liability for his knowing and willful conduct by subsequently resigning his position. If an officer, director or agent knowingly and willfully authorized, ordered or carried out a violation, failure or refusal, OSMRE is authorized by section 518(f) of the Act and these regulations to issue to the individual an individual civil penalty, even if the individual is no longer employed by the corporate permittee at the time the cessation order is issued or at a later time. As long as OSMRE can establish the necessary elements, an individual civil penalty may be issued regardless of the individual's subsequent status.

Sections 724.14 and 846.14 Amount of Individual Civil Penalty.

Section 518(f) of the Act subjects a corporate officer, director or agent to the same civil penalty that may be imposed upon a person or corporation under section 518(a) of the Act. OSMRE interprets this to mean that the relevant criteria of section 518(a) are to be applied, and that the daily ceiling in section 518(a) on the amount of the penalty must be observed when assessing an individual civil penalty. OSMRE does not interpret section 518(a) as requiring the amount of the penalty assessed against the individual to be the same as that assessed against the corporation. This interpretation is reasonable since all of the criteria used in assessing a section 518(a) penalty against a corporation might not apply to a corporate official charged under section 518(f).

This interpretation of the phrase "subject to the same civil penalties" is consistent with how the Department of the Interior interpreted the same phrase in section 109(c) of the Mine Safety Act when it administered that law from 1969 to 1977. Section 109(c) of the Mine Safety Act is the law after which section 518(f) of the Act was modeled. This also is consistent with the interpretation of the same phrase by MSHA. In *MSHA v. Propst and Stemple,* 2 FMSHRC 304 (1981), the Federal Mine Safety and Health Review Commission upheld individual civil penalties assessed against a supervisor and a foreman. Both penalties were larger than the penalty assessed against the corporate employer. Thus, applying the same criteria to individuals instead of a corporation may lead to a different, and even higher, individual civil penalty for the same underlying corporate violation.

Sections 724.14(a) and 846.14(a) of the rule list the criteria, discussed in detail below, which OSMRE will consider in assessing individual civil penalties. Any one criterion can be used as the primary basis for determining the amount of an individual civil penalty.

For example, if an individual repeatedly caused an administrative violation such as failure to allow an inspector access to the mine site, there might be no irreparable harm to the environment or appreciable costs of reclamation associated with such violation. OSMRE, however, has the discretion to base the amount of a penalty primarily upon the individual's history of violations at the particular permit site. Consequently, OSMRE would be able to discourage flagrant disregard for the provisions of the Act in accordance with the plain intent of section 518(f).

Under §§ 724.14(a)(1) and 846.14(a)(1), it is the individual's own history of authorizing, ordering or carrying out violations, failures or refusals at the particular surface coal mining operation which will be considered when assessing a penalty. OSMRE believes that a reasonable reading of sections 518(a) and 518(f) together supports this result.

A central goal of the Act and its implementing regulations is the protection of the environment from the adverse effects of surface coal mining operations (see section 102(a) of the Act). In many instances, a chief consequence of a corporate permittee's violation of the Act and subsequent failure or refusal to abate such violation is environmental damage. Section 518(a) directs OSMRE to consider the seriousness of the underlying violation when assessing an individual civil penalty.

OSMRE believes that if a violation leads to environmental damage, the extent of the damage is to be considered. One accurate indicator of its extent is the amount of money it will cost to abate the violation and/or reclaim the affected area. Accordingly, in measuring the harm to the environment pursuant to the criteria in §§ 724.14(a)(2) and 846.14(a)(2), OSMRE can base its assessment, as a whole or in part, upon the estimated cost to repair the damage caused by a failure to abate the violation.

OSMRE recognizes that in many cases the harm caused by the permittee's violation, failure or refusal cannot be repaired. Accordingly, §§ 724.14(a)(2) and 846.14(a)(2) will allow OSMRE, when assessing individual civil penalties, to consider that an individual has taken an action which has caused "irreparable damage to the environment," as defined at 30 CFR 701.5.

Section 518(a) also directs that the health and safety of the public be considered in the civil penalty assessment process. Accordingly, this criterion also is incorporated into the rule in §§ 724.14(a)(2) and 846.14(a)(2).

In the case of a civil penalty assessment against a permittee, section 518(a) requires the Secretary to consider whether the permittee was negligent. OSMRE believes that this criterion is not directly applicable to the assessment of individual civil penalties because section 518(f) of the Act requires knowing and willful conduct, which goes beyond merely negligent behavior.

Finally, section 518(a) requires the Secretary to consider the demonstrated good faith of a permittee in attempting to achieve rapid compliance after notification of a violation. Sections 724.14(a)(3) and 846.14(a)(3) establish this criterion as a factor to be considered in assessing an individual civil penalty, but reference "violation, failure and refusal" rather than just "violation."

Sections 724.14(b) and 846.14(b) give OSMRE broad discretion to assess a separate individual civil penalty for any or all days of a continuing violation, failure or refusal, from the date of service of the NOV, cessation order or other order until the abatement of the violation or compliance with any final order or decision. The authority for this

requirement derives from the reference in section 518(f) to section 518(a), which allows OSMRE to consider each day of a continuing violation a separate violation. In determining whether to assess separate penalties for continuing violations, failures or refusals, the rule requires OSMRE to consider the factors in §§ 724.14(a) and 846.14(a).

While the rule allows the assessment of a separate individual civil penalty for any or all days of a continuing violation, failure or refusal, from the date of service of the NOV, cessation order or other order, in some instances a willful and knowing refusal to comply may not be provable until the period set for abatement has expired. For example, if the initial notice of violation resulting from negligence on the part of the corporate permittee was served on day 1, and a failure-to-abate cessation order was served on the corporate permittee and corporate president on day 5, and the violation eventually was abated on day 45, OSMRE would be able to assess an individual civil penalty on a daily basis for 40 days (from day 5 thru day 45). OSMRE would not assess an individual civil penalty from day 1 through day 4 because the violation was the result of negligence, and not knowing and willful conduct. A knowing and willful failure or refusal can be established from day 5, when the corporate president was served a copy of the cessation order. Assessment of the individual civil penalty could not occur until after day 36, the thirtieth day the cessation order remained unabated.

Several comments were received on §§ 724.14 and 846.14. One commenter was concerned with the manner in which the individual's history of authorizing, ordering or carrying out previous violations, failures, or refusals would be factored into the calculations. The commenter was concerned that the history factor would unfairly penalize large operators who continued mining operations at one location over a long period of time, and accrued a relatively large number of violations per permit. The commenter suggested that a more reliable indicator of the kind of abuse section 518(f) was intended to check would be the number of separate corporate entities behind which the individual has committed knowing and willful violations.

OSMRE does not agree. Sections 724.15(a)(1) and 846.15(a)(1) specifically state that the individual's history of previous violations, failures or refusals at the particular surface coal mining operation must be considered. Therefore, even if the permittee/operator has been mining at the particular site for a number of years, it is only the knowing and willful violations of the particular corporate official at the particular site that will be considered, and not the number of violation notices received by the permittee at the particular site, or by the corporate official at other permitted cites. OSMRE considers the conduct of the individual at a particular site rather than at all mining operations over which the individual has control because the language of section 518(a) specifically states that it is the history at the particular site which should be considered as a factor.

One commenter stated that the seriousness of a violation in terms of the extent of damage that is caused is the same regardless of the individual's culpability and therefore, the amount of the penalty attributable to the seriousness of the violation should not be more for the penalty assessed against the individual under Parts 724 and 846 than it would be for the penalty assessed against the corporate permittee under the point system of Parts 723 and 845.

OSMRE does not agree with the commenter's approach of dissecting a penalty into components. OSMRE did not propose to apply the point system in Part 845 to individual civil penalties because a precise correlation does not exist for all of the factors. As to the specific example raised by the commenter, the damage occurring to the environment may increase substantially between the time the corporation is issued an NOV or cessation order, and the time an individual civil penalty is assessed against the corporate official for knowingly and willfully failing or refusing to order the corporation to comply. The initial damage to the environment may be the result of a negligent act on the part of the corporation, while the continuing damage to the environment may result from the corporate official's knowing and willful failure to order abatement. OSMRE therefore would be justified in assessing a higher penalty against the corporate official because the continuing damage to the environment is the result of knowing and willful conduct. Moreover, the penalty assessed against the corporate permittee under the point system for the seriousness of the violation in many instances may not cover the actual cost to repair the damage to the environment. Also, if the same penalty assessed against the corporate permittee were assessed against the officer, director or agent, the amount might be insufficient to act as a deterrent to a knowing and willful failure or refusal to order the corporate permittee to comply with an NOV or cessation order.

Two commenters were concerned that when assessing the seriousness of the violation, failure or refusal OSMRE would use the cost of reclamation as the amount of the individual civil penalty. Another was concerned that using the cost of reclamation when calculating the penalty would result in the penalty being equal to or greater than the cost of reclamation. Another commenter suggested that the relative magnitude of the reclamation costs should be considered a measure of the seriousness of the violation only.

When considering seriousness, OSMRE intends to use the cost the individual would incur in abating the violation, failure or refusal as a key component in determining the penalty. In some instances this will result in the individual civil penalty equaling or exceeding the cost of abatement. Assessment of a proposed individual civil penalty in such a high amount will act as an incentive for the individual to correct the violation, which would enable OSMRE or the regulatory authority to withdraw the proposed penalty under §§ 724.18(c) and 846.18(c).

One commenter was particularly concerned with the provisions in §§ 724.14(b) and 846.14(b) which allow a separate assessment for each day of a continuing violation. The commenter suggested that §§ 724.12 and 846.12 be amended by the addition of criteria to determine when separate assessments will be made for each day of a continuing violation. As examples of appropriate criteria, the commenter suggested: (1) Whether environmental damage continues to be caused by the violation, failure, or refusal from its inception until the abatement of the violation; and (2) whether the amount of the individual civil penalty assessed by the use of the criteria set forth in proposed §§ 724.14(a) and 846.14(a) would be so inadequate under the circumstances as to be manifestly unjust or inadequate to deter future violations, failures or refusals by individuals in control of corporate permittees.

OSMRE has added language to §§ 724.14(b) and 846.14(b) to clarify that an individual civil penalty under section 518(f) is limited by section 518(a) to a maximum amount of $5,000 per violation per day. However, OSMRE believes that the regulations as written contain adequate criteria for determining when and how an individual civil penalty will be assessed and what factors are to be considered in determining the amount of the penalty. While criteria similar to

those suggested by the commenter may be considered by OSMRE in determining whether to assess a penalty on a daily basis and thereby increase the amount of the penalty, OSMRE believes that some discretion should be retained and that the regulations need not contain detailed precedures or guidelines for such calculations. OSMRE intends to develop guidelines for the assessment of individual civil penalties which will assist those assessing an individual civil penalty in determining when an assessment is appropriate and the amount to be assessed. The guidelines will be made available to the state regulatory authorities and will help to insure consistency in the assessment process.

OSMRE notes that the MSHA regulations at 30 CFR 100.5 allow MSHA to waive its penalty/point provisions when calculating a penalty against a corporate official because "some types of violations may be of such a nature or seriousness that it is not possible to determine an appropriate penalty under these provisions." The MSHA regulations simply provide that when MSHA determines that a civil penalty should be assessed against a corporate official, MSHA will take into account the statutory criteria and issue its findings and assessment in narrative form. OSMRE's approach is consistent with that of MSHA.

Sections 724.17 and 846.17 Procedures for Assessment of Individual Civil Penalty.

Under §§ 724.17(a) and 846.17(a) of the rule, OSMRE will serve a notice of proposed individual civil penalty assessment on the individual who is to be assessed a penalty. The notice of proposed assessment will include a narrative setting forth the reasons for the civil penalty and the amount to be assessed. OSMRE intends that the narrative statement contain detailed information concerning the nature of the violation, failure or refusal, why OSMRE believes it was the result of knowing and willful conduct on the part of the officer, director or agent, and other information as appropriate establishing a justification for assessment of the penalty.

Under §§ 724.17(b) and 846.17(b), the proposed assessment will become a final order of the Secretary 30 days after it is served unless within the 30-day period the individual files a petition for review or agrees to a schedule or plan for the abatement or correction of the violation. Unlike §§ 723.19(a) and 845.19(a), which cover other civil penalty assessments, this rule does not require an individual to prepay the penalty before he or she appeals. The Act does not mandate prepayment of an individual civil penalty. Because no prepayment is required, the rule does not contain a provision for assessment conferences. A notice of proposed individual civil penalty assessment can be appealed to an administrative law judge, and then, under the OHA rules, to the Interior Board of Land Appeals at its discretion. The address of OHA has been added to the final rule to assist those desiring to file an appeal.

The OHA procedures for the administrative review of a proposed individual civil penalty assessment were published in the **Federal Register** on December 24, 1986 (51 FR 46848) as a proposed rule. It is expected that the final OHA procedural rule will be published in the **Federal Register** by March 9, 1988 and will be codified at 43 CFR 4.1300 when published.

For purposes of serving notices of proposed individual civil penalty assessment and final orders under §§ 724.17(c) and 846.17(c), service is considered sufficient if it satisfies Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint. This will ensure that future issues concerning service will be minimized and resolved in a uniform manner.

The final rule differs from proposed §§ 724.17 and 846.17 in that the word "proposed" has been added to the term "notice of individual civil penalty assessment" to characterize the notice more accurately, since it does not become a final order until 30 days after service. The same change also has been made in other sections of the rule where appropriate.

One commenter suggested that the rule contain provisions requiring that copies of the underlying NOV and cessation order which provide the basis for the individual civil penalty be attached to the narrative statement that is required by §§ 724.17(a) and 846.17(a). OSMRE has adopted the suggestion and added language to §§ 724.17(a) and 846.17(a) requiring that copies of the underlying NOV and cessation order be attached to the narrative statement.

One commenter requested that the rule provide an opportunity for an assessment conference in addition to the right to petition OHA under §§ 724.18 and 846.18. The commenter argued that this would avoid administrative waste and inconvenience by allowing corporate officials to resolve disputes at a conference rather than requesting a hearing with OHA. The commenter argued that MSHA at 30 CFR 100.6 provides for an assessment conference and that OSMRE should also do so.

OSMRE has not adopted the suggestion. The rules provide an adequate opportunity for administrative review through OHA. No need exists to create an additional level of administrative review in OSMRE. As was previously stated, the corporate official is not required to pre-pay the assessment as a prior condition to requesting a hearing with OHA; thus no due process violation exists. Moreover, the notice of proposed assessment against the corporate official will contain a detailed narrative explanation of the reasons for the assessment and the amount assessed, so that the corporate official will clearly understand why OSMRE believes that an individual civil penalty is justified. It has been OSMRE's experience with corporate violations that almost everyone requests both an assessment conference and a hearing with OHA, so that rather than eliminate administrative waste and inconvenience a conference simply would add another step in the process and increase the government's administrative costs. Finally, an individual civil penalty will be assessed only for knowing and willful conduct. Questions concerning such conduct may be better resolved by an administrative law judge, rather than an assessment conference officer. With regard to the commenter's assertion that MSHA provides for an assessment conference, the conference provided for by MSHA's regulations at 30 CFR 100.6 is for the purpose of reviewing the violation, not the proposed penalty assessment. The penalty assessment against the corporate official is reviewed under 30 CFR 100.7 directly by the Federal Mine Safety and Health Review Commission, which is the counterpart to OHA.

Sections 724.18 and 846.18 Payment of Penalty.

Under §§ 724.18(a) and 846.18(a), if pursuant to §§ 724.17(b) and 846.17(b) no petition for review is filed and no agreement is entered into, payment of the penalty will become due to OSMRE upon issuance of a final order.

Sections 724.18(b) and 846.18(b) provide that the penalty shall be due upon issuance of the order if the individual named in a notice of proposed civil penalty assessment files a petition for administrative review as provided in §§ 724.17(b) and 846.17(b), and if the final administrative review results in a final order affirming, increasing, or decreasing the proposed penalty.

Under §§ 724.18(c) and 846.18(c), if OSMRE and the corporate permittee or individual have agreed in writing on a

plan for the abatement of or compliance with the unabated order, the individual named in the notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from OSMRE stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

New §§ 724.18(d) and 846.18(d) have been added to the rule to clarify that delinquent penalties are subject to the Debt Collection Act of 1982 (Pub. L. 97–365). Under these sections, if the penalty is not paid within 30 days after the issuance of a final order assessing an individual civil penalty, the penalty will be considered delinquent will be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6–8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the **Federal Register**. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in 30 CFR 870.15 (e)(1) through (e)(5). Delinquent penalties are subject to late payment penalties specified in 30 CFR 870.15(f) and processing and handling charges specified in 30 CFR 870.15(g). Because of the 30 day grace period provided by these delinquent payment procedures, the due dates for payment of penalties under §§ 724.18(b) and 846.18(b) and 724.18(c) and 846.18(c) have been changed from the proposed time of 30 days after issuance to the date of issuance of the final order. Thus, under the procedures of §§ 724.18(d) and 846.18(d), even though payment is due upon issuance of a final order, the individual will have the same 30 day grace period for payment of the individual civil penalty before being charged interest as was provided in the proposed rules.

One commenter requested more elaboration of the phrase "that abatement is satisfactory and the penalty has been withdrawn," which appears in §§ 724.18(c) and 846.18(c). The commenter also asked under what circumstances the penalty can be withdrawn, and if it can be withdrawn, why was it even assessed at the earlier stage. The purpose of the individual civil penalty rule is not simply to assess and collect penalties, but to insure that the requirements of the Act are met. In part, OSMRE intends to propose the assessment of an individual civil penalty as an incentive to an officer, director or agent to authorize, order or carry out the abatement of a violation. It should be understood that an individual civil penalty is assessed against the officer, director, or agent of a corporate permittee and not against the corporate permittee. Therefore it is the individual and not the corporation that is liable for payment. OSMRE intends in some instances to propose an individual civil penalty which equals or exceeds the cost of abating the violation under the theory that it would be more economical for the corporate official to order the corporate permittee to abate the violation than to pay the penalty or, if the corporate permittee is now defunct, to abate the violation himself rather than pay an individual civil penalty that would be assessed for a sum greater than the cost of abatement. If the violation is abated prior to the issuance of a final order, it may be approporiate for OSMRE to withdraw the notice of proposed assessment.

As originally proposed, §§ 723.18(a) and 846.18(a) specified that if a notice of individual civil penalty assessment becomes a final order, the penalty shall be due upon *service* of a final order on the individual. In the final rule, OSMRE has substituted the word *issuance* for the word *service* in order to eliminate the need to send the final order to the individual by certified mail or to have it personally served. OSMRE believes that issuance of the final order is sufficient to satisfy the requirements of the Act and to provide due process to the individual. In every instance the notice of proposed individual civil penalty has to be served upon the individual. This action confers jurisdiction over the individual and is the act from which the individual's rights derive. An individual served with a notice of proposed individual civil penalty has the opportunity to contest the individual civil penalty, to pay the individual civil penalty or to enter into an abatement agreement. Issuance of the final order confers no additional rights and service of the final order serves no useful purpose. The regulations in §§ 723.17(b) and 846.17(b) specify that the notice of individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual of the notice of individual civil penalty assessment unless (1) the individual files within 30 days of service of the notice of individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals; or (2) the Office and the individual or responsible corporate permittee agree within 30 days of service of the notice of the individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal. Except for the substitution of the term "issuance" for the term "service," OSMRE has adopted §§ 724.18 and 846.18 as proposed.

Other Comments

One commenter was concerned that the rule would make large companies "easy targets" for examination and enforcement actions, and burden them to demonstrate innocence. OSMRE disagrees. These provisions merely provide procedures for a statutorily authorized enforcement action. The extent of the burden does not depend upon the size of the company but rather upon the conduct of individuals. The rule is directed only at officers, directors and agents of a corporate permittee who knowingly and willfully authorize, order or carry out a violation, failure or refusal. As a further limiting factor, when the individual civil penalty would be based upon a situation where a corporate permittee received a notice of violation, the rule requires that an individual civil penalty be assessed only after a cessation order has been issued to the corporate permittee and remains unabated for 30 days. A corporate permittee's obligations are not changed by these individual civil penalty rules. It must abate the violations within the period prescribed. If it does so, an individual civil penalty will not be assessed. If a company has been issued a cessation order and has failed to abate the violation within 30 days, then the conduct of the company and its officials must be scrutinized. If OSMRE believes that good reason exists for the assessment of an individual civil penalty, a corporate official justifiably may be called upon to account for his knowingly and willfully authorizing, ordering or carrying out a violation, failure or refusal.

One commenter argued that because of the relationship between this proposal and the previously proposed "ownership and control" rule, this rule cannot be adequately examined until the definitions of ownership and control are finalized. The commenter requested that the comment period on this proposal be reopened for a minimum of 30 days after publication of the final rule on ownership and control. OSMRE disagrees. The "ownership and control" rule does not define or determine who is an officer, director or agent of a corporate permittee for the purposes of the issuance of an individual civil

penalty under section 518(f). Each rule may be commented upon and promulgated independently of the other.

One commenter questioned the need for an individual civil penalty regulation in the Federal initial regulatory program since permanent programs are now in effect in all States with coal mining operations. OSMRE is incorporating Part 724 into the regulations to supplement § 723.15(b)(2) of the initial regulatory program. That section provides for the issuance of an individual civil penalty but does not contain any procedures. Outstanding cessation orders issued under the initial regulatory program may continue to result in the issuance of individual civil penalties. If such penalties are issued, section 518 of the Act and Part 724 of the regulations will be cited as authority.

Effect in Federal Program States and on Indian Lands

The rule will apply through cross-referencing to the following Federal program States: Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. No comments were received concerning any unique conditions which exist in any of these States which would have required changes to the national rules or State-specific amendments to any or all of the Federal programs. The rules will also apply through cross-referencing in 30 CFR Part 750 to surface coal mining and reclamation operations on Indian lands.

Effect of Rule in States With Primacy

Pursuant to 30 CFR 732.17(d), OSMRE will notify States with approved programs of their program provisions which need amendment to remain no less stringent than the Act and no less effective than these Federal regulations. Section 518(i) of the Act specifies that "[a]s a condition of approval of any State program * * * the civil and criminal penalty provisions thereof shall, at a minimum, incorporate penalties no less stringent than those set forth in this section and shall contain the same or similar procedural requirements relating thereto."

One commenter argued that a State regulatory authority need not modify its regulations to incorporate the procedures contained in these rules if the State statute confers adequate authority for the issuance of an individual civil penalty without the need for implementing regulations. The commenter made reference to the fact that State programs are not required to incorporate the point system utilized by OSMRE in Parts 723 and 845 of the regulations, and therefore should not be required to incorporate the requirements of these rules.

The question of whether a State is required to incorporate a point system for penalties was litigated in *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144 (D.D.C. 1980). The court held that section 503(a)(7) of the Act requires a State program to meet the stringency standards of OSMRE's regulations so long as OSMRE's regulations are not inconsistent with the Act or arbitrary or capricious. The court noted that neither section 518(i) nor the procedures enforcing those penalties refer to a point system; therefore the court held that it was arbitrary to require the States to exactly parallel the Secretary's penalty system. However, the court also held that a State must nonetheless incorporate the four criteria enumerated in section 518(a) within its own penalty system.

OSMRE has reviewed its regulations in light of the comment and the court's holding and has concluded that portions of these rules establish penalties, while other portions establish procedural requirements relating to such penalties. The requirements of section 518(i) thus will apply to State program individual civil penalty provisions. OSMRE will evaluate State programs accordingly.

One commenter suggested that OSMRE should use a point system for determining the amount of an individual civil penalty. OSMRE has not adopted the suggestion. As discussed above, the use of a point system does not appear practical for, nor strictly applicable to the assessment of individual civil penalties. The point system does not give the Secretary sufficient flexibility to assess a penalty which fairly considers the particular actions or inactions of an individual.

III. Procedural Matters

Federal Paperwork Reduction Act

There are no information collection requirements in the rule which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The Department of the Interior has examined the rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The rule will not add any new regulatory burden on the coal industry. It merely establishes procedures for the assessment of an individual civil penalty already authorized by section 518(f) of the Act and §§ 723.15(b)(2) and 845.15(b)(2) of the implementing regulations. The cost or economic effect of the final rule will be minimal or nonexistent so long as operators comply with requirements or take corrective action in a timely manner.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the rule will not have a significant economic impact on a substantial number of small entities. The rule governs the assessment of civil penalties personally upon individual corporate officers, directors or agents for violations of certain provisions of the Act rather than upon the corporate entities engaged in coal mining. No burden would be imposed upon entities operating in compliance with the Act.

National Environmental Policy Act

OSMRE has prepared an environmental assessment, and has made a finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The environmental assessment is on file in the OSMRE Administrative Record at the address previously specified (see "**ADDRESSES**").

Author

The principal author of this rule is Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202–343–5241 (Commercial or FTS).

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Law enforcement, Penalties, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 750

Indian lands, Reporting and recordkeeping requirements, Surface mining, Surface Mining Reclamation and Enforcement Office.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Law enforcement, Penalties, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 910

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Penalties, Surety bonds, Surface mining, Underground mining.

30 CFR Part 912

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 921

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 922

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 933

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 937

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 939

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 941

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 942

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 947

Intergovernmental relations, Surface mining, Underground mining.

For the reasons discussed in the preamble 30 CFR is amended by adding Parts 724 and 846, and by revising Parts 723, 750, 845, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 as set forth below.

Date: November 20, 1987.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

SUBCHAPTER B—INITIAL PROGRAM REGULATIONS

PART 723—CIVIL PENALTIES

1. The authority citation for Part 723 is revised to read as follows:

Authority: Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 518 (30 U.S.C. 1211, 1251, 1268) and Pub. L. 100–34.

2. Section 723.1 is revised to read as follows:

§ 723.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act for violations of a permit condition, any provision of Title V of the Act, or any implementing regulations, except for the assessment of individual civil penalties under section 518(f), which is covered by Part 724. This part governs when a civil penalty is assessed and how the amount is determined, and sets forth applicable procedures. This part applies to cessation orders and notices of violation issued under Part 722 of this chapter during a Federal inspection.

3. Section 723.18(a) is revised to read as follows:

§ 723.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is received.

* * * * *

4. In Subchapter B, Part 724 is added to read as follows:

PART 724—INDIVIDUAL CIVIL PENALTIES

Sec.

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); and Pub. L. 100–34.

§ 724.1 Scope.

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

§ 724.5 Definitions.

For purposes of this part:

Knowingly means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

Violation, failure or refusal means—

(1) A violation of a condition of a permit issued pursuant to a Federal program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act; or

(2) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under section 518(b) or section 703 of the Act.

Willfully means that an individual acted (1) either intentionally, voluntarily or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

§ 724.12 When an individual civil penalty may be assessed.

(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(b) The Office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

§ 724.14 Amount of individual civil penalty.

(a) In determining the amount of an individual civil penalty assessed under § 724.12, the Office shall consider the criteria specified in § 518(a) of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) the seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(3) the demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The penalty shall not exceed $5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the Office may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved.

§ 724.17 Procedure for assessment of individual civil penalty.

(a) *Notice.* The Office shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) *Final order and opportunity for review.* The notice of proposed individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703–235–3800), in accordance with 43 CFR 4.1300 *et seq.*; or

(2) The Office and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(c) *Service.* For purposes of this section, service is sufficient if it would satisfy Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint.

§ 724.18 Payment of penalty.

(a) *No abatement or appeal.* If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(b) *Appeal.* If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 *et seq.*, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) *Abatement agreement.* Where the Office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Office stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(d) *Delinquent payment.* Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6–8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the **Federal Register**. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in §§ 870.15 (e)(1) through (e)(5) of this chapter. Delinquent penalties are subject to late payment penalties specified in § 870.15(f) of this chapter and processing and handling charges specified in § 870.15(g) of this chapter.

SUBCHAPTER E—INDIAN LANDS PROGRAM

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

5. The authority citation for Part 750 is revised to read as follows:

Authority: 30 U.S.C. 1201–1328; 5 U.S.C. 301; and Pub. L. 100–34.

6. Section 750.18(a) is revised to read as follows:

§ 750.18 Inspection and enforcement.

(a) Parts 842, 843, 845 and 846 of this chapter and the hearings and appeals procedures of 43 CFR Part 4 are applicable on Indian lands.

* * * * *

SUBCHAPTER L—PERMANENT PROGRAM ENFORCEMENT AND INSPECTION AND ENFORCEMENT PROCEDURES

PART 845—CIVIL PENALTIES

7. The authority citation for Part 845 is revised to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); and Pub. L. 100–34

8. Section 845.1 is revised to read as follows:

§ 845.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act with respect to cessation orders and notices of violation issued under Part 843 (Federal Enforcement), except for the assessment of individual civil penalties under section 518(f), which is covered in Part 846.

9. Section 845.18(a) is revised to read as follows.

§ 845.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is received.

* * * * *

10. In Subchapter L, Part 846 is added to read as follows:

PART 846—INDIVIDUAL CIVIL PENALTIES

Sec.
846.1 Scope.
846.5 Definitions.
846.12 When an individual civil penalty may be assessed.
846.14 Amount of individual civil penalty.
846.17 Procedure for assessment of individual civil penalty.
846.18 Payment of penalty.

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); Pub. L. 100–34.

§ 846.1 Scope.

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

§ 846.5 Definitions.

For purposes of this part: *Knowingly* means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such

act or omission constituted a violation, failure or refusal.

Violation, failure or refusal means—

(1) A violation of a condition of a permit issued pursuant to a Federal program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act; or

(2) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under section 518(b) or section 703 of the Act.

Willfully means that an individual acted (1) either intentionally, voluntarily or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

§ 846.12 When an individual civil penalty may be assessed.

(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(b) The Office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

§ 846.14 Amount of individual civil penalty.

(a) In determining the amount of an individual civil penalty assessed under § 846.12, the Office shall consider the criteria specified in section 518(a) of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The penalty shall not exceed $5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the Office may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved.

§ 846.17 Procedure for assessment of individual civil penalty.

(a) *Notice.* The Office shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) *Final order and opportunity for review.* The notice of proposed individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703–235–3800), in accordance with 43 CFR 4.1300 *et seq.*; or

(2) The Office and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(c) *Service.* For purposes of this section, service is sufficient if it would satisfy Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint.

§ 846.18 Payment of penalty.

(a) *No abatement or appeal.* If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(b) *Appeal.* If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 *et seq.*, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) *Abatement agreement.* Where the Office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Office stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(d) *Delinquent payment.* Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6–8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the **Federal Register**. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in §§ 870.15 (e)(1) through (e)(5) of this chapter. Delinquent penalties are subject to late payment penalties specified in § 870.15(f) of this chapter and processing and handling charges specified in § 870.15(g) of this chapter.

SUBCHAPTER T—PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN EACH STATE

11. The authority citations for Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, are amended as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*; and Pub. L. 100–34.

PARTS 910, 912, 921, 922, 933, 937, 939, 941, 942, AND 947—[AMENDED]

12. Parts 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947 are amended by adding to each part the following section _____.846 (the wording is the same for each affected part):

_____.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[FR Doc. 88–2481 Filed 2–7–88 8:45 am]

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Monday
February 8, 1988

Part III

Department of Labor

Employment Standards Administration

Office of Workers' Compensation Programs

20 CFR Parts 61 and 62

Claims for Compensation Under the War Hazards Compensation Act; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

Office of Workers' Compensation Programs

20 CFR Parts 61 and 62

Claims for Compensation Under the War Hazards Compensation Act

AGENCY: Office of Workers Compensation Programs, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is revising the regulations governing the administration of the War Hazards Compensation Act, which provides compensation for injury or death due to a war-risk hazard, or detention by a hostile force or person, of overseas employees of contractors with the United States and certain other employees. The final rule reflects amendments made to the Act in 1961, 1959, and 1958 which replaced the World War II frame of reference in the Act with language applicable to current and future conditions faced by employees of contractors working in hazardous overseas locations. The chief effects of the final rule will be to simplify and clarify the requirements for filing a claim under the Act, remove unnecessary and repetitious provisions, and bring the regulations up to date with amendments to the Act and current terminology.

EFFECTIVE DATE: April 8, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S-3229, Frances Perkins "Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION: Proposed Regulations were published in the **Federal Register** on June 1, 1987 (52 FR 20536) and provided for a 45-day period for comment. The comment period was extended through August 19, 1987, to allow time for additional comment. (52 FR 27417) During the comment period, the Department of Labor received comments from five interested parties, including one consultant, two government agencies and two insurance carriers.

The preamble to proposed regulations contained a discussion of the definition of war-risk hazard as it applies to victims of terrorist activities. The matter of terrorist attacks raises complicated issues in determining coverage under the WHA since it is not always possible to identify the person or group responsible for a terrorist act, or to determine the intended target of the action. Consistent with the general tenor of the Act, it is the Department's view that reference to actions by a hostile force or person as war-risk hazards includes coverage of at least some victims of terrorist acts. Several examples were set forth and the public was invited to submit comments.

Two insurance carriers and a government agency commented on these examples and generally believed the analysis used in the examples was consistent with the purpose of the Act and clarified the Department's position on this issue. No change in the regulations on the definition of what constitutes a war risk hazard is therefore necessary.

The Department's analysis of the comments received are set forth below by sections on which comment was received. Unless otherwise indicated, section references refer to the sections of the regulations as revised. In addition, the Federal agency referred to was the same commentor, unless otherwise indicated.

Section 61.1

A Federal agency pointed out that its personal service contractors are covered as "employees" under the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101(1)(B)) and questioned whether the WHA would apply to these individuals. In this situation, the WHA would not apply to personal service contractors afforded coverage under the FECA. *See WHA section 105(a).*

The Federal agency referred to § 61.1(b)(4) and noted that its "host country contracts" are entered into under the Mutual Security Act of 1954 (MSA). The agency further noted that § 61.1(b)(4) provides coverage for persons under a contract "approved *and* financed" (emphasis added by commentor) under the MSA, but that agency regulations require no approval for contracts under $100,000 though financed by the agency. It was requested that employees under these non-approved, small value contracts be covered under the WHA. We believe that since the agency's regulations require no approval for contracts under $100,000, such contracts are technically "approved" for WHA coverage purposes since they are authorized by regulation.

A consultant involved in marine historical research and analysis requested that a § 61.1(b)(6) be added to the regulations and proposed specific language which would provide WHA coverage for American seamen and masters engaged for service on a United States flagship outside the continental United States by an America employer and in that position because of a declared policy of the United States government. The commentor specifically had in mind, in his proposed language, coverage for U.S. masters on board re-flagged tankers in the Persian Gulf. In the alternative, this commentor proposed language which would provide temporary WHA coverage, under Executive Order, for personal service employees engaged outside of the United States by American employers when their activities are deemed in the national interest. We believe the proposed § 61.1(b)(6), as presented by this commentor, is contrary to the intent of the WHA for lack of a contractual relationship between the United States and the employers of the employees for which coverage is proposed.

The Federal agency noted that § 61.1(c) was misprinted as § 61.1(b) in the proposed regulations. The regulation is revised accordingly. Under § 61.1(c)(1) the agency also requested insertion of the adjective "reasonable" before inference. We believe the suggestion valid and revise the regulation accordingly.

The Federal agency posed the question, whether employees would/should be provided detention benefits under § 61.1(c)(3) in the following two situations. First, if an employee does not complete his/her assignment (except for reasons beyond his/her control), the agency does not reimburse the costs of returning to the United States. Second, a contractor is bankrupt and does not live up to its commitment to pay for return travel costs of its employees.

We believe that application of this section should not turn on the reason why the employee is not furnished transportation to his/her home or place of employment, but should focus on whether the employee has been detained in an area which subjects him/her to war risk hazards.

Section 61.3

Under § 61.3(a) the Federal agency suggested that we strike the language "who are required to" as extraneous. We agree and the regulation is revised accordingly.

Section 61.4

In the definition section, 61.4, the Federal agency requested that we insert "contractor" before "subcontractor" in § 61.4(c). We believe the addition of contractor clarifies the definition and we revise the regulation accordingly.

With regard to § 61.4(f), the Federal agency sought an opinion on coverage for [1] injuries incurred from torture or while attempting to escape from the

control of hostile forces or persons and for [2] injuries incurred as a result of terrorist activities of an American working for a hostile force or person. If the injuries were inflicted by a "hostile force or person" as defined in § 61.4(f), the nature of the injury or nationality of the terrorist, would not be relevant.

The Federal agency also requested guidance on whether, under § 61.4(k), a death caused by a covered injury or by complications of a covered injury be covered. We believe the definition in § 61.4(k) covers such deaths.

Section 61.102

The agency requested guidance on methods of calculation under § 61.102(d). For both the 60 day period for carriers within the United States and 6 month period for foreign carriers, the period within which a carrier may file objections runs from the date the decision was issued to the date of postmark on the letter of objection.

Section 61.104

With respect to reimbursement of claims expense, the Federal agency asked whether translator fees, telex charges, international telephone and travel expenses are reimbursable. As stated in the regulations, such expenses are reimbursable if reasonably incurred.

Section 61.200

The Federal agency asked who will determine whether someone is entitled to foreign benefits under § 61.200(c)(4) and whether a "colorable claim" or "final judgment for benefits" from a foreign country should be required. As in all matters of administration of the WHA, the Office of Workers' Compensation Programs, U.S. Department of Labor, shall determine entitlement to foreign benefits based on a "final judgment" obtained in a foreign country.

Section 61.203

Commenting on § 61.203(c), the Federal agency recommended that the Department use the "present value computed at the prevailing discount rate," in its discharge of liability for all future payments of compensation to a noncitizen/nonresident. However, the Department is bound by the formula set forth in the Act at section 101(c).

Section 61.205

The Federal agency requested that the language "by law, or permitted by will" be added after "obligated" in § 61.205(a)(2). The Department believes that addition of the proposed language would make this section unnecessarily restrictive.

Under §§ 61.205(b) and 61.300(a), a Federal agency asked whether "home" is inclusive of "domicile" and "residence." According to *Black's Law Dictionary*, "home" is not synonymous with "residence" since a person may have more than one residence but only one "home" or "domicile."

Section 61.300

The Federal agency asked how funds under § 61.300(b), which are disbursed during the detained employee's absence to his dependents, are accounted for and whether an employee would have a claim against the government for any universe disbursement. We believe that government may use its discretion in its disbursement of compensation to an employee's dependents and would not be subject to claims by the employee for the exercise of that discretion.

The Federal agency requested that under § 61.300(d)(5) the word "is" be changed to "has been." The regulations have been revised accordingly.

Section 61.301

The Federal agency asked who has the burden of proof in proving entitlement under § 61.301(a)—the dependent or the government. As in all claims proceedings under WHA the burden of proof is on the claimant, or in this case the dependent.

Section 61.305

A Federal agency asked whether there would be a penalty, under § 61.305, where a dependent fails to give notice of the change of status of the formerly detained employee. In addition to the penalties imposed by section 203 of the Act, the statute does provide a method for reducing a dependent's entitlement to continuing compensation, as well as procedures for recovering any overpayment.

Classification—Executive Order 12291

The Department of Labor does not believe that this final rule constitutes a "major rule" under Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

The information collection requirements entailed by this final rule will not differ from those currently in effect. No new forms are required. All forms that are referenced have been submitted for approval by the Office of Management and Budget where required.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed revisions do not impose any additional requirements upon small entities, but only implement the 1958, 1959 and 1961 amendments to the War Hazards Act. Accordingly, no regulatory impact analysis is required.

List of Subjects

20 CFR Part 61

War claims, Workers' compensation, Claims, Labor, Detention benefits, Indemnity payments.

20 CFR Part 62

Claims, Government contracts, Health care, Workers' compensation.

Accordingly, Parts 61 and 62, Subchapter F, Chapter I of Title 20, Code of Federal Regulations, are amended as set forth below.

1. 20 CFR Part 61 is revised to read as follows:

PART 61—CLAIMS FOR COMPENSATION UNDER THE WAR HAZARDS COMPENSATION ACT, AS AMENDED

Subpart A—General Provisions

Sec.

Subpart B—Reimbursement of Carriers

Authority: 1950 Reorg. Plan No. 19, sec. 1, 3 CFR, 1949–1953 Comp., p. 1010, 64 Stat. 1271; 5 U.S.C. 8145, 8149; 42 U.S.C. 1704, 1706; Secretary's Order 7–87, 52 FR 48466; Employment Standards Order 78–1, 43 FR 51469.

Subpart A—General Provisions

§ 61.1 Statutory provisions

(a) The War Hazards Compensation Act, as amended (42 U.S.C. 1701 *et seq.*) provides for reimbursement of workers' compensation benefits paid under the Defense Base Act (42 U.S.C. 1651 *et seq.*), or under other workers' compensation laws as described in § 61.100(a), for injury or death causally related to a war-risk hazard.

(b) If no benefits are payable under the Defense Base Act or other applicable workers' compensation law, compensation is paid to the employee or survivors for the war-risk injury or death of—

(1) Any person subject to workers' compensation coverage under the Defense Base Act;

(2) Any person engaged by the United States under a contract for his or her personal services outside the continental United States;

(3) Any person subject to workers' compensation coverage under the Nonappropriated Fund Instrumentalities Act (5 U.S.C. 8171 *et seq.*);

(4) Any person engaged for personal services outside the continental United States under a contract approved and financed by the United States under the Mutual Security Act of 1954, as amended (other than Title II of Chapter II unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States Government, determines a contract financed under a successor provision of any successor Act should be covered by this subchapter), except that in cases where the United States is not a formal party to contracts approved and financed under the Mutual Security Act of 1954, as amended, the Secretary, upon the recommendation of the head of any department or agency of the United States, may waive the application of the Act; or

(5) Any person engaged for personal services outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces under appropriate authorization by the Secretary of Defense.

(c) The Act also provides for payment of detention benefits to an employee specified in paragraph (a) of this section who—

(1) If found to be missing from his or her place of employment under circumstances supporting a reasonable inference that the absence is due to the belligerent action of a hostile force or person;

(2) Is known to have been taken by a hostile force or person as a prisoner or hostage; or

(3) Is not returned to his or her home or to the place of employment due to the failure of the United States or its contractor to furnish transportation.

§ 61.2 Administration of the Act and this chapter.

(a) Pursuant to 42 U.S.C. 1706, Secretary of Labor's Order 6–84, (49 FR 32473), and Employment Standards Order 78–1, (43 FR 51469), the responsibility for administration of the Act has been delegated to the Director, Office of Workers' Compensation Programs.

(b) In administering the provisions of the Act, the Director may enter into agreements or cooperative working arrangements with other agencies of the United States or of any State (including the District of Columbia, Puerto Rico, and the Virgin Islands) or political subdivisions thereof, and with other public agencies and private persons, agencies, or institutions within and outside the United States. The Director may also contract with insurance carriers for the use of their service facilities to process claims filed under the Act

§ 61.3 Purpose and scope of this part.

(a) This Part 61 sets forth the rules applicable to the filing, processing, and payment of claims for reimbursement and workers' compensation benefits under the provisions of the War Hazards Compensation Act, as amended. The provisions of this part are intended to afford guidance and assistance to any person, insurance carrier, self-insured employer, or compensation fund seeking benefits under the Act, as well as to personnel within the Department of Labor who administer the Act.

(b) Subpart A describes the statutory and administrative framework within which claims under the Act are processed, contains a statement of purpose and scope, and defines terms used in the administration of the Act.

(c) Subpart B describes the procedure by which an insurance carrier, self-insured employer, or compensation fund shall file a claim for reimbursement under section 104 of the Act, and describes the procedures for processing a claim for reimbursement and transferring a case for direct payment by the Department of Labor.

(d) Subpart C contains the rules governing the filing and processing of a claim for injury, disability or death benefits under section 101(a) of the Act.

(e) Subpart D contains provisions relating to claims for detention benefits under section 101(b) of the Act.

(f) Subpart E contains miscellaneous provisions concerning disclosure of program information, approval of claims for legal services, and assignment of claim.

§ 61.4 Definitions and use of terms.

For the purpose of this part—

(a) "The Act" means the War Hazards Compensation Act, 42 U.S.C. 1701 *et seq.*, as amended.

(b) "Office" or "OWCP" means the Office of Workers' Compensation Programs, Employment Standards Administration, United States Department of Labor.

(c) "Contractor with the United States" includes any contractor, subcontractor or subordinate subcontractor.

(d) "Carrier" means any payer of benefits for which reimbursement is requested under the Act, and includes insurance carriers, self-insured employers and compensation funds.

(e) "War-Risk Hazard" means any hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by the Act is serving; from—

(1) The discharge of any missile (including liquids and gas) or the use of any weapon, explosive, or other noxious thing by a hostile force or person or in combating an attack or an imagined attack by a hostile force or person;

(2) Action of a hostile force or person, including rebellion or insurrection against the United States or any of its allies;

(3) The discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or person (except with respect to employees of a manufacturer, processor, or transporter of munitions during the manufacture, processing, or transporting of munitions, or while stored on the premises of the manufacturer, processor, or transporter);

(4) The collision of vessels in convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(5) The operation of vessels or aircraft in a zone of hostilities or engaged in war activities.

(f) "Hostile Force or Person" means any nation, any subject of a foreign nation, or any other person serving a foreign nation—

(1) Engaged in a war against the United States or any of its allies;

(2) Engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies; or

(3) Engaged in a war or armed conflict between military forces of any origin in any country in which a person covered by the Act is serving.

(g) "Allies" means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance.

(h) "War Activities" includes activities directly relating to military operations.

(i) "Continental United States" means the States and the District of Columbia.

(j) "Injury" means injury resulting from a war-risk hazard, as defined in this section, whether or not such injury occurred in the course of the person's employment, and includes any disease proximately resulting from a war-risk hazard.

(k) "Death" means death resulting from an injury, as defined in this section.

(l) The terms "compensation", "physician", and "medical, surgical, and hospital services and supplies" when used in Subparts D and E are construed and applied as defined in the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*).

(m) The terms "disability", "wages", "child", "grandchild", "brother", "sister", "parent", "widow", "widower", "student", "adoption" or "adopted" are construed and applied as defined in the Longshore and Harbor Workers' Compensation Act, as amended (35 U.S.C. 901 *et seq.*).

Subpart B—Reimbursement of Carriers

§ 61.100 General reimbursement provisions.

(a) The Office shall reimburse any carrier that pays benefits under the Defense Base Act or other applicable workers' compensation law due to the injury, disability or death of any person specified in § 61.1(a), if the injury or death for which the benefits are paid arose from a war-risk hazard. The amount to be reimbursed includes disability and death payments, funeral and burial expenses, medical expenses, and the reasonable and necessary claims expense incurred in processing the request.

(b) The Office shall not provide reimbursement in any case in which an additional premium for war-risk hazard was charged, or in which the carrier has been reimbursed, paid, or compensated for the loss for which reimbursement is requested.

(c) Reimbursement under this section with respect to benefits shall be limited to the amounts which will discharge the liability of the carrier under the applicable workers' compensation law.

§ 61.101 Filing a request for reimbursement.

(a) A carrier or employer may file a request for reimbursement. The request shall be submitted to the U.S. Department of Labor, Office of Workers' Compensation Programs, Branch of Special Claims, P.O. Box 37117, Washington, DC 20013–7117;

(b) Each request for reimbursement shall include documentation itemizing the payments for which reimbursement is claimed. The documentation shall be sufficient to establish the purpose of the payment, the name of the payee, the date(s) for which payment was made, and the amount of the payment. Copies of any medical reports and bills related to medical examination or treatment for which reimbursement is claimed shall also be submitted. If the carrier cannot provide copies of the payment drafts or receipts, the Office may accept a certified listing of payments which includes payee name, description of services rendered, date of services rendered, amount paid, date paid check or draft number, and signature of certifier.

(c) When filing an initial request for reimbursement under the Act, the carrier shall submit copies of all available documents related to the workers'compensation case, including—

(1) Notice and claim forms;

(2) Statements of the employee or employer;

(3) Medical reports;

(4) Compensation orders; and

(5) Proof of liability (e.g., insurance policy or other documentation).

§ 61.102 Disposition of reimbursement requests.

(a) If the Office finds that insufficient or inadequate information has been submitted with the claim, the carrier shall be asked to submit further information. Failure to supply the requested information may result in disallowance of items not adequately supported as properly reimbursable.

(b) The Office shall not withhold payment of an approved part of a reimbursement request because of denial of another part of the reimbursement request.

(c) The Office shall regard awards, decisions and approved settlement agreements under the Defense Base Act or other applicable workers' compensation law, that have become final, as establishing prima facie, the right of the beneficiary to the payment awarded or provided for.

(d) The Office shall advise the carrier of the amount approved for reimbursement. If the reimbursement request has been denied in whole or in part, the Office shall provide the carrier an explanation of the action taken and the reasons for the action. A carrier within the United States may file objections with the Associate Director for Federal Employees' Compensation to the disallowance or reduction of a claim within 60 days of the Office's decision. A carrier outside the United States has six months within which to file objections with the Associate Director. The Office may consider objections filed beyond the time limits under unusual circumstances or when reasonable cause has been shown for the delay. A determination by the Office is final

(e) In determining whether a claim is reimbursable, the Office shall hold the carrier to the same degree of care and prudence as any individual or corporation in the protection of its interests or the handling of its affairs would be expected to exercise under similar circumstances. A part or an item of a claim may be disapproved if the Office finds that the carrier—

(1) Failed to take advantage of any right accruing by assignment or subrogation (except against the United States, directly or indirectly, its employees, or members of its armed forces) due to the liability of a third party, unless the financial condition of the third party or the facts and circumstances surrounding the liability justify the failure;

(2) Failed to take reasonable measures to contest, reduce, or terminate its liability by appropriate available procedure under workers' compensation law or otherwise; or

(3) Failed to make reasonable and adequate investigation or injury as to the right of any person to any benefit or payment; or

(4) Failed to avoid augmentation of liability by reason of delay in recognizing or discharging a compensation claimant's right to benefits.

§ 61.103 Examination of records of carrier.

Whenever it is deemed necessary, the Office may request submission of case records or may inspect the records and accounts of a carrier for the purpose of verifying any allegation, fact or payment stated in the claim. The carrier shall furnish the records and permit or authorize their inspection as requested. The right of inspection shall also relate to records and data necessary for the determination of whether any premium or other charge was made with respect to the reimbursement claimed.

§ 61.104 Reimbursement of claims expense.

(a) A carrier may claim reimbursement for reasonable and necessary claims expense incurred in connection with a case for which reimbursement is claimed under the Act. Reimbursement may be claimed for allocated and unallocated claims expense.

(b) The term "allocated claims expense" includes payments made for reasonable attorneys' fees, court and litigation costs, expenses of witnesses and expert testimony, examinations, autopsies and other items of expense that were reasonably incurred in determining liability under the Defense Base Act or other workers' compensation law. Allocated claims expense must be itemized and documented as described in § 61.101.

(c) The term "unallocated claims expense" means costs that are incurred in processing a claim, but cannot be specifically itemized or documented. A carrier may receive reimbursement of unallocated claims expense in an amount of to 15% of the sum of the reimbursable payments made under the Defense Base Act or other workers' compensation law. If this method of computing unallocated claims expense would not result in reimbursement of reasonable and necessary claims expense, the Office may, in its discretion, determine an amount that fairly represents the expenses incurred.

(d) The Office shall not consider as a claims expense any general administrative costs, general office maintenance costs, rent, insurance, taxes, or other similar general expenses. Nor shall expenses incurred in establishing or documenting entitlement to reimbursement under the Act be considered.

§ 61.105 Direct payment of benefits.

(a) The Office may pay benefits, as they accrue, directly to any entitled beneficiary in lieu of reimbursement of a carrier.

(b) The Office will not accept a case for direct payment until the right of the person or persons entitled to benefits has been established and the Office finds that the carrier would be entitled to reimbursement for continuing benefits.

(c) The Office will not accept a case for direct payment until the rate of compensation or benefit and the period of payment have become relatively fixed and known. The Office may accpet a case for direct payment before this condition has been satisfied, if the Office determines that direct payment is advisable due to the circumstances in that particular case.

(d) In cases transferred to the Office for direct payment, medical care for the effects of a war-risk injury may be furnished in a manner consistent with the regulations governing the furnishing of medical care under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101, *et seq.*).

(e) The transfer of a case to the Office for direct payment does not affect the hearing or adjudicatory rights of a beneficiary or carrier as established under the Defense Base Act or other applicable workers' compensation law.

(f) The Office may retransfer any case to a carrier either for the purpose of completion of adjudicatory processes or for continuation of payment of benefits.

Subpart C—Compensation for Injury, Disability or Death

§ 61.200 Entitlement to benefits.

(a) Compensation under section 101(a) of the Act is payable for injury or death due to a war-risk hazard of an employee listed in § 61.1(a), whether or not the person was engaged in the course of his or her employment at the time of the injury.

(b) Compensation under this subpart is paid under the provisions of the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*), except that the determination of beneficiaries and the computation of compensation are made in accordance with sections 6, 8, 9, and 10 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 *et seq.*).

(c) The Office may not approve a claim for compensation if any of the following conditions are met:

(1) The employee resides at or in the vicinity of the place of employment, does not live there solely due to the exigencies of the employment, and is injured outside the course of the employment.

(2) The claim is filed due to the injury or death of a prisoner of war detained or utilized by the United States.

(3) The person seeking benefits recovers or receives workers' compensation benefits from any other source for the same injury or death.

(4) The person seeking benefits is a national of a foreign country and is entitled to compensation benefits from that or any other foreign country on account of the same injury or death.

(5) The employee is convicted in a court of competent jurisdiction of any subversive act against the United States or any of its allies.

§ 61.201 Filing of notice and claim.

An employee or his or her survivors may file a claim under section 101(a) of the Act only after a determination has been made that no benefits are payable under the Defense Base Act administered by the Office's Division of Longshore and Harbor Workers' Compensation. Notice and claim may be filed on standard Longshore or Federal Employees' Compensation Act forms. The claimant shall submit notice and claim, along with any supporting documentation, to the U.S. Department of Labor, Office of Workers' Compensation Programs, Branch of Special Claims, P.O. Box 37117, Washington, DC 20013–7117.

§ 61.202 Time limitations for filing notice and claim.

The time limitation provisions found in 5 U.S.C. 8119 apply to the filing of claims under section 101(a) of the War Hazards Compensation Act. The Office may waive the time limitations if it finds that circumstances beyond the claimant's control prevented the filing of a timely claim.

§ 61.203 Limitations on and deductions from benefits.

(a) Compensation payable for injury, disability or death may not exceed the maximum limitations specified in section 6(b) of the Longshore and Harbor Workers' Compensation Act, as amended.

(b) In determining benefits for disability or death, the Office shall not apply the minimum limits found in sections 6(b) and 9(e) of the Longshore and Harbor Workers' Compensation Act.

(c) Compensation for death or permanent disability payable to persons who are not citizens of the United States and who are not residents of the United States or Canada is in the same amount as provided for residents, except that dependents in a foreign country are limited to the employee's spouse and children, or if there be no spouse or children, to the employee's father or mother whom the employee supported, either wholly or in part, for the period of one year immediately prior to the date of the injury. The Office may discharge its liability for all future payments of compensation to a noncitizen/nonresident by paying a limp sum representing one-half the commuted value of all future compensation as determined by the Office.

(d) If any employee or beneficiary receives or claims wages, payments in lieu of wages, or insurance benefits for disability or loss of life (other than workers' compensation benefits), and the cost of these payments is provided in whole or in part by the United States, the Office shall credit the amount of the benefits against any payments to which the person is entitled under the Act. The Office shall apply credit only where the wages, payments, or benefits received are items for which the contractor is entitled to reimbursement from the United States, or where they are otherwise reimbursable by the United States.

(e) If an employee who is receiving workers' compensation benefits on account of a prior accident or disease sustains an injury compensable under the Act, the employee is not entitled to any benefits under the Act during the period covered by other workers' compensation benefits unless the injury from a war-risk hazard increases the employee's disability. If the war-risk injury increases the disability, compensation under the Act is payable only for the amount of the increase in disability. This provision is applicable only to disability resulting jointly from two unrelated causes, namely, (1) prior industrial accident or disease, and (2) injury from a war-risk hazard.

(f) Compensation for disability under this subchapter, with the exception of allowances for scheduled losses of members or functions of the body, may not be paid for the same period of time during which benefits for detention under this subchapter are paid or accrued.

§ 61.204 Furnishing of medical treatment.

All medical services, appliances, drugs and supplies which in the opinion of the Office are necessary for the treatment of an injury coming within the purview of section 101(a) of the Act shall be furnished to the same extent, and wherever practicable in the same manner and under the same regulations, as are prescribed for the furnishing of medical treatment under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*).

§ 61.205 Burial expense.

(a) When the death of a person listed in § 61.1(a) results from an injury caused by a war-risk hazard, the Office shall pay reasonable burial expenses up to the amount specified in section 9 of the Longshore and Harbor Workers' Compensation Act. If any part of the burial expense has been paid by any other agency of the United States, or by any person under obligation to discharge burial expenses, the amount so paid shall be deducted from the burial expense payable by the Office. Payment will be made directly (1) to the undertaker, (2) to the estate of the deceased if the estate is obligated to make payment, or (3) to any person who has paid such burial expenses and is entitled to such reimbursement.

(b) If the employee's home is within the United States and death occurs away from the employee's home or outside the United States, the Office may pay an additional sum for transporting the remains to the home.

§ 61.206 Reports by employees and dependents.

The Office may require a claimant to submit reports of facts materially affecting the claimant's entitlement to compensation under the Act. These may include reports of recurrence or termination of disability, of employment and earnings, or of a change in the marital or dependency status of a beneficiary.

Subpart D—Detention Benefits

§ 61.300 Payment of detention benefits.

(a) The Office shall pay detention benefits to any person listed in § 61.1(a) who is detained by a hostile force or person, or who is not returned to his or her home or to the place of employment by reason of the failure of the United States or its contractor to furnish transportation. Benefits are payable for periods of absence on and subsequent to January 1, 1942, regardless of whether the employee was actually engaged in the course of his or her employment at the time of capture or disappearance.

(b) For the purposes of paying benefits for detention, the employee is considered as totally disabled until the time that the employee is returned to his or her home, to the place of employment, or to the jurisdiction of the United States. The Office shall credit the compensation benefits to the employee's account, to be paid to the employee for the period of the absence or until the employee's death is in fact established or can be legally presumed to have occurred. A part of the compensation accruing to the employee may be disbursed during the period of absence to the employee's dependents.

(c) During the period of absence of any employee detained by a hostile force or person, detention benefits shall be credited to the employee's account at one hundred percent of his or her average weekly wages. The average weekly wages may not exceed the average weekly wages paid to civilian employees of the United States performing the same or most similar employment in that geographic area. If there are eligible dependents, the Office may pay to these dependents seventy percent of the credited benefits.

(d) The Office may not pay detention benefits under any of the following conditions:

(1) The employee resides at or in the vicinity of the place of employment, does not live there solely due to the exigencies of the employment, and is detained under circumstances outside the course of the employment.

(2) The person detained is a prisoner of war detained or utilized by the United States.

(3) Workers' compensation benefits from any other source or other payments from the United States are paid for the same period of absence or detention.

(4) The person seeking detention benefits is a national of a foreign

country and is entitled to compensation benefits from that or any other foreign country on account of the same absence or detention.

(5) The employee has been convicted in a court of competent jurisdiction of any subversive act against the United States or any of its allies.

§ 61.301 Filing a claim for detention benefits.

(a) A claim for detention benefits shall contain the following information: name, address, and occupation of the missing employee; name, address and relation to the employee of any dependent making claim; name and address of the employer; contract number under which employed; date, place and circumstances of capture or detention; date, place and circumstances of release (if applicable). The employer shall provide information about the circumstances of the detention and the employee's payrate at the time of capture. Dependents making claim for detention benefits may be required to submit all evidence available to them concerning the employment status of the missing person and the circumstances surrounding his or her absence.

(b) A claim filed by a dependent or by the employee upon his or her release should be sent with any supporting documentation to the U.S. Department of Labor, Office of Workers' Compensation Programs, Branch of Special Claims, P.O. Box 37117, Washington, DC 20013–7117.

§ 61.302 Time limitations for filing a claim for detention benefits.

The time limitation provisions found in the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*) apply to the filing of claims for detention benefits. The Office may waive the time limitations if it finds that circumstances beyond the claimant's control prevented the filing of a timely claim.

§ 61.303 Determination of detention status.

A determination that an employee has been detained by a hostile force or person may be made on the basis that the employee has disappeared under circumstances that make detention appear probable. In making the determination, the Office will consider the information and the conclusion of the Department or agency of the United States having knowledge of the circumstances surrounding the absence of the employee as prima facie evidence of the employee's status. The presumptive status of total disability of the missing person shall continue during the period of the absence, or until death is in fact established or can be legally presumed to have occurred.

§ 61.304 Limitations on and deductions from detention benefits.

(a) In determining benefits for detention, the Office shall not apply the minimum limits found in sections 6(b) and 9(e) of the Longshore and Harbor Workers' Compensation Act.

(b) If any employee or dependent receives or claims wages, payments in lieu of wages, or insurance benefits for the period of detention, and the cost of the wages, payments or benefits is provided in whole or in part by the United States, the Office shall credit the amount of the benefits against any detention payments to which the person is entitled under the Act. The Office shall apply credit only where the wages, payments, or benefits received are items for which the contractor is entitled to reimbursement from the United States, or where they are otherwise reimbursable by the United States.

§ 61.305 Responsibilities of dependents receiving detention benefits.

A dependent having knowledge of a change of status of a missing employee shall promptly inform the Office of the change. The Office must be advised immediately by the dependent if the employee is returned home or to the place of his or her employment, or is able to be returned to the jurisdiction of the United States.

§ 61.306 Transportation of persons released from detention and return of employees.

(a) The Office may furnish the cost of transporting an employee from the point of the employee's release from detention to his or her home, the place of employment, or other place within the jurisdiction of the United States. The Office shall not pay for transportation if the employee is furnished the transportation under any agreement with his or her employer or under any other provision of law.

(b) The Office may furnish the cost of transportation under circumstances not involving detention, if the furnishing of transportation is an obligation of the United States or its contractor, and the United States or its contractor fails to return the employee to his or her home or to the place of employment.

§ 61.307 Transportation of recovered bodies of missing persons.

If an employee dies while in detention and the body is later recovered, the Office may provide the cost of transporting the body to the home of the deceased or to any place designated by the employee's next of kin, near relative, or legal representative.

Subpart E—Miscellaneous Provisions

§ 61.400 Custody of records relating to claims under the War Hazards Compensation Act.

All records, medical and other reports, statements of witnesses and other papers filed with the Office with respect to the disability, death, or detention of any person coming within the purview of the Act, are the official records of the Office and are not records of the agency, establishment, Government department, employer, or individual making or having the care or use of such records.

§ 61.401 Confidentiality of records.

Records of the Office pertaining to injury, death, or detention are confidential, and are exempt from disclosure to the public under section 552(b)(6) of Title 5, United States Code. No official or employee of the United States who has investigated or secured statements from witnesses and others pertaining to any case within the purview of the Act, or any person having the care or use of such records, shall disclose information from or pertaining to such records to any person, except in accordance with applicable regulations (see 29 CFR Part 70a).

§ 61.402 Protection, release, inspection and copying of records.

The protection, release, inspection and copying of the records shall be accomplished in accordance with the rules, guidelines and provisions contained in Part 70 and Part 70a of Title 29 of the Code of Federal Regulations and the annual notice of systems of records and routine uses as published in the **Federal Register.**

§ 61.403 Approval of claims for legal and other services.

(a) No claim for legal services or for any other services rendered in respect to a claim or award for compensation under the Act to or on account of any person shall be valid unless approved by the Office. Any such claim approved by the Office shall, in the manner and to the extent fixed by the Office, be paid out of the compensation payable to the claimant.

(b) The Office shall not recognize a contract for a stipulated fee or for a fee on a contingent basis. No fee for services shall be approved except upon application supported by a sufficient statement of the extent and character of the necessary work done on behalf of the claimant. Except where the claimant was advised that the representation

would be rendered on a gratuitous basis, the fee approved shall be reasonably commensurate with the actual necessary work performed by the representative, and with due regard to the capacity in which the representative appeared, the amount of compensation involved, and the circumstances of the claimant.

§ 61.404 Assignments; creditors.

The right of any person to benefits under the Act is not transferable of assignable at law or in equity except to the United States, and none of the moneys paid or payable (except money paid as reimbursement for funeral expenses), or rights existing under the Act are subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

PART 62—[REMOVED]

3. 20 CFR Part 62 is removed.

Signed at Washington, DC, this 29th day of January 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-2400 Filed 2-5-88; 8:45 am]

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Monday
Februar 8, 1988

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, 32 and 52

Federal Acquisition Regulation; Ratification of Unauthorized Commitments and Prompt Payment; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 32, and 52

[Federal Acquisition Circular 84-33]

Federal Acquisition Regulation; Ratification of Unauthorized Commitments and Prompt Payment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-33 amends the Federal Acquisition Regulation (FAR), to add section 1.602-3, Ratification of unauthorized commitments, and to add Subpart 32.9 and a related contract clause to consolidate under a single procurement regulation the policies and procedures necessary to implement Office of Management and Budget (OMB) Circular A-125, "Prompt Payment."

EFFECTIVE DATE: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, telephone 202-523-4755, Room 4041, GS Building, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Background.

FAC 84-33, Item I. The FAR's predecessor regulations, the Defense Acquisition Regulation and the Federal Procurement Regulations, contained guidance on the subject of ratification of unauthorized commitments. The coverage was omitted from the FAR, however, pending a decision by the Councils regarding the need for its inclusion. Item I of this FAC reflects the Councils' decision to include such coverage.

FAC 84-33, Item II. When OMB Circular A-125 was initially issued in August 1982, the Federal agencies provided implementing instructions through their individual procurement regulations. These regulations were later superseded by the FAR in April 1984. Because the FAR did not specifically include coverage on OMB Circular A-125, the Federal agencies continued to provide implementing instructions through their respective FAR supplements. Later, as problems surfaced and amendments were issued to OMB Circular A-125, it became increasingly necessary to establish uniform coverage in the FAR.

A proposed rule for FAR Subpart 32.9 was published for public comment in the **Federal Register** on July 17, 1986 (51 FR 25976). Subsequent to that publication, a number of events occurred that were pertinent to the policies and procedures being proposed. The Senate introduced a legislative initiative to amend the Prompt Payment Act. The House of Representatives Committee on Government Operations issued a report entitled, "Prompt Payment Act Implementation: Improvements Needed." The General Accounting Office issued a report entitled, "Prompt Payment Act—Agencies Have Not Fully Achieved Available Benefits." Therefore, a revised proposed rule was published for public comment in the **Federal Register** on March 18, 1987 (52 FR 8576).

In developing the final rule, the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council not only took the public comments into consideration, but they also considered revisions that had been made to OMB Circular A-125 on June 9, 1987 (52 FR 21928). A summary of the major issues affecting the final rule is presented below.

Scope of FAR Coverage

The purpose of the new FAR Subpart 32.9 and the related contract clause at 52.232-25 is to implement OMB Circular A-125 as it applies to the Government's purchase of supplies and services from the private sector. The coverage is not intended to address areas outside this scope, such as federal assistance programs, Government debt collection, and agency reporting procedures. The coverage also does not implement proposed amendments to the Prompt Payment Act, such as subcontract flowdown, reduction in the grace period, and double interest penalties. It was observed that many criticisms of the proposed rule were directed more at the Prompt Payment Act and OMB Circular A-125 than the FAR coverage itself. In the event that the Prompt Payment Act is amended and OMB Circular A-125 is correspondingly revised, necessary changes will be made to FAR Subpart 32.9 and the related contract clause at 52.232-25.

Invoice Payment

The proposed rule's standard for establishing the payment due date on contractor invoices was based on the requirements of OMB Circular A-125. That is, payment will generally be made 30 days after the later of the following two events: (1) Receipt of a proper invoice and (2) Government acceptance of supplies or services. Some commenters believed that more favorable payment terms should be permitted, particularly for a few specific industries. Except for existing statutory requirements, no change was made in this area because a 30-day standard was considered appropriate in view of the normal commercial practice of payment in "net 30." This amount of time was also considered necessary to ensure that Government officials involved in the payment process had sufficient time to fulfill their responsibilities. Establishing separate standards in FAR Subpart 32.9 for specific industries was not feasible due to the vast range of supplies and services purchased by the Government. Agency heads, however, have been authorized to prescribe additional standards for establishing payment due dates, where considered appropriate.

Constructive Acceptance

In order to improve the timeliness of invoice payments, the proposed rule introduced a concept of constructive acceptance. This concept provided that solely for purpose of computing an interest penalty that might be due the contractor, acceptance will be deemed to have occurred on the 5th working day after contractor delivery. A period greater than 5 working days could be incorporated in the contract clause at 52.232-25 where justified under policies and procedures issued by the agency head. Commenters raised questions on the practical application of this clause to fixed price construction and architect-engineer contracts because payment is based on estimates of work accomplished. Accordingly, Subpart 32.9 was modified to accommodate this payment method. An alternate to the contract clause was also created.

Contract Financing Payments

The proposed rule implemented the OMB Circular A-125 requirement to specify a due date in the contract for making contract financing payments, even through such payments would not be subject to interest penalties if paid late. In so doing, it was essential to furnish a meaningful definition of invoice payment and contract financing payment. It was also important to distinguish between progress payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, from other forms of progress payments more appropriately treated as contract financing payments. The proposed rule

allowed agency heads to prescribe due dates for making contract financing payments, provided that payment was not made earlier than the seventh or later than the thirtieth day. The public comments received reflected continued confusion over the distinction between invoice payments and contract financing payments. The revisions to OMB Circular A–125 made on June 9, 1987, improved these definitions, and corresponding adjustments were made to FAR Subpart 32.9.

B. Regulatory Flexibility Act

FAC 84–33, Item I. The proposed rule was published in the **Federal Register** on March 18, 1986 (51 FR 9429). The DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because very few ratification actions are necessary.

FAC 84–33, Item II. The proposed rule published in the **Federal Register** on March 18, 1987 (52 FR 6360), contained an Initial Regulatory Flexibility Analysis. The analysis indicated that the purpose of the FAR revisions was to consolidate under a single procurement regulation the Federal agencies' implementing guidance on OMB Circular A–125. Further, it stated that the requirements adopted in FAR Subpart 32.9 would be consistent with the requirements of OMB Circular A–125.

No public comments were received that addressed the Initial Regulatory Flexibility Analysis prepared for the proposed rule. A final Regulatory Flexibility Analysis has been prepared and is on file in the Office of the FAR Secretariat.

C. Paperwork Reduction Act

FAC 84–33, Item I. The Paperwork Reduction Act does not apply because this proposed change to FAR 1.602 does not contain any additional information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

FAC 84–33, Item II. The proposed rule published in the **Federal Register** on March 18, 1987 (52 FR 6360), contained a statement that the Paperwork Reduction Act did not apply because the rule did not impose any additional requirements beyond those already imposed by OMB. There were no comments received on that Paperwork Reduction Act statement.

The information collection regarding electronic funds transfers contained in Alternate II of the clause at FAR 52.232–25 was approved by the Office of Management and Budget (OMB) pursuant to a request from the Department of the Treasury. OMB Control No. 1510–0056 was assigned to this information collection and to Form TFS 3881, Payment Information Form, which is referenced in the clause.

List of Subjects in 48 CFR Parts 1, 32, and 52

Government procurement.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84–33]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–33 is effective February 22, 1988.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

[Number 84–33]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–33 is effective February 22, 1988.

T.C. Golden,

Administrator, GSA.

[Number 84–33]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–33 is effective February 22, 1988.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–33 amends the Federal Acquisition Regulation (FAR) as specified below:

ITEM I—RATIFICATION OF UNAUTHORIZED COMMITMENTS

FAR 1.602–3 is added to provide policy and procedures on ratification of unauthorized commitments.

ITEM II—PROMPT PAYMENT

FAR Subpart 32.9 and the related contract clause at 52.232–25 are added. This revision consolidates under a single procurement regulation the policies and procedures necessary to implement OMB Circular A–125, Prompt Payment. When OMB Circular A–125 was initially issued in August 1982, the Federal agencies had provided implementing instructions in their individual procurement regulations. These regulations were later superseded by the FAR in April 1984. Because the FAR did not specifically include coverage on OMB Circular A–125, the Federal agencies continued to provide implementing instructions through their respective FAR supplements. Later, as implementation problems surfaced and amendments were issued to OMB Circular A–125, it became increasingly desirable to establish uniform coverage in the FAR.

Therefore, 48 CFR Parts 1, 32, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.602–3 is added to read as follows:

1.602–3 Ratification of unauthorized commitments.

(a) *Definitions.*

"Ratification," as used in this subsection, means the act of approving an unauthorized commitment by an official who has the authority to do so.

"Unauthorized commitment," as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) *Policy.* (1) Agencies should take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.

(2) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.

(3) The ratification authority in subparagraph (b)(2) of this subsection may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.

(4) Agencies should process unauthorized commitments using the ratification authority of this subsection instead of referring such actions to the General Accounting Office for resolution. (See 1.602–3(d).)

(5) Unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act of 1978 should be processed in

accordance with Subpart 33.2, Disputes and Appeals.

(c) *Limitations.* The authority in subparagraph (b)(2) of this subsection may be exercised only when—

(1) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(2) The ratifying official could have granted authority to enter or could have entered into a contractual commitment at the time it was made and still has the authority to do so;

(3) The resulting contract would otherwise have been proper if made by an appropriate contracting officer;

(4) The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;

(5) The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;

(6) Funds are available and were available at the time the unauthorized commitment was made; and

(7) The ratification is in accordance with any other limitations prescribed under agency procedures.

(d) *Nonratifiable commitments.* Cases that are not ratifiable under this subsection may be subject to resolution as recommended by the General Accounting Office under its claim procedure (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 32—CONTRACT FINANCING

3. Part 32 is amended by adding new Subpart 32.9, consisting of sections 32.900 through 32.909, to read as follows:

Subpart 32.9—Prompt Payment

32.900 Scope of subpart.

This subpart prescribes policies, procedures, and a clause at 52.232-25, Prompt Payment, for implementing Office of Management and Budget (OMB) Circular A-125, "Prompt Payment."

32.901 Applicability.

This subpart applies to all Government contracts, except for contracts where payment terms and late payment penalties have been established by other governmental authority (e.g., tariffs). This subpart also does not apply to purchases made outside the United States from foreign vendors.

32.902 Definitions.

"Contract financing payment," as used in this subpart, means a Government disbursement of monies to a contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (see 32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost-type contracts. Contract financing payments do not include invoice payments.

"Day," as used in this subpart, means calendar day, unless otherwise indicated.

"Designated billing office," as used in this subpart, means the Government office designated in the contract where the contractor first submits invoices and contract financing requests. This might be the Government disbursing office, contract administration office, office accepting the supplies delivered or services performed by the contractor, or contract audit office. In some cases, different offices might be designated to received invoices and contract financing requests.

"Designated payment office" means the place designated in the contract to make invoice payments or contract financing payments. Normally, this will be the Government disbursing office.

"Discount for prompt payment" means an invoice payment reduction voluntarily offered by the contractor, in conjunction with the clause at 52.232-8, Discounts for Prompt Payment, if payment is made by the Government prior to the due date.

"Due date" means the date on which payment should be made. If the due date falls on a nonworking day (e.g., Saturday, Federal holiday), then due date means the next working day.

"Invoice payment," as used in this subpart, means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government. This includes payments of partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the contractor. For purposes of this subpart, invoice payments also include all payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts. Invoice payments do not include contract financing payments.

"Payment date" means the date on which a check for payment is dated or an electronic funds transfer is made.

"Proper invoice" means a bill or written request for payments which meets the minimum standards specified in the clause at 52.232-25, Prompt Payment (also see 32.905(c)), and other terms and conditions contained in the contract for invoice submission.

"Receiving report" means written evidence meeting the requirements of 32.905(e) which indicates Government acceptance of supplies delivered or services performed by the contractor (see Subpart 46.6).

32.903 Policy.

All contracts subject to this subpart shall specify payment procedures, payment due dates, and interest penalties for late invoice payment. Invoice payments and contract financing payments will be made by the Government as close as possible to, but not later than, the due dates specified in the clause at 52.232-25, Prompt Payment. Payment will be based on receipt of a proper invoice or contract financing request and satisfactory contract performance. Agency procedures shall ensure that, when specifying due dates, full consideration is given to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract. Checks will be mailed and electronic funds transfers will be transmitted on or about the same day the payment action is dated. When appropriate, Government contracts should allow the contractor to be paid for partial deliveries that have been accepted by the Government (see 32.102(d)). Discounts for prompt payment offered by the contractor shall be taken only when payments are made within the discount period specified by the

contractor. Agencies shall pay an interest penalty, without request from the contractor, for late invoice payments or improperly taken discounts for prompt payment. The interest penalty shall be absorbed within funds available for administration or operation of the program for which the penalty was incurred.

32.904 Responsibilities.

Agency heads shall establish the policies and procedures necessary to implement this subpart. Agency heads are authorized to prescribe additional standards for establishing due dates on invoice payments (32.905) and contract financing payments (32.906), as deemed necessary to support agency programs and foster prompt payment to contractors. Agency heads may also adopt different payment procedures in order to accommodate unique circumstances, provided that such procedures are consistent with the policies set forth in this subpart.

32.905 Invoice payments.

(a) Except as prescribed in 32.905(b) and 32.905(c), the due date for making an invoice payment by the designated payment office shall be the later of the two events described in subparagraph (a)(1) or (a)(2) of this section.

(1) The 30th day after the designated billing office has received a proper invoice from the contractor; or

(2) The 30th day after Government acceptance of supplies delivered or services performed by the contractor.

(i) On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the fifth working day after the contractor has delivered supplies or performed services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract requirement. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities. The contracting officer may specify a longer period for constructive acceptance, if appropriate due to the nature of the supplies or services to be received, inspected, tested, and accepted by the Government.

(iii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(b) The due date for making payments on contracts that contain the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts, shall be as follows:

(1) The due date for work or services completed by the contractor shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the contractor; or

(ii) The 30th day after Government acceptance of the work or services completed by the contractor. On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the settlement. For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the 5th working day after the contractor has completed the work or services in accordance with the terms and conditions of the contract (see also 32.905(b)(3)). In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance.

(2) The due date for progress payments shall be the 30th day after Government approval of contractor estimates of work or services accomplished. For the sole purpose of computing an interest penalty that might be due the contractor, Government approval shall be deemed to have occurred constructively on the 5th working day after contractor estimates have been received by the designated billing office (see also 32.905(b)(3)). In the event that actual approval occurs within the constructive approval period, the determination of an interest penalty shall be based on the actual date of approval.

(3) The constructive acceptance and constructive approval requirements described in 32.905 (b)(1) and (b)(2) are conditioned upon receipt of a proper payment request and no disagreement over quantity, quality, contractor compliance with contract requirements, or the requested progress payment amount. These requirements do not compel Government officials to accept work or services, approve contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities. The contracting officer may specify a longer period for constructive acceptance or constructive approval, if appropriate, due to the nature of the work or services involved.

(c) The payment terms on contracts for meat and meat food products and contracts for perishable agricultural commodities are as follows:

(1) The due date on contractor invoices for meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), as further defined in Pub. L. 98–181, will be as close as possible to, but not later than, the seventh day after product delivery.

(2) The due date on contractor invoices for perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), will be as close as possible to, but not later than, the tenth day after product delivery, unless another date is specified in the contract.

(3) The notice of defect period described in paragraph (d) of this section is 3 days on contracts for meat and meat food products and 5 days on contracts for perishable agricultural commodities.

(d) A proper invoice must include the items listed in paragraphs (d)(1) through (d)(8) of this section. If the invoice does not comply with these requirements, then the contractors must be notified of the defect within 15 days after receipt of the invoice at the designated billing office. If such notice is not timely, then an adjusted due date for the purpose of determining an interest penalty, if any, will be established in accordance with 32.907–1(b):

(1) Name and address of the contractor.

(2) Invoice date.

(3) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(4) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(5) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(6) Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or on a proper notice of assignment).

(7) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(8) Any other information or documentation required by the contract (such as evidence of shipment).

(e) All invoice payments shall be supported by a receiving report or any other Government documentation authorizing payment. The receiving report or other Government documentation should be forwarded to the designated payment office by the 5th working day after Government acceptance or approval, unless other arrangements have been made. This period of time does not extend the due dates prescribed in 32.905. The receiving report or other Government documentation authorizing payment shall, as a minimum, include the following:

(1) Contract number or other authorization for supplies delivered or services performed.

(2) Description of supplies delivered or services performed.

(3) Quantities of supplies received and accepted, if applicable.

(4) Date supplies delivered or services performed.

(5) Date supplies or services were accepted by the designated Government official (or progress payment request was approved if being made under the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts).

(6) Signature printed name, title, mailing address, and telephone number of the designated Government official responsible for acceptance or approval functions.

(7) If the contract provides for the use of certified invoices in lieu of a separate receiving report, the certified invoice must also contain the information described in subparagraphs (e)(1) through (e)(6) of this section.

(f) When a discount for prompt payment is to be taken, payment will be made as close as possible to, but not later than, the end of the discount period. Payment terms are specified in the clause at 52.232–8, Discounts for Prompt Payment.

(g) The designated billing office shall annotate each invoice with the date a proper invoice was received by the designated billing office.

(h) The designated payment office shall annotate each invoice and receiving report with the date a proper invoice was received by the designated payment office.

32.906 Contract financing payments.

(a) Unless otherwise prescribed in policies and procedures issued by the Agency head, the due date for making contract financing payments by the designated payment office will be the 30th day after the designated billing office has received a proper request. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. Agency heads may prescribe shorter periods for payment, if appropriate based on contract pricing or administrative considerations. For example, a shorter period may be justified by an Agency if the nature and extent of contract financing arrangements are integrated with Agency contract pricing policies. A period shorter than 7 days or longer than 30 days shall not be prescribed.

(b) For advance payments, loans, or other arrangements that do not involve recurrent submission of contract financing requests, payment shall be made in accordance with the applicable contract financing terms or as directed by the contracting officer.

(c) A proper contract financing request must comply with the terms and conditions specified by contract financing clauses or other authorizing terms. The contractor shall correct any defects in requests submitted in the manner specified in the contract or as directed by the contracting officer.

(d) The designated billing officer and designated payment office shall annotate each contract financing request with the date a proper request was received in their respective offices.

32.907 Interest penalties.

32.907–1 Late invoice payment.

(a) An interest penalty shall be paid automatically by the designated payment office, without request from the contractor, when all of the following conditions, if applicable, have been met:

(1) A proper invoice has been received by the designated billing office.

(2) A receiving report or other Government documentation authorizing payment has been processed and there was no disagreement over quantity, quality, or contractor compliance with any contract requirement.

(3) In the case of a final invoice, the payment amount is not subject to further contract settlement actions between the Government and the contractor.

(4) The designated payment office paid the contractor more than 15 days after the due date (3 days for meat and meat food products and 5 days for perishable agricultural commodities).

(b) The interest penalty computation shall not include (1) the time taken by the Government to notify the contractor of a defective invoice, unless it exceeds the periods prescribed in 32.905(c)(3) or 32.905(d), or (2) the time taken by contractor to correct the invoice. If the designated billing office failed to notify the contractor of a defective invoice within the periods prescribed in 32.905(c)(3) or 32.905(d), then the due date on the corrected invoice will be adjusted by the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the contractor will be based on this adjusted due date.

(c) An interest penalty shall be paid automatically by the designated payment office, without request from the contractor, if an improperly taken discount for prompt payment was not corrected within 15 days after the expiration of the discount period (3 days for meat and meat food products and 5 days for perishable agricultural commodities). The interest penalty shall be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

(d) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty will accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. The interest penalty amount will be separately stated by the designated payment office on the check or accompanying remittance advice. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the contractor.

(e) Interest penalties under the Prompt Payment Act will not continue to accrue (1) after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or (2) for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(f) Interest penalties are not required on payment delays due to disagreement between the Government and contractor over the payment amount, or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the Disputes clause.

32.907–2 Late contract financing payment.

No interest penalty shall be paid to the contractor as a result of delayed contract financing payments.

32.908 Contract clause.

(a) The contracting officer shall insert the clause at 52.232–25, Prompt Payment, in all solicitations and contracts, except as indicated in 32.901 or paragraph (b) of this section.

(b) If the contract contains the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts, the contracting officer shall use Alternate I instead of the basic clause.

(c) If payment may be made by electronic funds transfer, the contracting officer shall use *Alternate II* with the clause prescribed in paragraph (a) of this section or *Alternate I* prescribed in paragraph (b) of this section.

32.909 Contractor inquiries.

Questions concerning delinquent payments should be directed to the designated billing office or designated payment office. If a question involves a disagreement in payment amount or timing, it should be directed to the contracting officer for resolution. The contracting officer shall coordinate within appropriate contracting channels and seek the advice of other offices as may be necessary to resolve disagreements.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.232–25 is added to read as follows:

52.232–25 Prompt payment.

As prescribed in 32.908(a), insert the following clause:

As authorized in 32.905(a)(2)(ii), the Contracting Officer may modify the date in subdivision (a)(6)(i) of the clause to specify a period longer than 5 working days for constructive acceptance, if considered appropriate due to the nature of the supplies or services to be received, inspected, tested, or accepted by the Government.

As prescribed in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

Prompt Payment (February 1988)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified.

(a) Invoice Payments

(1) For purposes of this clause, "invoice payment" means a Government disbursement of monies to a Contractor under a contract or other authorization for supplies or services accepted by the Government. This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the Contractor.

(2) Except as indicated in subparagraph (a)(3) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(3) The due date on contracts for meat and meat food products, contracts for perishable agricultural commodities, and contracts not requiring submission of an invoice shall be as follows:

(i) The due date for meat and meat food products, as defined in Section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) and further defined in Pub. L. 98–181 to include poultry, poultry products, eggs, and egg products, will be as close as possible to, but not later than, the 7th day after product delivery.

(ii) The due date for perishable agricultural commodities, as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(44)), will be as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(iii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(4) An invoice is the Contractor's bill or written request for payment under the contract for supplies delivered or services performed. An invoice shall be prepared and submitted to the designated billing officer specified in the contract. A proper invoice must include the items listed in subdivisions (a)(4)(i) through (a)(4)(viii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 15 days after receipt of the invoice at the designated billing office (3 days for meat and meat food products and 5 days for perishable agricultural commodities). Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagrpah (a)(6) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice.

(viii) Any other information or documentation required by other requirements of the contract (such as evidence of shipment).

(5) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made within 15 days after the due date (3 days for meat and meat food products and 5 days for perishable agricultural commodities) and the following conditions are met, if applicable:

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(6) The interest penalty shall be the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is

published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the contractor of a defective invoice within the periods prescribed in paragraph (a)(4) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 5th working day after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 15 days (3 days for meat and meat food products and 5 days for perishable agricultural commodities).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the Disputes clause or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the Disputes clause.

(7) An interest penalty shall also be paid automatically by the designated payment office, without request from the contractor, if an improperly taken discount for prompt payment was not corrected within 15 days after the expiration of the discount period (3 days for meat and meat food products and 5 days for perishable agricultural commodities). The interest penalty will be calculated as described in paragraph (a)(6) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

(b) Contract Financing Payments

(1) For purposes of this clause, "contract financing payment" means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232–16, Progress Payments, progress payments based on a percentage or stage of completion (32.102(e)(1)) other than those made under the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost type contracts.

(2) For contracts that provide for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (*insert day as prescribed by Agency head; if not prescribed, insert 30th day*) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(3) For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(4) Contract financing payments shall not be assessed an interest penalty for payment delays.

(End of clause)

Alternate I (FEB 1988). (a) If the contract contains the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts, insert *Alternate I* instead of the basic clause.

(b) As authorized in 32.905(b)(3), the Contracting Officer may modify the date in subdivision (a)(6)(i) of the clause to specify a period longer than 5 working days for constructive acceptance or constructive approval, if considered appropriate due to the nature of the work or services involved.

(c) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

Prompt Payment—Alternate I (February 1988)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Invoice Payments.* (1) For purposes of this clause, "invoice payment" means a Government disbursement of monies to a contractor under a contract or other authorization for work or services accepted by the Government, payments for partial deliveries that have been accepted by the Government, and progress payments based on contracting officer approval of the estimated amount and value of work or services performed.

(2) The due date for making invoice payments shall be as described in this subparagraph (a)(2).

(i) The due date for work or services completed by the Contractor shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(B) The 30th day after Government acceptance of the work or services completed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) The due date for progress payments shall be the 30th day after Government approval of Contractor estimates of work or services accomplished.

(3) An invoice is the Contractor's bill or written request for payment under the contract for work or services performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defeat within 15 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in paragraph (a)(5) of this clause:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) Any other information or documentation required by the contract.

(4) An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made within 15 days after the due date and the following conditions are met, if applicable:

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance or approval shall be deemed to have occurred constructively as shown in subdivisions (a)(5)(i) (A) and (B) of this clause. In the event that acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor, Government acceptance shall be deemed to have occurred constructively on the 5th working day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government approval shall be deemed to have occurred on the 5th working day after Contractor estimates have been received by the designated billing office.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 15 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233–1, Disputes.

(6) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if an improperly taken discount for prompt payment was not corrected within 15 days after the expiration of the discount period. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(b) *Contract Financing Payments.* (1) For purposes of this clause, if applicable, "contract financing payment" means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delays.

(End of clause)

Alternate II (FEB 1988). If payment may be made by electronic funds transfer, add the following paragraph (c) to the basic clause or to its *Alternate I*:

(c) *Electronic Funds Transfer.* Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Financial Communications System (TFCS) or the Automated Clearing House (ACH)), at the option of the Government. After award, but no later than 14 days before an invoice or contract financing request is submitted, the contractor shall designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this designation to the Contracting Officer or other Government official, as directed.

(1) For payment through TFCS, the Contractor shall provide the following information:

(i) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(ii) The American Bankers Association 9-digit identifying number of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(iii) Payee's account number at the financial institution where funds are to be transferred.

(iv) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains electronic funds transfer messages. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(2) For payment through ACH, the Contractor shall provide the following information:

(i) Routing transit numbers of the financial institution receiving payment (same as American Bankers Association identifying number used for TFCS).

(ii) Number of account to which funds are to be deposited.

(iii) Type of depositor account ("C" for checking, "S" for savings).

(iv) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," TFS 3881, must be completed before payment can be processed.

(3) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received

by the appropriate Government official 30 days prior to the date such change is to become effective.

(4) The documents furnishing the information required in this paragraph (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(5) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

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Part V

Environmental Protection Agency

40 CFR Parts 51 and 52

Prevention of Significant Deterioration for Nitrogen Oxides; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL 3304-9]

Prevention of Significant Deterioration for Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: As required by section 166 of the Clean Air Act (Act), with this notice EPA is here proposing regulations for nitrogen dioxide under Part C, Title I of the Act for the prevention of significant deterioration (PSD) of air quality due to emissions of nitrogen oxides. Stationary and mobile sources emit nitrogen oxides, which react in the atmosphere to form nitrogen dioxide. Nitrogen dioxide is the pollutant for which national ambient air quality standards (NAAQS) have been established. The proposed regulations would establish air quality increments to restrict the maximum allowable increase in annual average ambient concentrations of nitrogen dioxide over a baseline level in designated attainment and unclassifiable areas. The proposed regulations would also adopt a three-tiered area classification scheme for the purpose of applying different increment requirements.

To implement the proposed increment regulations for nitrogen dioxide, EPA is proposing revisions to 40 CFR Parts 51 and 52. Part 51 establishes requirements for the preparation, adoption, and submittal of State implementation plans (SIP's); Part 52 sets forth the Administrator's approval and promulgation of implementation plans, and establishes the regulation that is in effect in the absence of an approved SIP or until the responsibility for the program is delegated to the State.

DATES: Comments on the proposed regulations must be received on or before April 8, 1988; a public hearing will be held on March 23, 1988, beginning at 9:00 a.m.; requests to present oral testimony must be received on or before March 16, 1988. Supporting information used in developing the proposed rules is contained in Docket No. A-87-16. This docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday.

ADDRESSES: Comments may be mailed (in duplicate if possible) to: EPA Central Docket Section, Attn: Docket No. A-87-16, WIC Building, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460; the hearing will be held in the auditorium at the EPA's Office of Administration, Research Triangle Park, North Carolina.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Eric Noble at 919-541-5362. Persons interested in attending the hearing or wishing to present oral testimony should contact Nancy Mayer at 919-541-5390. Both Mr. Noble and Ms. Mayer may be contacted in writing at: Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Mangement Division, Noncriteria Pollutant Programs Branch, Mail Drop 15, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. PSD Program

The PSD program enacted by Congress in the 1977 Amendments to the Act contains measures to prevent significant deterioration in air quality, including requirements that major sources of air pollution employ the best available control technology (BACT) and prevent adverse impacts on Class I Federal areas. The PSD program is also implemented in part through the use of "increments" and area classifications for the pollutants sulfur dioxide and particulate matter. An increment is the maximum increase (above a baseline concentration) in the ambient concentration of a pollutant that would be allowed in an area. The area classification scheme establishes three classes of geographic areas and applies more stringent increments to those areas recognized as having higher air quality values (e.g., certain national parks and other Class I areas).

In the 1977 Amendments, Congress specified increments and area classification provisions applicable to particulate matter and sulfur dioxide under section 163 of the Act. Congress also directed the Administrator, in section 166 of the Act, to conduct a study and then to promulgate regulations to prevent significant deterioration resulting from emissions of hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides, as well as pollutants for which NAAQS would be established after the passage of the 1977 Amendments.

Following the enactment of section 166, EPA began to analyze the technological, economic, and policy issues involved in establishing a PSD regulation for nitrogen oxides and these other pollutants. In 1980, EPA published an advance notice of proposed rulemaking (ANPR) that described 10 regulatory alternatives the Agency was considering incorporating into the PSD program for these pollutants and requested public comment on these alternatives. Numerous comments were received in response to the ANPR asserting that the options listed in the ANPR were too costly or would greatly restrict growth. After considering these comments, the development of these

PSD regulations was canceled by EPA in 1981.

In 1986, the Sierra Club and others filed a citizens suit in the U.S. District Court for the Northern District of California against the Administrator (*Sierra Club, et al.*, v. *Thomas*, No. C–86–0971WWS). The plaintiffs sought to compel EPA to promulgate regulations under section 166 for nitrogen oxides. In April 1987, the Court directed the Administrator to conduct a regulatory development program for nitrogen oxides under a specified schedule. The Court called for publication of the proposed regulations for nitrogen oxides no later than February 9, 1988, and promulgation of final regulations no later than October 9, 1988. This proposed rulemaking is being undertaken in response to the mandate of section 166 and follows the schedule set forth by the District Court for completing these regulations. The rulemaking will complement the BACT, Class I area protection, and other measures to which major sources of nitrogen oxides are already subject by establishing ambient increments and a corresponding area classification scheme for nitrogen dioxide. Thus, the rulemaking will complete EPA's PSD obligations as to this pollutant. The increments proposed today would apply directly only to major stationary sources of nitrogen oxides. However, because aggregate mobile source emissions of nitrogen oxides are significant, EPA is proposing that such emissions be considered in assessing the increment available to stationary sources.

B. Statutory Context

The PSD program mandated by Congrress is required to balance three primary goals, as specified by section 160 of the Act. The first of these goals is to protect public health and welfare. This goal includes the prevention of significant deterioration of air quality in all areas where the ambient pollutant concentrations required by the NAAQS are currently being achieved. The second goal emphasizes the protection of air quality in national parks, wilderness areas, and similar areas of special concern where air quality is considered particularly important. The third goal is to ensure that economic growth in clean areas occurs only after careful deliberation by State and local communities.

The particular requirements for the PSD regulations under section 166 of the Act are as follows:

(c) Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 101 and section 160.

(d) The regulations * * * shall provide specific measures at least as effective as the increments established in section 163 to fulfill such goals and purposes, and may contain air quality increments, emission density requirements, or other measures.

1. Numerical Measures

The first step in developing regulations for nitrogen oxides under section 166 is to define deterioration using specific numerical measures. These proposed regulations for nitrogen dioxides follow the particulate matter and sulfur dioxide regulations under section 163 by establishing maximum increases (increments) in ambient air concentrations (expressed in micrograms per cubic meter, or $\mu g/m^3$) allowed over a baseline concentration. These increments represent the maximum deterioration in air quality that would be allowed in a PSD area from both stationary and mobile sources and are implemented through a series of permit review procedures applicable to major new or modified stationary sources. The impacts on ambient pollution levels of the construction and operation of a new or modified source subject to PSD review are calculated using mathematical models, and a determination is made as to whether the particular project under consideration, in conjunction with other applicable increases and decreases, would result in the increments being exceeded.

The increment provisions established by Congress for particulate matter and sulfur dioxide also include a three-tiered area classification scheme which recognizes that the need for prevention of significant deterioration in air quality may be greater in some geographic areas than others (see Clean Air Act, sections 162–164). Congress established Class I areas as areas of special national concern where the need to prevent significant deterioration in air quality is greatest. Class I areas include certain national parks and wilderness areas. Class II areas are, initially, all PSD areas that are not designated in the Act as Class I areas. The final classification established by Congress, Class III, permits more deterioration over baseline concentrations. This classification is available for specific areas designated by the States for higher levels of industrial development and other emissions growth. There are as yet no Class III areas.

Section 166 of the Act specifies that EPA is not required to adopt the area classification scheme for other pollutants. With respect to nitrogen oxides, however, EPA believes that this approach will contribute to the accomplishment of the goals of the PSD regulatory program and notes that it has been successfully implemented in the PSD regulatory program for particulate matter and sulfur dioxide. In addition, a substantial body of experience with administration of the area classification system has developed within EPA and other agencies charged with implementation of the PSD program, and a network of institutional arrangements exists to implement this scheme effectively. Consequently, EPA has determined that the three-tiered classification scheme is reasonable and appropriate for the section 166 regulations for nitrogen oxides.

The 1980 ANPR discussed a number of possible alternative forms for a section 166 regulation for nitrogen oxides. Most of these alternatives, however, can more properly be classified as alternative methods for implementing a regulation under section 166. Since most of these alternatives would not specify the amount of deterioration considered significant under section 166, it would be difficult to compare their effectiveness. The implementation method used in the particulate matter and sulfur dioxide PSD regulatory program and proposed in this regulation today relies on direct enforcement of the increment on a case-by-case basis through evaluation of preconstruction permit applications and air quality monitoring and modeling. At this time, none of the alternatives discussed in the 1980 ANPR appear to provide any greater protection than direct enforcement of the increment. However, EPA may provide in the promulgated rule an opportunity for States to propose an equivalent alternative implementation method in the SIP each submits. These alternative implementation measures are discussed in more detail in section III.D. of this preamble, "Alternative Implementation Methods."

2. Stimulating Improved Control Technology

Stimulating improved air pollution control technology through an increment regulation is primarily a function of the stringency of the increment. A number of factors may affect the selection of the control technology for an individual facility. These include the growth in emissions from sources located in close proximity to each other, the amount of increment remaining in an area when a permit application is received, and the stringency of the BACT requirement that would have applied in the absence of constraints imposed by the increments.

However, as discussed below, the only one of these factors which can be directly varied in this rulemaking is the stringency of the increments.

Because geographic areas can be expected to experience economic growth and development at different rates, the rate of consumption of PSD increments will differ between regions. Over time, as a given PSD increment level is approached, the level of control required to avoid causing exceedance of the increment becomes more stringent. Consequently, new or modified sources in such localities may have to install control technologies more effective than those normally considered representative of BACT in order to comply with the increment, or to preserve some portion of the increment for future economic growth. In States where air quality problems (such as possible increment exceedances) result in stringent control requirements for nitrogen oxides, the technologies applied to new sources will generally be more stringent than those currently required elsewhere. Because BACT determinations include an examination of the most stringent control technologies available, it is reasonable to expect that over time the control technologies utilized in these problem areas will become the basis of BACT determinations elsewhere. As technologies become more common, their costs tend to fall. This, in turn, tends to increase the frequency of their application. The effectiveness of different increment levels in stimulating improved control technologies is discussed in section II, "Selection of Increments."

3. Protection of Class I and Other Special Areas

In section 160(2) of the Act, Congress set forth the purposes of Part C. The second of these is a general PSD goal of protecting air quality in all national parks, wilderness areas, monuments, seashores, and other areas of "special national or regional natural, recreational, scenic or historic value." A more specific concern is evidenced in the area classification and increment scheme in sections 161 through 164 of the Act, applicable to sulfur dioxide and particulate matter. That scheme designates a mandatory subset of these special areas as mandatory Class I areas and allows only a small incremental increase in ambient pollution levels. Similarly, Congress created another subset of mandatory Class II areas.

In addition to the statutory increment provisions addressing air quality directly, Congress charged Federal land managers (FLM's) in section 165(d)(2)(B), with an affirmative responsibility to protect the "air quality related values (including visibility)" (AQRV's) of Class I areas, and to consider whether a proposed major new or modified source would have an adverse impact on AQRV's. In general, protection of AQRV's in the PSD program refers to the preservation of the environmental, social, aesthetic, and economic benefits that accrue to Class I areas by virtue of their air quality. Thus, AQRV's are directly dependent on low ambient concentrations of pollutants. Section 165(d)(2)(C) provides a mechanism for denial of a PSD permit in some circumstances where the proposed source would adversely affect AQRV's even if the Class I increment would not be exceeded.

4. "At Least As Effective As"

The requirement of section 166(d) that the PSD regulations for nitrogen oxides be "at least as effective as" the PSD increments for sulfur dioxide and particulate matter requires an analysis of the projected impacts of incorporating an increment into the nitrogen oxides regulation. In developing these proposed regulations, a range of alternative increments was examined to determine how they compare in terms of technology requirements, costs, product price impacts, cost effectiveness, and impacts on ambient air quality in selected areas. The comparison of these alternatives and the impacts of each are discussed in section II, "Selection of Increments."

II. Selection of Increments

A. Selection of Increment Stringency Options

To determine the level of stringency that would accomplish the two goals of stimulating the development of technology and being "at least as effective as" the existing PSD increments, a set of alternative increment levels was developed. These alternative levels were evaluated to determine which ones are "at least as effective as" the increment-based regulations for sulfur dioxide and particulate matter in achieving the goals and purposes of the PSD program. These evaluations focused initially on the selection of an increment for Class II areas because these areas are expected to show the greatest impacts of the regulation. A discussion of Class I and Class III area increments follow the description of the national impacts of the alternative increments on Class II areas.

The first alternative increment level, 100 $\mu g/m^3$ (annual average), was chosen as the "base case" in this analysis. This level of ambient nitrogen dioxide concentration is the same as the NAAQS for nitrogen dioxide, and represents the constraint on ambient concentrations that is already in effect through direct application of the NAAQS. The next alternative increment level chosen was 25 $\mu g/m^3$, which represents an increment level that is equivalent to the level established for sulfur dioxide and particulate matter in terms of a proportion of the annual NAAQS. Two additional alternative increments were selected at 45 and 35 $\mu g/m^3$ in order to evaluate less stringent increment levels. Similarly, an alternative increment was selected at 15 $\mu g/m^3$ so that the impacts of an increment more stringent than those for particulate matter and sulfur dioxide could be examined.

1. Relationship to NAAQS

In establishing the PSD regulations for sulfur dioxide and particulate matter, Congress used the NAAQS for those pollutants as the benchmark for determining what constitutes "significant deterioration," setting increments (with certain exceptions) as a percentage of the NAAQS level for each pollutant, and using the same averaging time and units of measurement as the NAAQS ($\mu g/m^3$). Because of this precedent, and because the NAAQS constitute the basic measure of air quality under the Act, the EPA has reached the preliminary conclusion that the regulations for nitrogen oxides under section 166 should also be established by reference to the NAAQS.

The NAAQS for control of nitrogen oxides is based on annual average ambient concentrations of nitrogen dioxide. Nitrogen dioxide is the most common of the nitrogen oxides and has been documented to have adverse effects on human health and welfare (see *Air Quality Criteria for Oxides of Nitrogen*, EPA 600/8–82–026). In basing the PSD increment on the NAAQS, it follows that the increment should be based on annual average ambient concentrations of nitrogen dioxide.

On June 19, 1985, the EPA published a final rule that retained the annual average NAAQS for nitrogen dioxide and concluded that a short-term nitrogen dioxide NAAQS was not justified. In making this decision, the EPA concluded that:

> * * * there is insufficient scientific evidence to support decisions on a short-term standard level, averaging time and number

of allowable exceedances which would be required to propose a separate short-term standard. At the same time, the possibility of adverse health effects cannot be ruled out. [50 FR 25536]

Consequently, EPA proposes that the increment be stated as an increase in the annual average ambient concentration of nitrogen dioxide. The EPA is currently conducting a research program to reduce the scientific uncertainties concerning short-term nitrogen dioxide exposures. Should a short-term NAAQS for nitrogen dioxide be established, EPA will review and reconsider the need for a short-term PSD increment for nitrogen dioxide.

The annual sulfur dioxide and particulate matter increments for Class II areas were established by Congress at 25 percent of the annual NAAQS for each pollutant. This can be interpreted as a Congressional determination of what level of increase in ambient concentration of an air pollutant is considered "significant." By this measure, the nitrogen dioxide increment should be at least as stringent in terms of ambient air quality impacts in order to provide the same level of effectiveness in preventing significant deterioration of air quality. An increment set above this level might theoretically achieve the same level of protection relative to the NAAQS as is achieved by the sulfur dioxide and particulate matter increments if, for example, the same degree of emission reduction ended up being required in all cases. However, the analyses conducted in conjunction with this rulemaking indicate that this does not occur, but rather that a higher increment level would allow additional emissions beyond those permitted by an increment of 25 percent of the NAAQS. A discussion of increment impacts is presented in section II.C.

Based on this consideration, the nitrogen dioxide increment, to be equivalent, should be set at a level of 25 μg/m3. The alternative increment levels of 35 and 45 μg/m3 would not be considered "at least as effective as" the sulfur dioxide and particulate matter increments in preventing the significant deterioration of air quality, while the alternative increment of 25 μg/m3 would be as effective and the 15 μg/m3 increment would be more effective than the sulfur dioxide increment.

As indicated above, EPA has relied primarily on the relationship between the congressionally-established increments for sulfur dioxide and particulate matter and the NAAQS for those pollutants in determining what nitrogen dioxide increments under section 166 would be "at least as effective as" the statutory increments in section 163 in preventing significant deterioration of air quality. Thus, EPA has interpreted section 166 as a Congressional determination that limiting increases in ambient air concentrations of nitrogen oxides to roughly the same percentage of the NAAQS that Congress allowed under section 163 would be "at least as effective as" the section 163 increments in fulfilling the goals and purposes of the PSD program.

However, by focusing on the ambient concentrations as a proxy for all the PSD purposes set forth in the statute, EPA chose not to consider directly and in depth the relative actual effectiveness of given sulfur dioxide, particulate matter, and nitrogen dioxide increments in fulfilling the purposes of the PSD program, most notably the purpose listed in section 160(1) to protect against actual or potential adverse effects on public health and welfare.

EPA's Criteria Documents and Regulatory Impact Analyses examining efforts to control particulate matter, sulfur dioxide and nitrogen oxides suggest that particulate matter, sulfur dioxides and nitrogen oxides present differing health and welfare concerns. For example, soiling is much more sensitive to emissions of particulate matter than to nitrogen oxides. Thus, it is possible that nitrogen dioxide concentrations at levels below the NAAQS present greater or lesser potential adverse effects than do sulfur dioxide or particulate matter concentrations at corresponding levels below the NAAQS for those pollutants. This is of particular concern because reductions in the nitrogen oxides emissions baseline in future years (e.g. 1995 and 2000) could increase ozone in some nonattainment areas. In fact, EPA's post-1987 ozone and carbon monoxide strategy suggests that changes in nitrogen oxides emissions can adversely affect ozone levels in ozone nonattainment areas. The nitrogen oxides role in ozone formation varies across regions, both positively and negatively. Given this concern, it may be appropriate to consider the risks associated with increased ozone in nonattainment areas when determining a nitrogen oxides PSD increment that is "at least as effective" as the sulfur dioxide and particulate matter PSD increments. If these parameters were to be considered by EPA, the Agency might conclude that nitrogen dioxide increments that represent different percentages of the NAAQS from those used in section 163 are "at least as effective as" the section increments in fulfilling this statutory purpose. This alternative approach merits serious consideration during the public comment period.

In light of the above, EPA solicits comment on these two issues associated with this alternative approach to section 166 rules. First, is it reasonable to interpret the statute as allowing a comparative assessment of severity of effects from various criteria pollutants in establishing numerical increments under section 166? Second, what data and analyses are available for documenting and assessing the comparative effects of different criteria pollutants with respect to fulfilling the PSD goals of the Clean Air Act?

2. Control Technology Requirements

In addition to the relationship to the NAAQS, the level of technology required to meet the proposed increment is another measure that could be used to determine if an increment fulfills the requirements of section 166. The use of this measure rests on Congress' determination that the levels chosen for the sulfur dioxide and particulate matter increments provided for the proper level of technological control without placing an unreasonable economic burden on the affected facilities and industries. In order to evaluate economic effect, an analysis was conducted to determine the nitrogen oxides emission control technologies that would be required to achieve compliance with each of the alternative increment levels. The technology requirements associated with each alternative increment were then compared with the baseline control technologies required under the existing PSD regulations, which require BACT emission controls for nitrogen oxides.

Because BACT determinations are made on a case-by-case basis by the individual States, these determinations vary in the specific nitrogen oxides emission control technologies required. As discussed earlier, in section I, some States have imposed more stringent technology requirements than others. For this reason, identifying a level of technology to represent the base case is a complex task. Although different emission control technology requirements could be used as the BACT base case to portray the impacts of the alternative nitrogen dioxide increments, one base case technology level was used in this analysis. This base case represents the least stringent of the technologies required by BACT determinations made under provisions of the existing PSD regulations. The EPA expects that more stringent BACT determinations will be typical of the PSD program in the future and notes

that more stringent technological controls are required by some States at the present time. The single base case was used in these analyses, however, because it reflects the most severe potential economic impacts of the alternative increment requirements. If the economic impacts of an increment are considered reasonable when compared with this relatively lenient base case, raising the stringency of the BACT requirements would only reduce those economic impacts.

B. Class II Increment Analyses

Three analyses were conducted on the economic impacts of the technology requirements of the alternative increments. The first analysis examined the impacts of those alternative increments on model facilities which are representatives of the individual existing facilities in each of the industrial categories expected to be affected most severely by the nitrogen dioxide increment regulations. This analysis is described in detail in the docket for this rulemaking in a document entitled "Model Plant Emission Reduction and Control Cost Impacts." In this model facilities analysis, the focus was on the cost to the individual source or firm of installing and operating the control technologies required to comply with the increment and on the resulting increases in prices projected for the products manufactured at the facility.

The second set of analyses evaluates the impacts of the alternative increments on an areawide basis. These area analyses evaluate the impact of the consumption of increment by all of the potential sources located in two types of geographic areas on the construction of new or modified sources. One area is a high growth urban area with significant nitrogen oxides emissions from mobile sources. The focus of this urban area analysis is on the potential constraints posed by mobile source emissions. The other area is a rural area with a high rate of growth in stationary sources, rather than in mobile sources. The focus of the rural area analysis is on the impacts of concentrated stationary source siting. Additionally, as a preparatory step toward the performance of the third part of the analysis—the national impacts analysis—the area impacts were examined to determine whether costs and impacts associated with the consumption of increment by sources other than the PSD permit applicant should be included in the national costs. The urban and rural area analyses are described in detail in the docket in two documents entitled "Urban Area Air Quality Impact Analysis" and "Alaska Ambient Nitrogen Dioxide Impact Analysis."

The national impacts analysis itself focused on the annualized costs, emissions reductions, cost effectiveness, and administrative costs associated with the alternative increment levels. A detailed description of the methodology and results of this analysis are contained in the docket in two documents entitled "National Cost Estimates for Proposed NO_x Increment Regulation" and "NO_2 Increment Administrative Costs."

1. Model Facilities Analysis

The source types analyzed in the model facilities analysis are those industrial categories and specific types of emission sources that are most likely to be affected by PSD regulations for nitrogen oxides. Based on a review of PSD permits issued to new and modified sources between 1977 and 1984 (comprising the "new source review" or "NSR" data base), the source types expected to be most affected by the increment regulation and, consequently, selected for analysis were: chemical processing plants, natural gas and crude oil pumping stations, steam electric generating plants (including cogeneration facilities), petroleum refineries, kraft pulp mills, and natural gas processing plants. Municipal solid waste incineration facilities were also selected for analysis because they are expected to be an active source category in the future, even though they are not a frequent source type in the NSR data base. For each of the source types selected for evaluation, the NSR data base was used to determine representative plant configurations that would represent the plants with the potential for the highest ambient nitrogen dioxide concentrations.

The control technologies required to comply with the alternative increment levels were examined to determine if there are technologies available or anticipated which will enable the model facilities to comply with the alternative increments. If compliance with an alternative increment is technologically infeasible in many locations, that increment could be significantly more stringent than either the particulate matter or sulfur dioxide increments. Further, although the increment selected should be feasible, increments should also stimulate technological development in nitrogen oxides control.

Based on the analysis of the control technologies required to comply with the alternative increments, the EPA has determined that, as anticipated, the technology-forcing aspects of the alternative increments become more significant as the increments become more stringent. Further, the EPA has determined that, with one exception, each of the alternative increments can be achieved by model facilities using available or anticipated nitrogen oxides emission control technologies. The only exception to this conclusion is a limited one. In the unlikely event that a major chemical process plant is proposed for an urban area, there are no technologies available to meet an increment of 25 $\mu g/m^3$ under adverse meteorological conditions. The 15 $\mu g/m^3$ increment cannot be achieved in urban areas under any of the meteorological conditions modeled. It should be noted that this analysis is based on impacts projected using nonreactive air quality screening models. These models assume that all nitrogen oxides emitted are converted into nitrogen dioxide as soon as they enter the atmosphere. Since not all the nitrogen oxides emissions are immediately converted into nitrogen dioxide, this assumption results in an overstatement of the impacts of the chemical process plant emissions. The calculated air quality impacts would be expected to be lower if more sophisticated reactive models, which require site-specific data, were used in connection with specific PSD permit applications.

The costs of the alternative increments were also examined for the model facilities to determine the economic impacts of these technology requirements. In addition to showing that the control requirements become more expensive to install and operate as the increment becomes more stringent, the cost impact analysis shows that the increase in costs is significantly greater for some model facilities when going from the 25 $\mu g/m^3$ to the 15 $\mu g/m^3$ increments than for any other increase in the stringency of the increment levels.

The costs of the control technologies required under the alternative increments were used to calculate the effects of the increments on the price of products produced by the industries represented by the model facilities. In this screening analysis, it was assumed that a product price increase resulting from the imposition of an increment would be significant if it exceeds 5 percent. The conclusion of the product price analysis is that there are no product price impacts, or only insignificant impacts, resulting from the imposition of a 45, 35, or 25 $\mu g/m^3$ increment for nitrogen dioxide. For these alternative increments, the product price increases range from 0 to 3.3 percent. At an increment level of 15 $\mu g/m^3$,

however, product price increases of over 5 percent are possible. Consequently, the economic impacts of a 15 $\mu g/m^3$ increment could potentially be significant for some source types. For those sources, more refined analyses would be needed to determine whether increases of over 5 percent would actually occur.

2. Area Analysis

The focus of the area analysis is to determine what the impact of a nitrogen oxides regulation would be on typical high growth urban and rural areas subject to the PSD program.

a. *Urban Area Impact Analysis.* The goal of the urban area impact analysis is to determine how increases in nitrogen oxides emissions by mobile sources influence the availability of nitrogen dioxide increments for new or modified stationary sources in high growth urban areas. Nitrogen oxides emissions from mobile sources consume increment after the minor source baseline date has been triggered, posing a potential problem for the siting of new PSD sources. The urban area impact analysis focuses on a single urban area in order to determine what growth in nitrogen oxides emissions is anticipated and whether the consumption of increment by mobile sources places a serious limitation on the location of industrial facilities in high growth urban areas.

The results of the urban area impact analysis indicate that the consumption of increment by mobile sources should not be a constraining factor in the location of new stationary sources or on the modification of stationary sources in high growth urban areas in the near term (through 1994). Although the number of vehicle miles traveled in high growth urban areas is anticipated to increase steadily throughout the study period, the overall quantity of nitrogen oxides emitted is projected to decrease through 1994. This is the result of a decrease in the emissions per vehicle mile traveled due to emission control requirements established pursuant to the Federal Motor Vehicle Control program administered by EPA.

As a result of this decrease in annual emissions, it is projected that nitrogen oxides emissions from mobile sources will not result in significant constraints on the location of new or modified industrial sources in PSD areas subject to a nitrogen dioxide increment. Instead, the reduction in mobile source emissions resulting from the implementation of emission controls on motor vehicles would result in an expansion of the increment through 1994. The expansion provides emission reductions which offset new industrial emissions. Starting in 1995, emissions of nitrogen oxides may begin to increase as motor vehicle miles traveled increase without compensating improvements in emission controls for motor vehicles.

The urban area impact analysis indicates that the imposition of any of the alternative increments would have little impact on the location of new or modified sources in a high growth urban area. Improvements in mobile source emissions controls will, in effect, expand the increment available until 1995. On a localized level, there may be sites within an urban area where vehicle traffic is low and increment expansion is less significant. At these sites, a more stringent increment might pose constraints on a new or modified source. Overall, however, the expansion of industrial and mobile sources in a high growth urban area should not be constrained by any of the alternative increment levels examined.

b. *Rural Growth Impact Analysis.* The rural growth impact analysis was conducted to determine the impacts of nitrogen dioxides increment on rural areas that are projected to experience significant increases in nitrogen oxides emissions from industrial growth. In contrast to the urban area growth analysis, the rural analysis concentrated on nitrogen oxides emissions and ambient nitrogen dioxide concentrations resulting from stationary point sources located in close proximity to each other, rather than emissions from mobile sources.

For this analysis, a rural area was selected which has experienced and is expected to continue to experience substantial stationary source growth. The Prudhoe Bay area of Alaska was selected for this analysis to represent an extreme case of emissions growth in a rural area. Prudhoe Bay is a rural area that is the site of a major industrial complex associated with the production and transportation of petroleum and natural gas. Analysis of the impact of industrial growth at Prudhoe Bay during the period 1980 through 1987 on nitrogen oxides emissions shows that actual annual emissions have increased by approximately 35,080 tons. Permits have been approved for an additional 10,240 tons of emissions for plants which are not yet in service.

The analysis shows that, as a result of this emissions growth, only the 45 $\mu g/m^3$ increment alternative would not have been exceeded in Prudhoe Bay, taking into account growth since 1980. All other increment levels would have been exceeded at current levels of emissions. Actual air quality impacts, however, are probably much less. This type of analysis provides a very conservative estimate of increment consumption, since it is based on "allowable" emissions rather than "actual" emissions. Allowable emissions estimates assume continuous operation at full load so, for an annual average, tend to show higher air quality impacts than would be the case if actual emissions were used. If a contemporaneous baseline date is selected, the contraint on the future development of the Prudhoe Bay area would be in direct proportion to the stringency of the increment and the rate of increase in actual nitrogen oxides emissions.

3. National Cost Impacts Analysis

The annualized costs of the alternative increments were calculated for the fifth year after the effective date of the regulations. For the 45 $\mu g/m^3$ increment, the national annualized costs of the regulation exceed $7.5 million (in 1987 dollars). The national annualized costs of the 35 $\mu g/m^3$ incement in the fifth year increase to $25.2 million. For the 25 $\mu g/m^3$ increment, the costs increase to $63.7 million and at the most stringent increment level, 15 $\mu g/m^3$, costs quadruple to $236 million.

The national average cost effectiveness of nitrogen oxides control at each increment level was determined compared to base case, as was the incremental cost effectiveness of each increment relative to the next less stringent alternative increment. At an increment of 45 $\mu g/m^3$, the average and incremental cost effectiveness of nitrogen oxides control over the base case control level is $875 per ton of nitrogen oxides emission reduction. At an increment of 35 $\mu g/m^3$, the average cost effectiveness is $1,051 per ton and the incremental cost effectiveness is $1,150 per ton. The 25 $\mu g/m^3$ has an average cost effectiveness of $1,106 per ton, and an incremental cost effectiveness of $1,128 per ton.

The national costs of the increments also include the administrative costs of the PSD program. Among other costs, these administrative burdens include the cost to the PSD permit applicant for the preparation of the permit application and for the collection and analysis of ambient air quality data. For the agency reviewing the application, the administrative costs include a determination of the applicability of the regulations to a specific proposed project, as well as the review of the application itself. Based on estimates of the time required to perform these functions in the typical case, it is anticipated that the total annual administrative cost of the PSD

regulations for nitrogen oxides to applicants will be approximately $400,000. For the reviewing agencies, the total overall administrative cost impact is expected to be $150,000 per year. It is not anticipated that these costs will vary significantly with the level of stringency of the increment selected.

C. Selection of Class II Increment

Four factors were examined to determine the nitrogen dioxide increment level for Class II areas that is "at least as effective as" the particulate matter and sulfur dioxide increments in achieving the goals of the PSD program. First, the relationship between the NAAQS for particulate matter and sulfur dioxide and the PSD increments for those pollutants was examined. On this basis, it was determined that a nitrogen dioxide increment of 25 $\mu g/m^3$ in Class II areas achieved a level of protection relative to the NAAQS for nitrogen dioxide that is "at least as effective as" the increments for particulate matter and sulfur dioxide. It was also determined that a nitrogen dioxide increment of 15 $\mu g/m^3$ could be considered "more effective" than the particulate matter and sulfur dioxide increments when compared to the NAAQS levels.

Second, the product price increases resulting from the alternative increment levels were examined. In this analysis, no direct comparison was made between the economic impacts of the nitrogen dioxide increment and the economic impacts of the particulate matter and sulfur dioxide increments. Instead, the impacts imposed by the nitrogen dioxide increment were examined to determine whether they are unreasonable for the affected industries. Because the industries and source types affected by the different increment requirements vary (to a greater degree between nitrogen dioxide and particulate matter and to a lesser degree between nitrogen dioxide and sulfur dioxide), direct cost comparisons for model facilities are not informative. Congress determined that the economic impacts of the particulate matter and sulfur dioxide increments are reasonable for the most severely affected industries and source types. Therefore, a nitrogen dioxide increment which does not cause significant product price increases is "at least as effective as" the particulate matter and sulfur dioxide increments in avoiding unreasonable economic impacts on affected industries and facilities. Based on the model facilities analysis, the 25 $\mu g/m^3$ increment alternative is not considered to impose unreasonable product price impacts on individual facilities and industries. A 15 $\mu g/m^3$ increment, however, would impose unreasonable impacts on individual facilities under some circumstances.

Third, the impacts of the alternative increment levels on representative areas were evaluated in order to determine whether the nitrogen dioxide increment levels would pose unreasonable constraints on growing urban and rural areas. In many high growth urban areas, it is expected that improvements in mobile source emission controls over the next 5 to 10 years will result in an overall improvement in ambient nitrogen dioxide concentrations. Therefore, no significant adverse impacts are expected in high growth urban areas from any of the alternative increments over the period of time analyzed. For rural areas where mobile sources are less important sources of nitrogen oxides emissions, the impacts of the increments may be more constraining where industrial growth is high, such as Prudhoe Bay, especially at 25 and 15 $\mu g/m^3$. This result is consistent with the effects that the particulate matter and sulfur dioxide increments have had on balancing economic activity and air quality in PSD areas.

Finally, the national impacts of the alternative nitrogen dioxide increments were calculated to determine the fifth-year costs of regulations based on these alternatives. For the 45, 35, and 25 $\mu g/m^3$ increment levels, the national fifth-year costs remain well below $100 million, and consequently are not expected to have severe economic effects on these industries. For the 15 $\mu g/m^3$ increment, however, the fifth-year costs quadruple over the costs of the 25 $\mu g/m^3$ increment to $236 million and could have a significant impact on the affected industries.

Based on these separate analyses of the legal and economic aspects of increment selection, the 25 $\mu g/m^3$ increment is proposed as the increment for Class II areas. This increment level appears to fulfill the statutory requirement of being "at least as effective as" the current annual increments for particulate matter and sulfur dioxide; is expected to provide a more stringent level of technological control of nitrogen oxides emissions from the source categories most affected by the standard than either the 35 or 45 $\mu g/m^3$ alternatives; and finally, unlike the 15 $\mu g/m^3$ increment, does not result in the imposition of unreasonable product price impacts on the affected facilities or industries.

D. Class I Analysis

The annual average sulfur dioxide and particulate matter increments for Class I areas are based on smaller percentages of their respective NAAQS than are the increments for Class II areas. This relationship between Class I and Class II areas represents Congress' determination to allow less deterioration of air quality in national parks, wilderness areas, and similar areas. For particulate matter, the annual Class I increment of 5 $\mu g/m^3$ is 6.7 percent of the NAAQS for particulate matter. For sulfur dioxide, the annual Class I increment of 2 $\mu g/m^3$ is 2.5 percent of the NAAQS for sulfur dioxide.

In terms of types of sources that generate nitrogen oxides, there is a greater similarity between nitrogen oxides and sulfur dioxide than particulate matter. Both nitrogen oxides and sulfur dioxide are generated primarily by stationary combustion sources, including boilers and process heaters. The exception to this generalization is that nitrogen oxides are also emitted in substantial amounts by mobile sources, as discussed above in the area analysis. Nitrogen oxides and nitrogen dioxide also react and are transported in the atmosphere in ways which are more closely linked to sulfur dioxide than to particulate matter. Because of these similarities, it was decided to set the Class I increment for nitrogen dioxides at 2.5 percent of the NAAQS for nitrogen dioxide, following the pattern set for sulfur dioxide rather than particulate matter. Therefore, the proposed Class I increment for nitrogen dioxide is 2.5 $\mu g/m^3$.

It should be noted that section 165(d)(2)(C)(iii) and (iv) of the Act contains provisions whereby an FLM may certify to the permitting agency that a particular facility will have no adverse impact on air quality-related values in the Class I area, even though the increment may be exceeded. Pursuant to this certification, the permitting agency may issue a permit for the facility. Even if such a waiver is recognized and the permit issued, the ambient concentrations are constrained from increasing by more than an amount which, for the sulfur dioxide and particulate matter regulations, is equal to the Class II increment. This same provision will also be made applicable to the proposed nitrogen dioxide increment, with a proposed cap on the deterioration of ambient air quality set at 25 $\mu g/m^3$. Although use of these waiver provisions is expected to be uncommon in practice, it does provide a

mechanism whereby the stringency of a Class I increment can be modified under appropriate circumstances.

One aspect of Class I areas that is important to this rulemaking is the impact of the construction of new or modified stationary sources in Class II areas on the air quality in nearby Class I areas, and, conversely, the constraints imposed by the presence of a Class I area on such construction in Class II areas. To evaluate these impacts, an analysis was performed of selected past PSD permit applications reviewed by the National Park Service and the Fish and Wildlife Service of the U.S. Department of the Interior between 1979 and 1986 that had potential Class I implications. This analysis is described in the docket in a document entitled "Baseline Date Issue Paper" and summarized briefly in the following paragraphs.

For these applications, the distance between the nitrogen oxides source and the impacted Class I area ranged between 17 and 90 kilometers, and annual emissions were stated as ranging from 44 to over 44,000 tons of nitrogen oxides. The impact of these facilities on ambient concentrations of nitrogen dioxide in Class I areas was estimated based on information contained in the applications. This analysis indicated that the expected impacts of these facilities on nitrogen dioxide concentrations in the affected Class I areas would, in all likelihood, be less than 1.0 $\mu g/m^3$ in all cases. Further, it was concluded that past patterns of stationary sources sitting would not be constrained by the 2.5 $\mu g/m^3$ Class I increment.

To evaluate the impacts of a 2.5 $\mu g/m^3$ Class I increment, the contribution of mobile sources to ambient nitrogen oxides concentrations was also evaluated for two of the most frequently visited national parks—Acadia National Park and Great Smoky Mountains National Park. As with the urban area analysis described above, improved emissions controls on newer automobiles are projected to result in an overall reduction in ambient nitrogen dioxide levels in these parks, even though the vehicle miles traveled are expected to increase. Consequently, mobile source emissions should not contribute to increment violations of the 2.5 $\mu g/m^3$ nitrogen dioxide increment and, hence, the increment should not constrain vehicle traffic in Class I areas in the near-term.

E. Class III Analysis

Increments were established for Class III areas in the Act for sulfur dioxide and particulate matter. This designation is permitted in order to give States a mechanism for accommodating economic growth and air quality in areas where the Class II increment is too stringent to allow the siting of new or modified sources. Procedures specified by the Act in order for a State to redesignate an area as Class III require the commitment of the State government to creation of such an area, extensive public review, participation in the SIP area redesignation process, and a finding that the redesignation will not result in the increment being exceeded in any other Class I or II area. To date, no area of the country has been redesignated as Class III for sulfur dioxide or particulate matter.

For the sulfur dioxide and particulate matter PSD regulations, the Class III increment is set at 50 percent of the NAAQS, approximately twice the level of the Class II increment. Following this pattern, a nitrogen dioxide increment for Class III areas of 50 $\mu g/m^3$ is being proposed. The analysis conducted in this rulemaking indicate that the Class II increment should not pose a serious constraint on economic activity in most areas of the country. Consequently, it is not anticipated that the Class III designation will be used in the foreseeable future.

III Implementation

A. Baseline Date

In an increment system, the "baseline date" marks the date after which increases in a pollutant in an area consume increment. Hence, it is an important factor in determining the overall stringency of the increment.

For sulfur dioxide and particulate matter, as defined in section 169(4) of the Act and 40 CFR 51.166(b)(13), the ambient concentration on the baseline date is the baseline concentration against which increment consumption is measured. All ambient concentrations resulting from: (1) Actual emissions from existing sources, and (2) allowable emissions for certain sources permitted, but not yet in operation on that date, are part of the baseline concentration for those pollutants.

The EPA regulations established two baseline dates for particulate matter and sulfur dioxide: the "major source baseline date" and the "minor source baseline date." The major source baseline date is the date after which major stationary sources consume increment, and is a single date applied nationwide. The minor source baseline date is the date on which the first complete PSD application is submitted in an area, after which minor source emissions in the baseline area affect increment.

The minor source baseline date was, in turn, related to a "trigger date" (August 7, 1977). The first complete PSD application submitted in an area for a major source after the trigger date established the minor source baseline date for that area. Applications submitted prior to the trigger date did not affect the setting of the minor source baseline date. This system has resulted in a wide variety of minor source baseline dates. Some areas still do not have a particulate matter or sulfur dioxide minor source baseline date.

Because this approach has proven effective in the implementation of the increments for particulate matter and sulfur dioxide, the Administrator is proposing a similar approach to the selection of the baseline dates for the nitrogen dioxide increments. Three options have been studied for the major source baseline date and for the trigger date for minor source baseline dates. These options are: Option 1—August 7, 1980, for both dates; Option 2—February 8, 1988, for both dates; and Option 3—August 7, 1980, for the major source baseline date, and February 8, 1988, for the trigger date.

Option 1 is based on the date on which a nitrogen dioxide increment would have become effective had EPA met the schedule for development of the PSD regulations for nitrogen oxides set out in section 166 of the Act. Using this date would prevent any deterioration which has occurred between 1980 and the present from being "grandfathered," but it also constitutes a retroactive application of an effective date, something which EPA has avoided in new source review programs, including PSD.

Option 2 selects the date of proposal of these regulations, February 8, 1988, as the uniform baseline date. The use of the date of proposal avoids retroactive application of the regulation by making owners or operators aware of the fact that they will be affected by the nitrogen dioxide increments before construction begins. It also requires both States and prospective new sources to determine ambient concentration levels as of that date for purposes of future permitting actions. Moreover, selecting the proposal date as the baseline date would prevent a rush of PSD applications between the proposal date and either the promulgation date (approximately October 9, 1988) or the effective date (approximately October 9, 1989). The rush could occur because nitrogen oxides emissions from major sources with permits issued prior to the

major source baseline date would be a part of the baseline concentration, would not consume increment, and would not establish the minor source baseline date in that baseline area.

The selection of a prospective trigger date, as in Option 2, presents an unusual situation since it could result in the setting of a more stringent baseline date than would a retrospective trigger date. This is due to the steadily decreasing contribution of mobile source emissions to ambient air nitrogen dioxide concentrations through 1994. In general, urban area "minor" source emissions have decreased since 1980 due to improvements in mobile source emission controls, while rural area "minor" source emissions have increased modestly due to emissions from nonmajor stationary sources, or have remained about the same. Although not specifically analyzed, rural areas which become urbanized would have experienced moderate emissions growth due to the increased number of mobile sources. A 1980 trigger date, therefore, tends to "free up" (expand) the available nitrogen dioxide increment in urban areas but, in rural areas, the trigger date selected appears to have little, if any, effect. In rural areas, it is the major source baseline date that largely determines the stringency of the increment baseline. In effect, a 1980 trigger date would set a baseline concentration that is less stringent than a 1988 trigger date (assuming in both cases that the minor source baseline date is established soon after the trigger date).

For major PSD sources, a 1988 major source baseline date under Option 2 "grandfathers" emissions increases in both urban and rural areas. In urban areas, the increase in major stationary source emissions may be completely overshadowed by the mobile source emission decreases since 1980. In rural areas, mobile source emission decreases since 1980 are usually not sufficient to offset major source emission increases. Thus, in some rural areas, the choice of a 1980 major source baseline date would significantly diminish the amount of available growth margin for nitrogen oxides emissions, as compared to the increment which would be available using a 1988 baseline date and, in extensive cases, would even require a rollback of existing emissions. For example, several Class I areas now have ambient nitrogen dioxide concentrations up to 1.0 $\mu g/m^3$ higher than 1980 levels. This is a small absolute increase, but one which represents 40 percent of the proposed Class I increment. In addition, certain Class II areas such as Prudhoe Bay, Alaska, have ambient concentrations as much as 40 $\mu g/m^3$ higher than in 1980. This exceeds the proposed 25 $\mu g/m^3$ Class II increment.

Under Option 3, which uses two different baseline dates, the mobile source emission decreases over the last 8 years create the unusual effect of making Option 3 more stringent in urban areas than would have been the case if the rule had been put into effect by EPA in 1980, or would now be the case if EPA chooses Option 1. This is because a 1980 trigger date would have let the mobile source decreases offset increases from other sources, but Option 3 allows minor sources to affect increment only after February 8, 1988.

After consideration of the environmental, legal, administrative, and implementation aspects of each option, the Administrator is proposing a prospective baseline date of February 8, 1988 (Option 2). The proposed regulation therefore reflects only this option. However, compelling data or arguments have not been developed for selecting between the three baseline date options. Therefore, although the analyses in this notice and the referenced documents concentrate on an Option 2 scenario, information is included on the other options to provide data on the effects of alternate baseline dates. The EPA solicits comments on these options and on the selection of the major source baseline date and the trigger date for the nitrogen dioxide increment. Also, although no information is provided on any other baseline date or trigger date options, it is recognized that there may be valid reasons for selecting different dates (e.g., the effective date of this regulation). Comments are therefore solicited on other possible baseline and trigger dates.

B. State Implementation Issues

There are two main issues regarding implementation of the nitrogen dioxide increments. The first is timing; the second is the type of analysis required.

1. Timing

There are two distinct timing issues. The first is the timing of the implementation of the nitrogen dioxide increments requirement. The second is a determination of when permit applications will be required to include a nitrogen dioxide increment analysis.

a. *Program Implementation.* Complete applications for PSD permits for sources with significant nitrogen oxides emissions submitted after the date on which the nitrogen dioxide increments are implemented must contain a demonstration of compliance with nitrogen dioxide increments as well as all other PSD requirements. As with other PSD requirements, these increments cannot be implemented with respect to a particular State until they become part of an applicable implementation plan for that State.

Section 166(b) explicitly states that the section 166 regulations become effective one year after promulgation, that SIP revisions accommodating the regulations must be submitted within 21 months of the date of promulgation, and that the Administrator must approve or disapprove the SIP revisions within 25 months of promulgation, "in the same manner as required under section 110." Thus, if States fail to submit appropriate SIP revisions within these time frames, Congress apparently also contemplated that EPA would then promulgate the necessary plan revisions directly under the provisions of section 110(c) of the Act. Implementation dates for the nitrogen dioxide increments would depend on when the SIP was approved [or when EPA finally promulgated the revision under section 110(c)]. Some States may submit approvable SIP's earlier, or could even begin implementation of a State nitrogen dioxide increment program earlier, but no program would be approvable by EPA earlier than 12 months after promulgation. After incorporation of the plan revisions, through action under section 110(c) if necessary, PSD applicants would be required to adhere to the new nitrogen dioxide increments. Given the explicit language of section 166(b), there seems little doubt that Congress intended this approach to be followed for at least those States with PSD programs that have been approved as meeting the requirements of 40 CFR 51.166, and EPA intends to do so for those "approved" States.

However, only about half of the States have approved PSD programs. The remaining States still have not submitted approvable programs. In 1978, EPA incorporated the new PSD requirements of the 1977 Amendments in the form of federal regulations at 40 CFR 52.21 into the SIP's of those States without approved PSD SIP's, pursuant to section 110(c). EPA has since delegated authority to issue PSD permits to most of this group of States under 40 CFR 52.21(u). As to the balance, EPA still issues PSD permits directly.

The continued absence of an approved PSD program in many States raises a significant question regarding whether EPA should afford these States a further period of time after the effective date of the section 166 regulations to submit an entire approvable PSD program, including the

new increment provisions, before proceeding to directly promulgate the necessary revisions to § 52.21. Accordingly, while EPA today proposes to afford all States a 21 month period to submit their SIP revisions, it will consider comments on whether it should instead put revisions to § 52.21 into effect in States without approved programs at the same time as the section 166 regulations take effect (i.e., 12 months after promulgation).[1]

In all States, EPA has always retained authority to issue permits under § 52.21 directly to sources locating on Indian lands, because States lack authority to issue PSD permits on Indian lands. Because sources on Indian lands are not subject to PSD permitting by the States, it is a foregone conclusion that States could not submit approvable SIP revisions implementing the increments on Indian lands within their borders. Thus, there is an especially strong reason for EPA to put the necessary revisions to § 52.21 into effect in Indian lands at the same time that the section 166 regulations take effect. On the other hand, this action could make areas in and around Indian reservations less attractive places for development for a time when compared to many other areas, and it is questionable whether Congress ever intended to authorize EPA to create such an uneven pattern of development potential. In light of all this, EPA proposes to insert the necessary revisions to § 52.21 into the SIP's of all States with Indian lands within their borders on the date of promulgation of the section 166 regulations, and to provide that the revisions will be effective in those States one year later. Through this mechanism, the regulations will be implemented without delay. EPA, however, solicits comment on this and any other implementation issues.

b. *Inclusion of Nitrogen Dioxide Increment Analysis in Applications.* The second timing issue involves the date after which PSD permit applicants must submit a nitrogen dioxide increment analysis. The increment analysis is used by the reviewing agency to determine whether the applicant would cause or contribute to exceedances of the increment. Construction of proposed sources which would do so is prohibited. These analyses rely in part on a determination of emissions changes which have occurred since the baseline date(s) for an area. The longer the time between a baseline date and the first increment analysis, the more difficult it is to locate and review old records and complete an inventory of emissions as of that baseline date. This is one of the difficulties that would result from a baseline date established in the past (e.g., 1980).

Likewise, even if a contemporaneous baseline date (e.g., date of proposal or promulgation, effective date, etc.) is promulgated, applicants and States will find it more difficult to recreate a 1988 emissions inventory in 1990 than in 1988. Thus, there is some risk in "starting the clock" on increment consumption and then allowing new sources to construct without determining the effect of these sources on the newly established increment. A State could discover in 1990 that it had unknowingly allowed increment exceedances to occur in an area and would then be faced with developing a retrofit control program to correct the exceedances.

States have three main options:

(1) Require all PSD permit applications to contain the nitrogen dioxide increment analysis after the major source baseline date.

(2) Require the increment analysis in permits submitted after the effective date of the regulation (12 months after promulgation).

(3) Require the analysis only for PSD permits submitted after the nitrogen dioxide program has been approved or is being implemented.

The EPA would require States to adopt the third option as a minimum. This would require the analysis only where the program is being implemented because, until that time, it is not mandatory that the analysis be utilized by the reviewing agency under section 166. However, since all major source construction after the major source baseline date consumes increment, EPA would strongly encourage States to require the analysis for informational purposes for applications submitted after the major source baseline date.

In addition, sources and applicants should recognize the importance of determining and retaining emissions and other data essential for calculating increment consumption. Also, it should be noted that applications for sources which significantly impact areas where the nitrogen dioxide increment program is being implemented must include the increment analysis, even if the State in which the source locates has not yet implemented the program.

2. *Increment Analysis.* The basic components of a nitrogen dioxide increment analysis are identical to the increment analyses for particulate matter and sulfur dioxide that are required under existing PSD regulations. This demonstration is based on dispersion modeling of incremental emissions of nitrogen oxides in accordance with EPA's "Guideline on Air Quality Models (Revised)," July 1986. The nitrogen dioxide increment demonstration differs from particulate matter and sulfur dioxide increment demonstrations in the development of the emission inventory because of the importance of mobile sources, and in the treatment of atmospheric transformations of the pollutant in dispersion modeling.

a. *Emission Inventories.* There are three main differences between the emissions inventories for the particulate matter and sulfur dioxide increments and the inventories that will be required for nitrogen oxides.

First, regulatory agencies have generally not required PSD applicants to consider mobile source emissions in increment analyses for particulate matter and sulfur dioxide in the past. However, unlike particulate matter and sulfur dioxide, and as discussed previously in the urban area analysis, mobile sources can greatly influence the amount of nitrogen dioxide increment available in an area and must be considered. A large portion of nitrogen oxides emissions are from mobile and area sources that are not subject to permit requirements and do not have "allowable" levels. The development of an emission inventory based only on permitted allowable emissions would not reflect all of the emissions that must be accounted for in the implementation of the nitrogen dioxide increment. Further, many SIP's only specify allowable nitrogen oxides emission rates for certain source types.

Second, the emission inventory requirements for the nitrogen dioxide increment analyses are different from those needed for particulate matter and sulfur dioxide. Inventories of actual emissions are essential for proper determination of available nitrogen dioxide increment over time. The reason for this difference is that the proposed nitrogen dioxide increment is an annual average while the particulate matter and sulfur dioxide increments also include short-term averages. Short-term averages can often be modeled using allowable emission rates, which are not appropriate for annual averages

[1] Inasmuch as it has already been 10 years—during which those States without approved PSD SIP programs have failed to produce their own programs—it appears unlikely that they will prepare an approvable PSD SIP within 21 months of promulgation of the nitrogen dioxide increments. One position EPA is considering is to amend § 52.21 as of the effective date of the nitrogen dioxide increments unless, before that date, the State informs EPA, in writing through an authorized representative, that it intends to submit a PSD SIP for approval within 21 months of promulgation of the increments.

because, under the guideline, annual averages assume continuous full load operation.

If a retroactive baseline date is chosen, such as 1980, the determination of the baseline inventory of actual nitrogen dioxide concentrations would be further complicated because the inventory would have to be based on historical data (e.g., actual emissions for a prior year, such as 1980 or 1983) which may not be readily available, rather than on contemporary data (1988 and beyond). This problem would be aggravated if minor and area sources are included in the inventory. In addition, if a prior date (e.g., 1980) is chosen and actual emissions from minor and area sources are included in the inventory, a few areas of the country could be in violation of the increment when the nitrogen oxides PSD regulation takes effect (e.g., Prudhoe Bay, Alaska). This violation would not necessarily be revealed through a case-by-case review of PSD permit applications alone and EPA anticipates that it would require States to examine areas which have experienced high growth since 1980 for possible increment exceedances. Exceedances of the nitrogen dioxide increment would, in turn, require revision of the SIP to remedy the existing exceedances and to prevent future exceedances.

Third, the emissions inventories are typically in terms of total nitrogen oxides, while the proposed increment is in terms of nitrogen dioxide. This distinction also relates to the dispersion modeling issues discussed below, since assumptions may have to be made about the ratio of nitrogen dioxide to total nitrogen oxides and the rate of conversion of nitrogen oxides to nitrogen dioxide. Some sources may account for nitrogen dioxide emissions explicitly.

b. *Dispersion Modeling.* Under the proposed rules, PSD applicants will be required to calculate the increment consumed due to the construction of major new or modified stationary sources, in conjunction with all other applicable emission increases and decreases. Increases caused by the proposed new source, as well as increases and decreases at other stationary sources, will generally be based on mathematical dispersion models. The EPA's "Guideline on Air Quality Models (Revised)," July 1986, lists the recommended air quality modeling techniques for estimating air quality impacts of PSD sources and is incorporated by reference in 40 CFR 51.166 and 52.21.

Due to the reactive nature of nitrogen oxides, assumptions regarding the conversion of nitrogen oxides to nitrogen dioxide are required when modeling, unless suitable photochemical models are used. Because of this limitation, the recommended modeling approach in the guideline for determining annual average concentrations of nitrogen dioxide is a three-tiered screening procedure. The initial screen is based on the use of an appropriate Gaussian model (from Appendix A of the guideline) and assumes total conversion of nitrogen oxides to nitrogen dioxide. If the concentration determined by this initial screen exceeds the increment, then the ozone limiting method (OLM) may be applied to account for a more realistic conversion rate of nitrogen oxides to nitrogen dioxide. Application of the OLM using annual average ozone concentrations to "limit" the conversion of nitrogen oxides to nitrogen dioxide constitutes the second-level screen, while use of the OLM on an hourly basis with hourly ozone data and hourly background nitrogen dioxide is the third-level screen. More refined techniques may be considered on a case-by-case basis, but should consider individual quantities of nitrogen oxides and nitrogen dioxide emissions, atmospheric transport and dispersion, and site-specific atmospheric transformation of nitrogen oxides to nitrogen dioxide.

The PSD applications submitted for major new sources and major modifications after the minor source baseline data has been triggered need to consider consumption of the nitrogen dioxide increment by mobile sources. For modeling the impact of mobile sources, a necessary first step is preparation of the emission inventory. Preliminary emission estimates should be made with the MOBILE 4 model, soon to be released by EPA's Office of Mobile Sources. This model uses vehicle miles traveled and speed data (with default values assumed for other model inputs) for each major highway link. After the minor source baseline date has been triggered, future PSD applicants should determine emissions based on the average tons per year for the 2 years prior to the permit application. If these 2-year averaged emissions are less than the baseline concentration year emissions, then mobile sources will not consume nitrogen dioxide increment, but rather will expand the increment available. In this case, mobile sources can conservatively be ignored when calculating increment consumption.

If mobile source emissions increase, however, the following approach is suggested to determine nitrogen dioxide increment expansion. For most urban area analyses, localized areas of high ambient nitrogen dioxide concentrations need not be considered, given the annual average basis of the increment (which tends to smooth concentration gradients). Consequently, mobile sources can be modeled as area sources, with grid squares on the order of 1 kilometer on a side. Uniform emissions should be assumed over the entire highway link. Mobile source emissions should be allocated to each area source grid square based on the portion of each highway link within each grid square. The area sources should be modeled consistent with the procedures recommended in the guideline.

If local areas of high ambient nitrogen dioxide concentrations are expected, then the modeling approach should be modified in the vicinity of these localized areas. The mobile source emissions in these areas should be modeled as line sources. Since the guideline does not contain a preferred long-term line source model (CALINE 3 applies only for short-term averages), one of the available long-term guideline models should be used, such as the Industrial Source Complex Long Term (ISCLT) model. A series of volume sources should be used in ISCLT to approximate a line source for each highway segment. A greater spatial resolution in emissions is needed to ensure a more accurate concentration estimate for such localized areas. The line source results (based on the inventory in the localized area of high ambient nitrogen dioxide concentrations) should then be added to the area source results (based on the inventory for the remainder of the study area) at the same receptor(s) for the same year(s) of meteorology. Since experience with the ozone limiting method to account for nitrogen oxides to nitrogen dioxide conversion in the atmosphere has been limited, EPA will consider the need for additional guidance on dispersion modeling for the nitrogen dioxide increment prior to the efective date of the proposed regulation.

c. *Increment Violations and Enforcement.* The adequacy of SIP regulations and procedures for enforcement of the increment also becomes particularly acute for a nitrogen dioxide increment. Currently, violations of PSD increments are addressed through revisions to the SIP. States are required by 40 CFR 51.166(a)(4) to review the adequacy of SIP requirements periodically, or within 60 days of learning that an applicable increment is being violated. If the State or EPA determines that an applicable increment is being violated, the

applicable SIP must be revised within 60 days (or later as prescribed by EPA) to correct the violation pursuant to the requirements of 40 CFR 51.166(a)(3).

A large portion of nitrogen oxides emissions are not regulated by State or local rules. Some of these unregulated emissions are from area sources such as mobile sources and residential and commercial heating units. Others are larger industrial sources for which no SIP regulations for nitrogen oxides emission rates have been developed. This means that, in contrast to particulate matter and sulfur dioxide, the existing SIP regulations have little direct control over much of the nitrogen oxides emissions in an area.

To overcome this limitation, the procedures for compiling an inventory of increment-consuming emissions based on actual emissions would need to be included in revisions to SIP's presented to EPA for review. Similarly, procedures for detecting and addressing increment violations, particularly with reference to minor and area sources, need to be developed in the SIP revision process. The responsibility for developing these procedures rests with the State regulatory agencies. In the past, States have experienced difficulty in incorporating actual emissions into their inventories. The EPA is considering the need for guidance on the development of emissions inventories for use by the State agencies in the PSD program.

The EPA is specifically requesting comments on the impact of the selection of a major source baseline date and a trigger date on the development of inventories of actual emissions of nitrogen oxides. The EPA further requests comment on the issues involved in addressing both future and retroactive violations of SIP requirements. This is particularly important relative to options that are open to States to address violations of the increment that occur on the effective date of these regulations if a past baseline date is promulgated.

C. Alternative Implementation Methods

On May 7, 1980, the EPA published an ANPR which gave notice of the Agency's intent to develop PSD regulations for the remaining criteria pollutants, including nitrogen oxides (45 FR 30088). In the ANPR, 10 "regulatory alternatives" were identified which EPA was then considering for incorporation into the PSD regulations for one or more of these pollutants. These alternatives were: (1) The use of emission controls only, (2) the use of ambient air quality increments, (3) emission density zoning, (4) inventory management, (5) statewide emission limitations, (6) avoidance of co-located hydrocarbon and nitrogen oxides sources, (7) emission fees, (8) marketable permits, (9) de minimis levels, and (10) development of BACT for transportation sources. No further action was taken following the publication of this notice to develop these alternatives or to determine their potential for meeting the goals and purposes of the PSD program.

With the initiation of this rulemaking, EPA determined that the appropriate format for the nitrogen oxides PSD regulations is the development and use of ambient air quality increments. This format is similar to the system already in effect for particulate matter and sulfur dioxide. In developing the increments for nitrogen dioxide, the EPA has tentatively concluded that no other alternative protects air quality as effectively as a limit on ambient air concentration increases.

In this respect, then, the EPA believes that 9 of the 10 "regulatory alternatives" are, perhaps, more appropriately considered as potential methods, or surrogates, for implementing an ambient air quality increment, than as alternative forms of a section 166 regulation itself.

However, these other measures might be preferred by the States in formulating plans for implementing its PSD program. Under Section 166, States may adopt strategies other than increments for nitrogen oxides under Section 166 if those strategies, taken as a whole, accomplish the purposes of this provision. In developing such programs, the State would be required to demonstrate that the implementation of such an alternative system would yield a program at least as effective as the program established by EPA through this rulemaking. Further, periodic review of the effectiveness of the alternative program would be required for the State to maintain the program. The EPA is inclined to consider such alternatives as being more complicated than the basic approach of case-by-case modeling already in use. However, it is possible that some combination (e.g., no modeling below a certain emission density, but modeling after that density is reached) may prove worthwhile, compared to case-by-case modeling for every source. Or, that a marketable permit approach might replace some of the cumbersome administrative process that are likely to accompany a "first-come, first-served" approach and provide a more powerful financial incentive for the development of superior technologies. Therefore, EPA solicits comments on these implementation measures, on how their equivalence to the increment approach might be established, and on their potential role in State PSD programs.

IV. Administrative Requirements

A. Public Hearing

A public hearing will be held to discuss the proposed regulations in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket for this regulatory action is A–87–16. The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials [section 307(d)(7)(A)]). The docket is available for public inspection at EPA's Central Docket Section, which is listed under the **ADDRESSES** section of this notice.

C. Reference Documents

All the documents referenced in this preamble fall into one of two categories. They are either reference materials which are considered to be generally available to the general public, or they are memoranda and reports prepared specifically for this rulemaking. Both types of documents can be found in docket number A–87–16.

Documents which are classified as reference material are as follows:

1. Air Quality Criteria for oxides of Nitrogen (EPA 600/8–82–026).
2. Guideline on Air Quality Models (Revised) (July 1986) and Supplement A (1987) (EPA 450/2–78–027R).
3. Retention of the National Ambient Air Quality Standards for Nitrogen Dioxide (50 FR 25536), June 19, 1985
4. Advanced Notice of Proposed Rulemaking: Prevention of Significant Deterioriation for Hydrocarbons.

Carbon Monoxide, Nitrogen Oxides, Ozone, and Lead (PSD Set II) (45 FR 30038), May 7, 1980

5. Memorandum of Opinion and Order, United States District Court, Northern District of California, No. C-86-0971-WWS, April 8, 1987

6. Industrial Source Complex (ISC) Dispersion Model Users Guide—2nd Edition (EPA 450/4-86-005)

The memoranda and reports that were prepared specifically for this rulemaking are contained in a 2-part document entitled "Technical Support for NO_x PSD Rule" and placed in the docket. The following referenced reports are contained in Volume 1:

1. Model Plant Emission Reduction and Control Costs Impacts

2. Economic Impact Assessment of the Proposed NO_2 Increment Regulation

3. Urban Area Air Quality Impact Analysis

D. Office of Management and Budget Review

Under Executive Order 12291 (hereafer referred to as the Order), EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because it would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be major. The annualized costs in the fifth year after the proposed regulations would go into effect would be $63.7 million, less than the $100 milion established as the first criterion for a major regulation in the Order. Estimated price increases of 0 to 3.7 percent associated with the proposed regulations would not be considered a "major increase in costs or prices" specified as the second criterion in the Order. The economic analysis of the proposed regulations' effect on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion in the Order).

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments will be included in Docket A-87-16.

The information collection requirements in this proposed regulation have been submitted for approval to OMB under the Paperwork Reduction Act of 1980, 44 USC 3501 *et. seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention, Desk Office for EPA," as well as to EPA. The final rule will respond to any OMB or public comments on the information collection requirements.

E. Federalism Implications

Under Executive Order (Order) 12612, EPA must determine if a rule has federalism implications. Federalism implications refers to substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. For those rules which have federalism implications, a Federalism Assessment is to be made.

The Order also requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law however if there is a clear Congressional intent for the agency to do so. Any such preemption, however, is to be limited to the extent possible.

The development of section 166 regulations for nitrogen dioxide is a statutory, non-discretionary duty. However, States may adopt strategies other than increments for NO_x under section 166 if the strategies, taken as a whole, accomplish the statutory purposes. In addition, the regulations that EPA is proposing will allow States a full opportunity to develop their own approvable methods of implementing the proposed increments. Finally, the EPA will implement its own increments regulations only for those States that do not develop their own approvable regulations. Congressional intent for preemption of State law is clear in such cases.

Unfortunately, because of the limited time allowed under the Court's order for the development of these increments, it was not possible to consult with States prior to this proposal. However, State comments on the proposal will be fully considered prior to promulgation of final rules. For these reasons a Federalism Assessment has not been prepared.

F. Economic Impact Assessment

Section 317 of the Act requires the Administrator to prepare an economic impact assessment for any regulations under Part C of Title I (relating to PSD of air quality). An economic impact assessment was prepared for the proposed PSD increments for nitrogen dioxide and for other alternative increments. The requirements of this section were considered in the formulation of the proposed increments to ensure that they would represent the best system for the PSD of air quality, considering costs. The economic impact assessment is included in the docket.

G. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities (see 46 FR 8709).

List of Subjects

40 CFR Part 51

Air pollution control, intergovernmental relations, Reporting and recordkeeping requirements, Nitrogen dioxide, State implementation plans.

40 CFR Part 52

Air pollution control, Nitrogen dioxide.

Dated: February 2, 1988.

A. James Barnes,

Acting Administrator.

For the reasons set forth in the preamble, it is proposed that Part 51 of Chapter I of the Title 40 of the Code of Federal Regulations be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for Part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 110, 160–169, 171–178, and 301(a) of the Clean Air Act 42 U.S.C. 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a).

2. In § 51.166, paragraphs (b)(3)(iv), (b)(13)(i)(*b*), (b)(13)(ii)(*a*), (b)(14)(i), (f)(1)(v), (f)(4)(i) and the last sentence of paragraph (p)(4) are revised and new entries are added under the heading "Nitrogen dioxide" in the tables in paragraphs (c) and (p)(4) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(3) * * *

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable baseline date is

creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

* * * * *

(13) * * *

(i) * * *

* * * * *

(*b*) The allowable emissions of major stationary sources which:

(*1*) In the case of particulate matter or sulfur dioxide, commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(*2*) In the case of nitrogen oxides, commenced construction before February 8, 1988, but were not in operation by the applicable baseline date.

(ii) * * *

(*a*) Actual emissions from any major stationary source which:

(*1*) In the case of particulate matter or sulfur dioxide, commenced construction after January 6, 1975;

(*2*) In the case of nitrogen oxides, commenced construction after February 8, 1988;

* * * * *

(14)(i) "Baseline date" means the earliest date after the date specified below on which the first complete application is submitted by a major stationary source or major modification subject to, and under the provisions of, the requirements of 40 CFR 52.21 or the requirements of regulations approved pursuant to 40 CFR 51.166 as follows:

(*a*) For particulate matter and sulfur dioxide, the baseline date is established on the earliest date after August 7, 1977.

(*b*) For nitrogen oxides, the baseline date is established on the earliest date after February 8, 1988.

* * * * *

(c) * * *

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I	
* * * * *	
Nitrogen dioxide: Annual arithmetic mean	2.5
Class II	
* * * * *	
Nitrogen dioxide: Annual arithmetic mean	25.0
Class III	
* * * * *	
Nitrogen dioxide: Annual arithmetic mean	50.0

* * * * *

(f) * * *

(1) * * *

(v) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(4) of this section.

* * * * *

(4) * * *

(i) Specifies the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed 2 years in duration unless a longer time is approved by the Administrator.

* * * * *

(p) * * *

(4) * * * If the Federal land manager concurs with such demonstration and so certifies to the State, the reviewing authority may: *Provided*, that applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
* * * * *	
Nitrogen dioxide: Annual arithmetic mean	25

* * * * *

For the reasons set out in the preamble, it is proposed that Part 52 of Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7642.

2. In 52.21, paragraphs (b)(3)(iv), (b)(13)(ii)(*b*), (b)(13)(ii)(*a*), (b)(14)(i), (f)(1)(v), (f)(4)(i) and the last sentence of paragraph (p)(5) are revised and new entries are added under the heading "Nitrogen dioxide" in the tables in paragraphs (c) and (p)(5) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality

* * * * *

(b) * * *

(3) * * *

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

* * * * *

(13) * * *

(i) * * *

* * * * *

(*b*) The allowable emissions of major stationary sources which:

(*1*) In the case of particulate matter or sulfur dioxide, commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(*2*) In the case of nitrogen oxides, commenced construction before February 8, 1988, but were not in operation by the applicable baseline date.

(ii) * * *

(*a*) Actual emissions from any major stationary source which:

(*1*) In the case of particulate matter or sulfur dioxide, commenced construction after January 6, 1975.

(2) In the case of nitrogen oxides, commenced construction after February 8, 1988; and

* * * * *

(14)(i) "Baseline date" means the earliest date after the date specified below on which the first complete application is submitted by a major stationary source or major modification subject to the, and under the provisions of, requirements of 40 CFR 52.21 or the requirements of regulations approved pursuant to 40 CFR 51.166 as follows:

(*a*) For particulate matter and sulfur dioxide, the baseline date is established on the earliest date after August 7, 1977.

(*b*) For nitrogen oxides, the baseline date is established on the earliest date after February 8, 1988.

* * * * *

(c) * * *

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I	
* * * * *	
Nitrogen dioxide: Annual arithmetic mean	2.5

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class II	
* * * * *	
Nitrogen dioxide: Annual arithmetic mean	25.0
Class III	
* * * * *	
Nitrogen dioxide: Annual arithmetic mean	50.0

* * * * *

(f) * * *

(1) * * *

* * * * *

(v) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(4) of this section.

* * * * *

(4) * * *

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed 2 years in duration unless a longer time is approved by the Administrator.

* * * * *

(p) * * *

(5) * * * If the Federal land manager concurs with such demonstration and he so certifies, the State may authorize the Administrator, *provided* that the applicable requirements of this section are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over baseline concentrations for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
* * * * *	
Nitrogen dioxide: Annual arithmetic mean	25

* * * * *

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federal register

Monday
February 8, 1988

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Alteration of the San Diego Terminal Control Area, CA; Final Rule

14 CFR Part 71

[Airspace Docket No. 85-AWP-38]

Alteration of the San Diego Terminal Control Area, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the San Diego, CA, Terminal Control Area (TCA). It reduces TCA airspace along the California shoreline between La Jolla and Del Mar, simplifies the definition of TCA boundaries by reference to navigational aid radials where possible, and establishes airspace east and northeast of Miramar Naval Air Station (NAS) to contain high performance aircraft arriving and departing Miramar NAS.

EFFECTIVE DATE: 0901 U.t.c., 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

On March 4, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the San Diego TCA (51 FR 7448). The proposal was preceded by numerous meetings and briefings, all of which solicited input in the development of alterations which would simplify and align boundaries and vertical segments with current traffic flows. Specifically, the following goals were established:

1. Widen the visual flight rules (VFR) area along the California shoreline.
2. Simplify definition of TCA boundaries by reference to navigational aid radials where possible.
3. Lower the ceiling of the San Diego TCA from 12,500 feet MSL to 10,000 feet MSL.
4. Reduce the overall lateral size of the existing TCA.
5. Encompass airspace east and northeast of Miramar NAS to contain high performance aircraft arriving and departing that airport.

Concurrent with the above modification of the TCA, the FAA announced plans to cancel the San Diego Terminal Radar Service Area (TRSA), as coordinated with local users, in consideration of the newly configured TCA. The new TCA configuration makes more efficient use of available airspace which makes the TRSA unnecessary.

During the later part of 1986, the FAA initiated a review of the TCA program during which 39 recommendations related to issues such as TCA design, operating criteria, training and enforcement were developed. Many of these recommendations have been implemented while others are under refinement and/or consideration through related rulemaking actions. This rule will implement changes which are considered necessary safety enhancements for the San Diego TCA, but will not implement policies which are being developed or considered under related rulemaking. For that reason, the FAA anticipates a follow-on proposal regarding further alteration of the San Diego TCA. Adoption of alterations contained herein is considered necessary since they provide enhancements related to safety of flight in the San Diego terminal area.

Analysis of Comments

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. In addition, an informal airspace meeting was held on April 29, 1986, in San Diego, CA, at which participants were invited to express their views and make comments. There were 35 comments submitted to this proposal. Following is an analysis of the comments received.

Several commenters objected to the proposed ceiling and recommended lowering it to 7,000 or 8,000 feet MSL. The original proposal contained a recommendation to lower the ceiling of the TCA from 12,500 to 10,000 feet MSL. This recommendation represented views attained during the early planning stages for revising the San Diego TCA. Since the development of the original proposal, several studies have been undertaken which relate to terminal airspace configuration, TCA design, standardization and simplification, and the study of factors relating to improved safety in and around busy terminal "hub" airports. As a result of these actions, the FAA has determined that 12,500 feet is the optimum ceiling for a TCA. Consequently, the FAA has decided to retain the original 12,500 foot ceiling of the San Diego TCA.

Several commenters objected to the proposed lower limit of 4,800 feet in Area A, north and west of Rancho Bernardo. The portions of this area which are over land are utilized by general and commercial aviation interests for flight training, balloon operations and other purposes which, they contend, would be adversely impacted by lowering the existing altitude of 6,800 feet. Some of these commenters recommended deletion of Area A airspace east of Highway 15.

The FAA originally proposed a lower base altitude in this area to encompass specific flight profiles of aircraft operating to and from Lindbergh and Miramar. Subsequent to the proposal, a major operator of large turbine-powered aircraft ceased operation in this area. The FAA has determined that modification of applicable procedures can alleviate the requirement for the lower altitude, thereby allowing retention of a 6,800-foot base altitude throughout a substantial portion of the area. To accommodate this higher base altitude, a subset of Area A is created and defined as Area R. This area, predominately that airspace east of Highway 15, requires a base altitude of 4,800 feet to contain the high volume of jet traffic operating to and from Miramar. Additionally, the FAA created a subset called Area S. This contains the area which had a floor at 6,800 feet and retains that floor. The FAA believes this action significantly reduces the impact of the original proposal. Operations which require altitudes above 4,800 feet may be accommodated by adjusting their flight path to the north of Area R or west of Area E.

Several commenters stated the Area D altitude adjustments contained in the original proposal would adversely affect transit of the Torrey Pines Area and further limit glider operations in this area. The FAA agrees there would be no substantial advantage to adjusting the altitudes from those which previously existed. Therefore, the original altitude structure of the TCA in Area D is retained. Furthermore, boundaries defining this area at both the northwest and southern boundaries have been adjusted, thereby providing additional airspace for flights intending to remain clear of the TCA.

Several commenters questioned the necessity for development of Area E north of Miramar. They contend the area is extensively utilized for flight training and other VFR operations which would be adversely impacted by establishing additional TCA airspace.

The development of Area E is necessary as it ensures that aircraft utilizing the Julian Standard Instrument Departure (SID) and those aircraft arriving at Miramar will be contained within the TCA. The FAA determined an adjustment to the SID would allow reduction of the northern most portion of Area E, and such a reduction is incorporated in this rule. Although some flight training may be inhibited, the FAA believes sufficient airspace is available in close proximity to this area which can accommodate these operations. Segregation of flight training and other uncontrolled VFR operations from extensive instrument flight rule (IFR) operations is consistent with the objectives of the TCA program.

Several commenters stated the elimination of nonregulatory airspace from 3,600 to 6,800 feet MSL in Area G north and east of Miramar NAS would focus traffic into two north/south corridors east and west of this area. The FAA does not believe Area G unduly encumbers nonparticipating flights and its adoption is necessary in order to preclude potential conflict with the high performance jet traffic arriving and departing Miramar NAS. Area G replaces airspace previously containing a transition route which accommodated nonparticipating aircraft conducting VFR transit north and south. This was in addition to a similar configuration in Area D. Area G will now require that aircraft participate or circumnavigate to either the east or west. Area F will accommodate much of these transits to the west without requiring significant alteration to many north/south transit operations.

One commenter stated the northwest portion of Area G is utilized extensively for balloon landings which would be precluded by this modification. The FAA does not agree with this comment. Area G, as altered, represents a reduction in surface area to the northwest over that which previously existed. The adverse impact, as stated in the objection, existed prior to this proposal. None of the provisions of this rule will add to the adverse impact in this area.

Several commenters stated the base altitude limits of Areas H and I, which encompass the final approach corridor to Miramar NAS, should be raised The FAA does not agree. The base altitude of Area H is consistent with that which previously existed. The base altitude of 3,800 feet in Area I, as well as that retained for Area H, is necessary in order to contain the high volume of jet arrivals and departures at Miramar NAS.

Several commenters stated the easternmost portions of Areas I and K, east of Lakeside and Barrett Lake, should have boundaries adjusted westward and/or base altitudes should be raised. The FAA has revisited the requirement for TCA airspace in these areas and has eliminated entire portions from the TCA in consonance with these recommendations. Alteration of the base altitudes in the remaining airspace is not feasible; therefore, recommendations in this regard could not be adopted.

Experimental Aircraft Association, San Diego Chapter, commented that the proposed lower base altitude in Area K, near Otay Mesa, would eliminate parachute operations at that location. The FAA agrees the originally proposed 3,500-foot lower limit in this area would essentially preclude such operations. A revised lower limit of 5,800 feet has been established which will provide sufficient altitude to conduct parachute operations. The FAA believes this adjustment mitigates the concern.

Several commenters questioned the rationale for utilizing navigational aid (NAVAID) radials and distances as a method of TCA simplification. Specifically, objection was raised because certain operators were unable to receive NAVAID signals or ATC communications at low altitudes in some areas of the TCA as well as below the TCA in other areas.

The FAA believes utilization of NAVAID reference in determining boundaries enables a more precise determination of boundary placement. This method, therefore, allows airspace allocation to be more closely aligned with actual requirements. TCA boundaries are, for the most part, established in areas where suitable landmarks, topographical features, highways, etc., may be utilized for visual reference in aiding the pilot to determine proximity to the TCA. However, many coastal areas, San Diego included, frequently experience low stratus which necessitates operations above an obscuring layer. This low stratus could virtually eliminate operation by sole reference to geographical features and landmarks. Even though some areas beneath the floor of TCA airspace or at very low altitudes within the TCA may not allow adequate NAVAID or communications reception, flight in such areas can be conducted without sole reliance upon NAVAID reception when appropriately planned during preflight and/or coordinated with ATC.

San Diego Nonprofit Aviation Council (SANPAC) questioned military qualification for TCA airspace. The FAA establishes TCA airspace predicated upon a number of factors which affect the terminal area operations. TCA airspace is developed solely to enhance safety in terminal airspace. A basic causal factor in air traffic conflicts is the mix of uncontrolled VFR and controlled IFR aircraft, making segregation essential to safety in certain portions of highly congested terminal areas. The overwhelming majority of these conflicts occur between a general aviation aircraft and either an air carrier, military aircraft or another general aviation aircraft. The airspace configuration established by this action, similar to that which previously existed, has taken into consideration all aspects of air traffic in the terminal area including the high density IFR operations conducted to and from Miramar NAS. This configuration is in consonance with the fundamental safety objectives of the TCA program.

Regulatory Evaluation

Benefit-Cost Analysis

The regulatory evaluation prepared for this final rule examines the cost and benefit aspects of amending Part 71 of Federal Aviation Regulations.

The objective of this rule is to enhance safety and, to a lesser extent, operational efficiency by employing these modifications to the San Diego, CA, TCA: (1) Increase the non-TCA airspace along the California shoreline between La Jolla and Del Mar, (2) simplify the definition of TCA boundaries by reference to navigational aid radials where possible, and (3) establish airspace east and northeast of Miramar Naval Air Station (NAS) to contain high performance aircraft arriving and departing Miramar NAS.

A. Benefits

This rule is expected to generate benefits in terms of enhanced safety and, to a lesser extent, operational efficiency. An example of enhanced safety, for instance, is the reduced likelihood of midair collisions. Improved efficiency will allow Air Traffic Control (ATC) to reallocate its resources from low priority to high priority functions.

In terms of enhanced safety, expansion of the San Diego, CA, TCA will restrict more airspace to controlled operations in revised Areas B, E, G, H, I, J, K, P, and R. (These revised areas of the TCA are shown in "Chart A" of the

detailed regulatory evaluation contained in the docket.) This action is expected to result in a reduced likelihood of midair collisions resulting in serious injuries, fatalities, and property damage (namely, aircraft). Due to the proactive nature of the final rule, these safety benefits are extremely difficult to quantify in monetary terms, because the rule attempts to avert a problem (or midair collisions) by taking corrective action towards its symptom before it can escalate. In this case, for example, the symptom is increased complexity in airspace east and northeast of Miramar NAS. As the result of increased complexity, the lateral boundaries will be expanded in revised Areas G, H, I, J, K, and R. In revised Area B, the western and southern portions of the floor will be lowered from 2,800 to 2,000 feet mean sea level (MSL). In revised Area E, the floor will be lowered from 6,800 to 4,800 feet MSL. In revised Area G, expansion will occur as a result of eliminating a corridor in that airspace to the east that was not previously in the TCA. Similarly, in revised Area P the western and eastern portions of the floor will be lowered from 5,800 to 4,800 feet MSL. In addition, in revised Areas I and R, a floor of 4,800 feet MSL will be established in airspace outside of the present TCA boundary. Previous actions such as these have been successful in lowering the likelihood of midair collisions by correcting safety problem symptoms. Thus, such proactive efforts have not afforded sufficient opportunity to quantify potential benefits. (A review of the National Transportation Safety Board data based on midair collisions revealed that no midair collisions have occurred in the TCA since its inception.) Without documented evidence of midair collisions in the San Diego, CA, TCA, estimating the probability of their occurrence and magnitude of casualty loss cannot be determined with a reliable degree of certainty. Despite the lack of documented midair collisions, the FAA firmly believes the rule will result in enhanced safety, in terms of reduced likelihood of midair collisions due to expansion of the aforementioned revised areas.

In terms of operational efficiency, contraction of the San Diego, CA, TCA, in revised Areas A, B, K, and P will allow ATC to reallocate its resources from low complexity to high complexity areas of the TCA. In addition, contraction of the TCA will reduce the travel distance for those aircraft operators who elect to circumnavigate revised surface Areas A and K by approximately 3 to 5 nautical miles (one-way). Conversely, expansion of the TCA floors in the central portions of revised Areas B (1,500 to 2,000 feet MSL) and P (2,800 to 4,800 feet MSL) is expected to provide additional airspace to general aviation (GA) aircraft operators who decide to circumnavigate beneath the floors of the TCA over the ocean.

B. Costs

FAA estimates the total cost of compliance that will accrue from the implementation of this rule to be negligible. This assessment is based on the fact that revised Areas B, E, G, H, I, J, K, P, and R will be slightly to moderately expanded within the San Diego, CA, TCA's airspace. In addition, the cost of recharting the TCA as a result of these and other changes is expected to be negligible; that is, such cost is not expected to exceed five percent (or $1,200) of the routine semiannual TCA recharting cost estimated at $25,000 (in 1987 dollars), based on the informed judgment of FAA personnel. Discounted for 1988, this one-time cost is expected to amount to an estimated $1,100 (in 1987 dollars). Each of the revised areas of the TCA resulting in either costs or benefits is discussed as follows:

Area B. In revised Area B, most of the floor will be lowered from 2,800 to 2,000 feet MSL. This revised area is not expected to impose any additional costs on aircraft operators. Those aircraft operators, without Mode C transponders, who routinely circumnavigate beneath the floor of this area will still be able to do so by flying over the ocean.

Area E. In revised Area E, the floor will be reduced from 6,800 to 4,800 feet MSL. This action is expected to impose only negligible costs on aircraft operators engaged in flight training. This assessment is based on the belief that while some flight training may be inhibited, sufficient airspace is available in close proximity to this area which can accommodate such operations.

Area G. The lateral boundary of revised Area G will be expanded as the result of eliminating a transition route which accommodated nonparticipating aircraft operators conducting north and south VFR transits, and it takes in airspace to the east that was not previously in the TCA. This action is expected to have a negligible cost impact on nonparticipating aircraft operators who elect to circumnavigate the TCA by requiring them to transit slightly to the west of revised Area G. Area F will accommodate much of these transits to the west without requiring significant alteration to many north and south transit operations.

Areas H and J. The lateral boundaries of revised Areas H and J will be slightly expanded. Area H will be slightly expanded to the northwest and southeast, whereas Area J will be slightly expanded to the northcentral. Due to the changes to these areas and the unique configuration of the existing TCA, only negligible costs is expected to accrue from this action. The unique configuration of existing Areas H and J made circumnavigation within approximately 3 to 5 nautical miles of these areas impractical because of their circuitous routes along the northern lateral boundaries of the TCA. The changes to these areas will not significantly alter this situation. Therefore, aircraft operators who currently circumnavigate outside of the affected areas of the TCA will not have to significantly alter their flying practices, if at all. In addition, aircraft operators who routinely fly within the TCA will not be impacted as the result of these changes because their flying practices would not be impeded

Area K. The northwestern portion of this area's lateral boundary will be expanded approximately 3 to 5 nautical miles. Aircraft operators with Mode C transponders would not be impacted by this change for the same reason noted previously. However, aircraft operators without Mode C transponders will be impacted, though not significantly. These aircraft operators are assumed to circumnavigate the TCA by flying approximately 3 to 5 nautical miles out of the way. (Even though Area K will have a floor of 5,800 feet MSL, aircraft operators are not expected to fly under it because of high terrain in the area.) The additional cost of operation as the result of circumnavigating approximately 3 to 5 nautical miles out of the way is not expected to be significant because of the short travel distance.

Another reason why these revised areas will not significantly affect GA aircraft operators without Mode C transponders, is based on the assumption that another FAA proposed rulemaking action will be adopted shortly after this rule (more than likely, no later than six months) and require all aircraft operating within 30 nautical miles of a TCA to be equipped with Mode C transponders. (See Notice 87-7, "Terminal Control Area (TCA) Classification and TCA Pilot and Equipment Requirements," 52 FR 22918, June 16, 1987.) Assuming that this notice becomes a rule, the only cost imposed by revised Areas H and J will be for a short period of time after the implementation of this rule. This rule is

expected to be implemented in early to mid-1988. If, however, the FAA does not adopt the other proposed rule change as expected, the cost of compliance will still be negligible, though to a higher degree. This assessment is based on the premise that those aircraft operators who circumnavigate the TCA will only have to travel a short distance of approximately 3 to 5 nautical miles out of the way.

Area P. In revised Area P, the western and the eastern portions of the floor will be lowered from 5,800 to 4,800 feet MSL. This action is not expected to impose any additional costs on GA Mode C equipped aircraft operators who elect to circumnavigate beneath the floor of this area because it lies directly over the ocean.

Areas I and R. These revised areas will represent an addition to the TCA. These changes will expand the northeastern lateral boundaries of the TCA by approximately 5 nautical miles. As noted earlier, primarily GA aircraft operators without Mode C transponders will be impacted by this action, though not significantly. As noted above for revised Areas J and K, the costs that will be imposed by these changes will be negligible if Notice 87-7 becomes a final rule and adopted shortly after this rule.

C. Conclusion

In view of the aforementioned costs and benefits that are expected to accrue, the FAA firmly believes the final rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional information related to the costs and benefits that are expected to accrue from the implementation of this rule.

International Trade Impact Assessment

The final rule will neither have an affect on the sale of foreign aviation products or services in the United States, nor will it have an affect on the sale of United States products or services in foreign countries. This is because the FAA will incur virtually all costs imposed by this rule for those reasons previously discussed in the cost section.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this rule will be those who circumnavigate the San Diego, CA, TCA as a result of not having Mode C transponders. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this rule already have Mode C transponders. This is because such operators fly regularly in or near airports where radar approach control service has been established. A number of individuals, however, who operate small single-engine (piston) airplanes, without Mode C transponders, are expected to incur economic impacts. Such individuals are not defined as small entities under the RFA. Therefore, the FAA believes this rule will not have a significant economic impact on a substantial number of small entities.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations: (1) Describes the San Diego, CA, TCA using NAVAID radials and distances where practical; (2) adjusts the lateral and vertical limits, predominantly in the northern and eastern portions, to accommodate current traffic flows and provide a greater degree of safety in known areas of congestion involving controlled IFR and uncontrolled VFR flights; and (3) eliminates regulatory TCA segments in areas where an evaluation revealed a lessening in complexity or density of air traffic operations. The overall result of this action is a reduction in the amount of TCA airspace concurrent with a more comprehensive airspace configuration capable of serving the air traffic demands of a congested, complex terminal area.

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; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Amendment

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

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

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

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

§ 71.401 [Amended]

2. Section 71.401(b) is amended as follows:

San Diego, CA (Revised)

Primary Airports

San Diego, CA, (Lindbergh Field), (lat. 32°43'58"N. long. 117°11'14"W.).
Miramar NAS, Miramar, CA (lat. 32°52'30"N., long. 117°08'15"W.).

Boundaries

Southern TCA Boundary. A straight line beginning at the intersection of Julian 185° radial and a point 3 miles north of the Mexico Border to lat. 32°33'07"N., long. 117°40'45"W.

Western Boundary. Eastern edge of Warning area 291 (W-291).

Area A. That airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Julian VORTAC 262° radial and the eastern edge of Warning Area W-291; then east via the Julian 262° radial to intercept the Mission Bay VORTAC 325° radial, then southeast via the Mission Bay 325° radial to the Julian VORTAC 257° radial, then west via the Julian VORTAC 257° radial to the Oceanside VOR 200° radial, then southwest via the Oceanside 200° radial to the eastern edge of W-291, then north via the eastern edge of W-291 to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 12,500 feet MSL beginning at the intersection of the eastern edge of W-291 and the Oceanside 200° radial; then northerly via the Oceanside 200° radial to intercept the Julian 257° radial; then via the Julian 257° radial to intercept the Oceanside 182° radial; then southerly via the Oceanside 182° radial to intercept the Poggi VORTAC 291° radial; then via the Poggi 291° radial to intercept the extension of the control zone division line that separates San Diego Linbergh Field, CA, and San Diego NAS North Island, CA, Control Zones; then via this line on an easterly heading to intercept the Oceanside 171° radial; then southerly via the Oceanside 171° radial to the Poggi 280° radial; then westerly via the Poggi 280° radial to the eastern edge of W-291; then northerly along the eastern edge of W-291 to the point of beginning.

Area C. That airspace extending upward from 1,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Oceanside 182° radial and the Julian 257° radial; then easterly via the Julian 257° radial

to intercept the Mission Bay 325° radial; then via the Mission Bay 325° radial to intercept the Oceanside 167° radial; then via the Oceanside 167° radial to intercept the Mission Bay 310° radial; then via the Mission Bay 310° radial to the Mission Bay VORTAC; then westerly via the Mission Bay 279° radial to intercept the Oceanside 171° radial; then via the Oceanside 171° radial southerly to intersect the extension of the control zone division line between San Diego Lindbergh Field and San Diego NAS North Island Control Zones; then westerly via the extension line to intercept the Poggi 291° radial; then westerly via the Poggi 291° radial to intercept the Oceanside 182° radial; then northerly via the Oceanside 182° radial to the point of beginning.

Area D. That airspace extending upward from 1,500 feet MSL to and including 2,500 feet MSL and that airspace extending upward from 6,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Julian 257° radial and Mission Bay 325° radial; then northerly via the Julian 257° radial to intercept a visual extension of Miramar Runway 28 centerline; then via the Runway 28 centerline extension to intercept the Miramar Control Zone 5 SM arc west of Miramar; then counterclockwise along the 5 SM control zone arc to intercept a visual extension of Montgomery Field Runway 28R centerline; then via the Runway 28R centerline to intercept the Mission Bay 325° radial; then via the Oceanside 325° radial to the point of beginning.

Area E. That airspace extending upward from 3,000 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Mission Bay 008° radial and the Julian 257° radial; then clockwise via the Julian 257° radial to intercept the Oceanside 135° radial; then via the Oceanside 135° radial to intercept the Julian 247° radial; then southwesterly via the Julian 247° radial to intercept the Mission Bay 008° radial; then northerly via the Mission Bay 008° radial to the point of beginning.

Area F. That airspace extending upward from the surface to and including 3,200 feet MSL and that airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Miramar NAS Runway 28 centerline extension and Miramar Control Zone 5 SM arc; then via the visual extension of Miramar NAS Runway 28 centerline to the approach end of Miramar Runway 28; then southeasterly via a straight line to a point intercepting the Miramar Control Zone 5 SM arc at the point where the control zone arc intersects the southern boundary of the Miramar Control Zone extension; then clockwise via the Miramar Control Zone 5 SM arc to intercept the division line of the Miramar and San Diego Montgomery Field Control Zones; then westerly via this separation line to intercept a visual extension of the Montgomery Field Runway 28 centerline; then via the Montgomery Field Runway 28R centerline extension to intercept the Miramar Control Zone 5 SM arc; then clockwise via the Miramar Control Zone 5 SM arc to the point of beginning.

Area G. That airspace extending upward from the surface to and including 12,500 feet MSL beginning at the intersection of the Oceanside 135° radial and the Julian 247° radial; then southeasterly via the Oceanside 135° radial to intercept the south boundary of the Miramar Control Zone extension; then westerly via the Miramar Control Zone extension southern boundary line to a point intersecting the Miramar Control Zone 5 SM arc; then via a direct line to the approach end of Miramar Runway 28 approach end; then northwesterly via the Miramar Runway 28 centerline and Runway 28 centerline extension to intercept the Miramar Control Zone 5 SM arc; then clockwise via the Miramar Control Zone 5 SM arc to intercept the Julian 247° radial; then northeasterly via the Julian 247° radial to the point of beginning.

Area H. That airspace extending upward from 1,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Oceanside 135° radial and the Julian 247° radial; then northeasterly via the Julian 247° radial to intercept the Oceanside 130° radial; then southeasterly via the Oceanside 130° radial to the Poggi 007° radial; then southerly via the Poggi 007° radial to the southern boundary line of the Miramar Control Zone extension; then westerly along the southern boundary line of the Miramar Control Zone extension to intercept the Oceanside 135° radial; then northwesterly via the Oceanside 135° raidal to the point of beginning.

Area I. That airspace extending upward from 3,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Oceanside 130° radial and the Julian 247° radial; then northeasterly via the Julian 247° radial to the Oceanside 121° radial; then southeasterly via the Oceanside 121° radial to intercept the Poggi 020° radial; then southerly via the Poggi 020° radial to intercept an extension of the southern boundary line of the Miramar Control Zone extension; then southwest along this extension line of intercept the Poggi 007° radial; then northerly via the Poggi 007° radial to the Oceanside 130° radial; then via the Oceanside 130° radial to the point of beginning.

Area J. That airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL beginning at the Mission Bay VORTAC; then northwesterly via the Mission Bay 310° radial to the Oceanside 167° radial; then northerly via the Oceanside 167° radial to the westerly extension of the Montgomery Field Runway 28R centerline; then easterly vial the Runway 28R centerline to the separation line between San Diego Montgomery Field and Miramar Control Zones; then via the control zone separation line to intercept the Miramar Control Zone 5 SM arc; then counterclockwise via the Miramar Control Zone 5 SM arc to intercept the southern boundary of the Miramar Control Zone extension; then easterly along the Miramar Control Zone extension southern boundary line extended to intercept the Oceanside 130° radial; then southeasterly via the Oceanside 130° radial to the Julian 207° radial; then southerly via the Julian 207° radial to the Mission Bay 099° radial; then westerly via the Mission Bay 099° radial to the point of beginning.

Area K. That airspace extending upward from 5,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Mission Bay 085° radial and the Oceanside 130° radial; then easterly via the Mission Bay 085° radial to intercept the Julian 191° radial; then southerly via the Julian 191° radial to intersect a line that is 3 NM north and parallel to the U.S./Mexican Border; then westerly via this line to the Poggi 121° radial; then northwesterly via the Poggi 121° radial to Poggi VORTAC; then northwesterly via the Poggi 075° radial to intercept the Julian 207° radial; then northeasterly via the Julian 207° radial to intercept the Oceanside 130° radial; then via the Oceanside 130° radial to the point of beginning.

Area L. That airspace extending upward from the surface to 12,500 feet MSL beginning at the intersection of the Oceanside 171° radial and the Mission Bay 279° radial; then easterly via the Mission Bay 279° radial and the Mission Bay 099° radial to the Mission Bay 10 DME, then clockwise via the Mission Bay 10 DME arc to the Poggi 300° radial; then northwesterly via the Poggi 300° radial to intersect the division line that separates the San Diego Lindbergh Field and San Diego NAS North Island Control Zones; then westerly along this line extended to intercept the Oceanside 171° radial; then northerly via the Oceanside 171; radial to the point of beginning; excluding (VFR Corridor) that airspace from 3,300 feet to 4,700 feet MSL in an area beginning at the Mission Bay VORTAC; then southeasterly on a line direct to the Hotel del Coronado (south end of Coronado Island); then via the Silver Strand Boulevard to the Mission Bay 10 DME; then counterclockwise via the Mission Bay 10 DME to intersect Interstate 5 (I–5); then northerly via I–5 to the intersection of Highway 94; then on a northerly heading direct to the intersection of the interchange of I–5 and I–805 to intersect the Mission Bay 099° radial; then westerly via Mission Bay 099° radial to Mission Bay to the Point of beginning.

Area M. That airspace extending upward from 1,800 feet MSL to and including 12,500 feet MSL beginning at the Mission Bay 099° radial/10 DME; then easterly via the Mission Bay 099° radial to the Mission Bay 13 DME; then clockwise via the 13 DME arc to the Poggi 300° radial; then via the Poggi 300° radial to the Mission Bay 10 DME; then northerly via the 10 DME arc to the point of beginning.

Area N. That airspace extending upward from 3,000 feet MSL to and including 12,500 feet MSL beginning at the Mission Bay 099° radial/13 DME; then easterly via the Mission Bay 099° radial to the Mission Bay 15 DME; then clockwise via the Mission Bay 15 DME arc to the Poggi 300° radial; then via the Poggi 300° radial to the Mission Bay 13 DME; then northerly via the 13 DME to the point of beginning.

Area O. That airspace extending upward from 3,500 feet MSL to and including 12,500 feet MSL beginning at the Mission Bay 099° radial/15 DME; then easterly via the Mission Bay 099° radial to the Julian 207° radial; then southerly via the Julian 207° radial to the Poggi 070° radial; then southwesterly via the Poggi 070° radial to the Poggi VORTAC; then northwesterly via the Poggi 301° radial to the

Mission Bay 15 DME; then northerly via the Mission Bay 15 DME arc to the point of beginning.

Area P. That airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Poggi 279° radial and the eastern edge of W–291; then easterly via the Poggi 279° radial to intercept the Mission Bay 10 DME; then northeasterly via the Mission Bay 10 DME to the Poggi 300° radial; then southeasterly via the Poggi 300°/120° radials to intercept a line that is 3 NM north and parallel to the U.S./Mexican Border; then westerly via this line to the eastern edge of W–291; then northerly via the eastern edge of W–291 to the point of beginning.

Area Q. That airspace extending upward from 2,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Oceanside 171° radial and an extension of the division line separating the San Diego Lindbergh Field and San Diego NAS North Island Control Zones; then easterly along that division line to intercept the Poggi 300° radial; then southeasterly via the Poggi 300° radial to intercept the Mission Bay 10 DME; then clockwise via the Mission Bay 10 DME arc to intercept the Poggi 279° radial; then westerly via the Poggi 279° radial to the Oceanside 171° radial; then northerly via the Oceanside 171° radial to the point of beginning, excluding airspace of the VFR Corridor (See Area L).

Area R. That airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Oceanside 135° radial and the Julian 257° radials; then easterly via the Julian 257° radial to intercept the Oceanside 115° radial; then southeasterly via the Oceanside 115° radial to intercept the Poggi 020° radial; then southerly via the Poggi 020° radial to intercept the Oceanside 121° radial; then northwesterly via the Oceanside 121° radial to intercept the Julian 247° radial, then southwesterly via the Julian 247° radial to intercept the Oceanside 135° radial; then northwesterly via the Oceanside 135° radial to the point of beginning.

Area S. That airspace extending upward from 6,800 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Julian VORTAC 262° radial and the Mission Bay 325° radial; then clockwise via the Julian 262° radial to intercept the Oceanside VORTAC 115° radial; then via the Oceanside 115° radial to intercept the Julian 257° radial; then via the Julian 257° radial to the Mission Bay VORTAC 008° radial; then via the Mission Bay 008° radial to intercept the Julian 247° radial; then southwesterly via the Julian 247° radial and to intercept the Miramar, CA, Control Zone 5 SM boundary to intercept the Miramar Runway 28 centerline extended; then westerly via the Miramar Runway 28 centerline extension to intercept the Julian 257° radial; then via the Julian 257° radial to intercept the Mission Bay 325° radial, then northwest via the Mission Bay 325° radial to the point of beginning.

Issued in Washington, DC, on February 1, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

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H.R. 278/Pub. L. 100-241

Alaska Native Claims Settlement Act Amendments of 1987. (Feb. 3, 1988; 101 Stat. 1788; 27 pages) Price: $1.00

CFR CHECKLIST

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10 Parts:		
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11	11.00	July 1, 1987
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

** Note: The original version of 46 CFR Parts 41–69, revised as of October 1, 1987, was printed incorrectly. A corrected edition will be issued in the near future.